



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

The 2023 Annual Statement

Human Rights in Northern Ireland

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2023



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COMMISSION

About Us

The Northern Ireland Human Rights Commission (the Commission) protects and promotes the human rights of everyone in NI.

We do this by:

- keeping under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights;
- monitoring the implementation of Windsor Framework Article 2;
- reporting to the Secretary of State for NI and the NI Executive Office on the implementation of Windsor Framework Article 2;
- advising the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights and/or implement Windsor Framework Article 2;
- advising the NI Assembly whether proposed legislation is compatible with human rights standards and/or Windsor Framework Article 2;
- promoting understanding and awareness of the importance of human rights and Windsor Framework Article 2 in NI, for example, by undertaking or commissioning or otherwise assisting research and educational activities;
- giving assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights and/or involving an alleged breach (or potential future breach) of Windsor Framework Article 2;

- bringing proceedings involving law or practice concerning the protection of human rights;
- taking judicial review proceedings in respect of an alleged breach (or potential future breach) of Windsor Framework Article 2;
- intervening in legal proceedings concerning human rights where it need not be a victim or potential victim of the unlawful act to which the proceedings relate;
- intervening in legal proceedings concerning an alleged breach (or potential future breach) of Windsor Framework Article 2;
- conducting investigations;
- requiring a person to provide information and documents in their possession, and to give oral evidence, in respect of an investigation;
- entering a specified place of detention in NI, in respect of an investigation;
- bringing any appropriate matters of relevance to Windsor Framework Article 2 to the attention of the Specialised Committee on issues related to the implementation of the Windsor Framework, established by the UK-EU Withdrawal Agreement; and
- publishing advice and the outcome of research and investigations.

Our Mission Statement

**The Commission
champions and guards
the rights of all those
who live in NI**

Chief Commissioner:
Commissioners:

Alyson Kilpatrick BL
Helen Henderson
Jonathan Kearney
Justin Kouame
David Lavery CB
Stephen White OBE

Chief Executive:

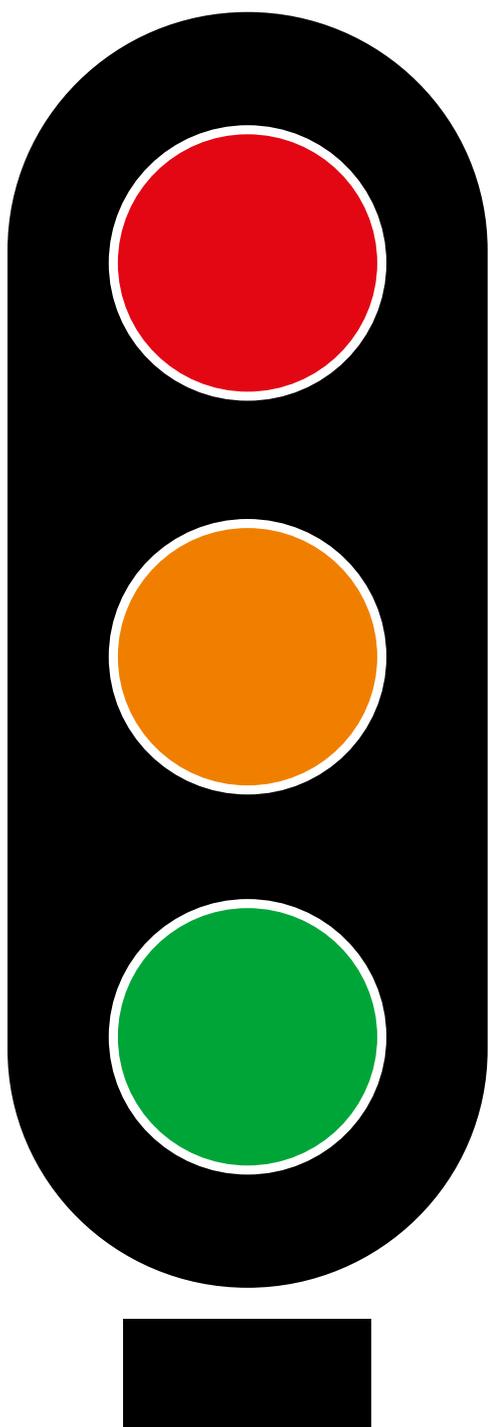
Dr David Russell

Abbreviations

CJEU	Court of Justice of the European Union
CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEA	European Economic Area
EU	European Union
NI	Northern Ireland
UK	United Kingdom
UN	United Nations
UN CAT	United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment
UN CERD	United Nations Convention on the Elimination of All Forms of Racial Discrimination
UN CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination Against Women
UN CRC	United Nations Convention on the Rights of the Child
UN CRPD	United Nations Convention on the Rights of Persons with Disabilities
UN ICCPR	United Nations International Covenant on Civil and Political Rights
UN ICESCR	United Nations International Covenant on Economic, Social and Cultural Rights

Understanding the Annual Statement

The Commission's annual statement uses a traffic light system to assist readers.



Red

identifies a subject that on human rights grounds requires immediate action by the UK Government, NI Executive or relevant public authority, where the issue may be an ongoing violation or abuse of human rights within NI.

Amber

identifies a subject that on human rights grounds requires action by the UK Government, NI Executive or relevant public authorities. Amber means initial steps have already been taken or been acknowledged as necessary by the relevant public authority, but the necessary action has not yet been completed.

Green

identifies a subject that on human rights grounds requires action by the UK Government, NI Executive or relevant public authority and a firm commitment has been made, followed by an effective response.

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Foreword

I am pleased to offer this (my third) annual statement covering the discharge by the Commission of its statutory functions, as prescribed by the Northern Ireland Act (NI) 1998. This has been a year of enormous challenge, but also of success.

I am proud to have overseen the work of the Commission and privileged to have been selected to speak on behalf of a team of people who have dedicated themselves to the pursuit of human rights for everyone in Northern Ireland. Our challenge has been to respond to an ever increasing number and range of issues that have threatened fundamental rights. Our success has been to raise awareness of those issues and in some instances to act as a bulwark against their erosion. That work is far from complete, so we continue unabashed to identify and meet the needs of the people of Northern Ireland.

Last year, we reported on the risk to our 'A' status accreditation before the United Nations, which resulted from a protracted and critical reduction in our resources. The long-term under-funding of the Commission and its obvious impact upon our ability to function was recognised in an independent review report, published earlier this year. That report made a number of recommendations to ensure the future of the Commission's operational independence. The Commission has now been reaccredited as an 'A' status NHRI. That reflects some progress made in respect of our funding arrangements, but continued oversight is required to ensure that continues next year.

A short-term measure has been implemented to protect the Commission for the next six to 12 months. A further commitment is needed to secure its longer term sustainability. We will work with the UK Government to achieve that. We want to do the job we were set up to do, efficiently and effectively. We need to reinforce our foundation - as an arrangement central to the Belfast (Good Friday)

Agreement 1998 – we need to hold government and all public authorities to account. That requires courage and resilience, but also support.

This statement outlines the work we have completed in year and the work that is ongoing. I cannot do justice to the range and complexity of the issues tackled this year, or forthcoming, but special mention should be made of our ‘own motion’ judicial review of the Illegal Migration Act 2023 and our intervention in the judicial review of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023.

These are significant challenges, which stretch an organisation such as the Commission, but which also signal the strength of its purpose and are a demonstration of its independence. Such steps are not taken lightly; when necessary the Commission will exercise the full remit of its powers to protect its privileged place as a protector of human rights for each and every human being who resides, for however long, in Northern Ireland.

Chapter 1 – Introduction

The Commission was established following the Belfast (Good Friday) Agreement 1998. It is a national human rights institution with ‘A status’ accreditation at the Global Alliance of National Human Rights Institutions.

Having assessed developments affecting human rights protections in NI throughout 2023, the Commission publishes this annual statement, operating in accordance with the NI Act 1998, and recalling its mandate to:

- keep under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights; and
- advise the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights.¹

The Commission is mandated in accordance with Article 2(1) of the Windsor Framework,² formerly known as the Protocol on Ireland/Northern Ireland, to the UK-EU Withdrawal Agreement³ to oversee the UK Government’s commitment to rights and equality in NI after UK Withdrawal from the EU.⁴

1 Section 69, NI Act 1998.

2 Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework.

3 Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 24 January 2020.

4 In December 2022 the Commission, together with Equality Commission for NI, published a joint working paper on the scope of Article 2(1) of the Windsor Framework. Appendix 1 to the working paper sets out the EU law which the Commissions have identified as of that date as falling within the scope of Windsor Framework Article 2. The Commissions published a further table which sets out the EU directives identified in the Appendix together with the associated underpinning domestic transposing legislation. See NI Human Rights Commission and Equality Commission for NI ‘Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol’ (NIHRC and ECNI, 2022); NI Human Rights Commission and Equality Commission for NI, ‘Table of EU Directives which Underpin the Rights, Safeguards and Equality of Opportunity Provisions included in the Chapter of the Belfast (Good Friday) Agreement of the same name and Implementing Domestic Legislation’ (NIHRC and ECNI, 2022).

Following the Joint Declaration by the UK and the EU and the decision of the Joint Committee in March 2023, the Protocol on Ireland/NI has been renamed as the Windsor Framework.⁵ For historic reasons some of the references in the report still mention the Protocol on Ireland/NI and where such references occur, these should be understood as concerning the Windsor Framework.

The Commission exercises this mandate alongside the Equality Commission for NI, and, together with the Irish Human Rights and Equality Commission, the three Commissions provide oversight of, and reporting on Windsor Framework Article 2 issues with an island of Ireland dimension. This is in addition to its role under the Belfast (Good Friday) Agreement as part of the Joint Committee of representatives of the Commission and the Irish Human Rights and Equality Commission.

The Commission's statutory functions for this purpose in accordance with the EU (Withdrawal Agreement) Act 2020 are:

- to monitor the implementation of Article 2 of the Windsor Framework (formerly known as the Protocol on Ireland/NI) to the UK-EU Withdrawal Agreement (Windsor Framework Article 2);⁶ and
- to advise the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to implement Windsor Framework Article 2.⁷

5 Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework; Joint Declaration No 1/2023 of the European Union and the United Kingdom in the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023. Further detail on these developments and Windsor Framework Article 2 can be found in the 'Human Rights after UK Exit from the EU' in Chapter 2.

6 Section 78A(1), NI Act 1998.

7 Section 78A(5), NI Act 1998.

The Commission operates under the UN Paris Principles and, in particular, respects the responsibility of a national human rights institution to:

submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.⁸

The Commission has assessed developments during 2023 against domestic human rights standards and treaty obligations of the UN and European systems that are legally binding in NI.⁹ Moreover, since 1 January 2021, the Commission assesses developments against the requirements of Windsor Framework Article 2.¹⁰

Domestic standards

The ECHR is given direct domestic effect across the UK by virtue of the Human Rights Act 1998. Subject to limited exceptions, all public authorities in NI must ensure that their actions are compatible with the Human Rights Act and therefore with the ECHR.

The definition of a public authority includes a court or tribunal, and any person certain of whose functions are of a public nature.¹¹

Windsor Framework Article 2 is given domestic effect through the EU (Withdrawal) Act 2018 and the EU (Withdrawal Agreement) Act 2020, which confirm that all rights, obligations and remedies from the Withdrawal Agreement, including Windsor Framework Article 2, are recognised and available in domestic law.¹²

8 A/RES/48/134, 'UN General Assembly Principles Relating to the Status of National Institutions', 20 December 1993.

9 By ratifying a treaty the State agrees to be bound by the contents of that treaty.

10 Article 2, Windsor Framework, formerly the Protocol on Ireland/NI to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020.

11 Section 6, Human Rights Act 1998. This means that private sector contractors may, depending on their role, be subject to the requirements of the Human Rights Act.

12 Section 7A, EU (Withdrawal) Act 2018.

Human rights law applies directly in NI by virtue of section 24(1) of the NI Act 1998. This means that Ministers of the Executive Committee of the NI Assembly (NI Executive) and NI Executive departments are required to ensure that all legislation and actions are compatible with the ECHR and Windsor Framework Article 2.¹³

The NI Assembly is prohibited from making any law that is incompatible with the ECHR or with Windsor Framework Article 2.¹⁴

Moreover, section 26 of the NI Act 1998 requires compliance with other international human rights obligations. For that purpose, the Secretary of State for NI may, by direct order, prohibit any proposed action by Ministers of the NI Executive and devolved Executive departments.¹⁵

Binding international standards

The treaties which the UK has ratified and is bound by include:

- CoE European Convention on Human Rights 1950 (ECHR);¹⁶
- CoE European Social Charter 1961;¹⁷
- UN Convention on the Elimination of All Forms of Racial Discrimination 1965 (UN CERD);¹⁸
- UN International Covenant on Civil and Political Rights 1966 (UN ICCPR);¹⁹
- UN International Covenant on Economic, Social and Cultural Rights 1966 (UN ICESCR);²⁰
- UN Convention on the Elimination of All Forms of Discrimination Against Women 1981 (UN CEDAW);²¹

13 Section 24 of the NI Act 1998 states: “A Minister or NI department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – a) is incompatible with any of the [ECHR]... rights; aa) is incompatible with Article 2(1) of the Protocol on Ireland/NI in the EU Withdrawal Agreement (rights of individuals)”.

14 Section 6 of the NI Act 1998 states: “1) A provision of an Act is not law if it is outside the legislative competence of the [NI] Assembly. 2) A provision is outside that competence if... c) it is incompatible with any of the [ECHR]... rights; ca) it is incompatible with Article 2(1) of the Protocol on Ireland/NI in the EU Withdrawal Agreement (rights of individuals)”.

15 Section 26 of the NI Act 1998 states: “If the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order, he may by order direct that the proposed action shall not be taken”.

16 UK ratification 1951 and given further domestic effect by the Human Rights Act 1998.

17 UK ratification 1962. The UK has signed, but not ratified, the CoE Revised European Social Charter 1991.

18 UK ratification 1969

19 UK ratification 1976.

20 UK ratification 1976.

21 UK ratification 1986.

- UN Convention Against Torture, Inhuman or Degrading Treatment or Punishment 1984 (UN CAT);²²
- UN Convention on the Rights of the Child 1989 (UN CRC);²³
- CoE European Charter for Regional or Minority Languages 1992;²⁴
- CoE Framework Convention for the Protection of National Minorities 1998;²⁵
- UN Optional Protocol to the UN CRC on the Involvement of Children in Armed Conflict 2000;²⁶
- UN Optional Protocol to the UN CRC on the Sale of Children, Child Prostitution and Child Pornography 2000;²⁷
- CoE Convention on Action against Trafficking in Human Beings 2005;²⁸
- UN Educational, Scientific and Cultural Organisation Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005;²⁹
- UN Convention on the Rights of Disabled Persons 2006 (UN CRPD);³⁰
- CoE Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse 2007 (Lanzarote Convention);³¹ and
- CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence 2011 (Istanbul Convention).³²

Human rights monitoring

The Commission, in assessing compliance with international human rights standards, takes account of the findings of international monitoring bodies that are directed to or otherwise apply to NI, as well as the general comments and other interpretative texts adopted by such bodies.³³

22 UK ratification 1988.

23 UK ratification 1991.

24 UK ratification 2001.

25 UK ratification 1998.

26 UK ratification 2003

27 UK ratification 2009.

28 UK ratification 2008.

29 UK ratification 2007.

30 UK ratification 2009.

31 UK ratification 2018.

32 UK ratification 2022.

33 These standards developed by the human rights bodies of the CoE and UN are non-binding, but provide further guidance in respect of specific rights areas.

Human rights monitoring in 2023

CoE Framework Convention for the Protection of National Minorities

In 2022, the Commission provided written evidence to inform the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities' fifth cycle monitoring of the UK's implementation of the Framework Convention.³⁴ In 2022, the CoE Advisory Committee also conducted a country-visit meeting with the Commission, government officials, parliamentarians, representatives of minorities, civil society organisations and other relevant bodies across the UK, including NI. In May 2023, the CoE Advisory Committee published its adopted opinion.³⁵ In July 2023, the CoE Committee of Ministers adopted a resolution, which contains recommendations on the UK's implementation on the Framework Convention.³⁶ In August 2023, the UK Government's comments on the CoE Advisory Committee's report were published.³⁷

CoE European Commission Against Racism

In May 2023, the Commission provided written evidence to the CoE European Commission Against Racism and Intolerance to inform its sixth cycle monitoring of the UK.³⁸ In November 2023, the CoE European Commission visited the UK, including NI, and met with several stakeholders, including the Commission.

CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)

In December 2023, the Commission provided written evidence to the CoE Group of Experts on Action against Violence Against Women and Domestic Violence as part of its first monitoring cycle of the UK's

34 NI Human Rights Commission, 'Submission to the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities: Parallel Report to the Advisory Committee on the Fifth Monitoring Report of the UK' (CoE, 2022).

35 CoE Advisory Committee on the Framework Convention for the Protection of National Minorities, 'Fifth Opinion on the UK', 8 December 2022.

36 CM/ResCMN(2023)7, 'CoE Committee of Ministers Resolution on the Implementation of the CoE Framework Convention for the Protection of National Minorities by the UK', 12 July 2023.

37 CoE, 'Comments of the Government of the UK on the Fifth Opinion of the Advisory Committee on the Implementation of the CoE Framework Convention for the Protection of National Minorities by the UK' (CoE, 2023).

38 NI Human Rights Commission, 'Submission to the CoE European Commission Against Racism and Intolerance: Parallel Report for the Sixth Cycle in Monitoring the UK' (NIHRC, 2023).

compliance with the Istanbul Convention. The CoE Group of Experts is due to conduct an in-country visit to the UK, including NI, in early 2024. A report of the CoE Group of Experts' findings and recommendations is to follow thereafter.

UN Convention against Torture

In 2022, the UN CAT Committee published its List of Issues prior to reporting in respect of the seventh periodic report of the UK on its compliance with the UN CAT.³⁹ Disappointingly, the list of issues stage of the process took place without meaningful engagement with the Commission, the UK National Preventive Mechanism or civil society organisations. In June 2023, the UK Government submitted its written report to the UN CAT Committee.⁴⁰ The Commission, the UK National Preventive Mechanism and civil society organisations are to have an opportunity to provide written and oral evidence to the UN CAT Committee in response to the UK Government's report. However, due to broader pressures on the UN CAT Committee, the process is not expected to progress until Autumn 2024, at the earliest.

UN Convention on the Rights of the Child

In 2022, the Commission provided written evidence to the UN CRC Committee to inform its examination of the UK's sixth and seventh periodic report on its compliance with the UN CRC.⁴¹ In February 2023, the Commission also provided oral evidence to the UN CRC Committee. In June 2023, the UN CRC Committee published its concluding observations on how the UK can improve compliance with the UN CRC.⁴²

39 CAT/C/GBR/QPR/7, 'UN CAT Committee List of Issues Prior to Submission of the Seventh Periodic Report of the UK of Great Britain and NI', 8 June 2022.

40 UK Government, 'Seventh Periodic Report Submitted by the UK of Great Britain and NI Under Article 19 of the UN CAT Pursuant to the Optional Reporting Procedure' (UK Gov, 2023).

41 NI Human Rights Commission, 'Submission to the UN CRC Committee: Parallel Report to the Pre-Session on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI' (NIHRC, 2022).

42 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023.

Universal Periodic Review

In 2022, the Commission made written and oral submissions to the fourth cycle of the UN Human Rights Council's Universal Periodic Review of the UK.⁴³ In January 2023, the UN Working Group on the Universal Periodic Review's report was adopted by the UN Human Rights Council.⁴⁴ The outcome report includes several recommendations for the UK Government on how the human rights situation can be improved in the UK, including NI.

UN Convention on the Elimination of All Forms of Discrimination against Women

In 2018, the UN CEDAW Committee published its inquiry report on abortion services in NI.⁴⁵ In January 2023, the UK Government submitted a follow-up written report on the steps it has taken to address the UN CEDAW Committee's inquiry recommendations.⁴⁶ The Commission and civil society organisations involved in the initial inquiry have also provided written observations.⁴⁷ In early 2024, the UN CEDAW Committee is to consider what the next steps are in the follow-up process.

UN Convention on the Rights of Persons with Disabilities

In 2017, the UN CRPD Committee published its inquiry report on the cumulative impact of the legislation, policies and measures adopted by the UK Government relating to social security schemes and to work and employment, from 2010 to October 2017, directed to persons with disabilities or affecting their enjoyment of their

43 NI Human Rights Commission, 'Submission to the UN Human Rights Council's Universal Periodic Review of the UK' (NIHRC, 2022).

44 A/HRC/52/10, 'Report of the UN Working Group on the Universal Periodic Review on the UK of Great Britain and NI', 9 January 2023.

45 CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee', 6 March 2018.

46 CEDAW/C/OP.8/GBR/3/Add.1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Conducted Under Article 8 of the Optional Protocol to the UN CEDAW: Follow-up Report Submitted by the UK of Great Britain and NI', 14 March 2023.

47 NI Human Rights Commission, 'Submission to the UN CEDAW Committee's Follow-up to Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW' (NIHRC, 2023).

rights under Articles 19, 27 and 28 of the UN CRPD.⁴⁸ In 2022, the UK Government submitted a follow-up written report on the steps it had taken to address the UN CRPD Committee’s inquiry recommendations.⁴⁹ In August 2023, under the umbrella of the UK Independent Mechanism to the UN CRPD, the Commission, the Equality Commission for NI, the Equality and Human Rights Commission, and the Scottish Human Rights Commission provided written and oral evidence to the UN CRPD Committee as part of this process.⁵⁰ In 2024, a follow-up report from the UN CRPD Committee is anticipated, following engagement between the UK Government and the UN CRPD Committee.

UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity

In April 2023, the Commission met with the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, during his visit to the UK. In May 2023, the UN Independent Expert published an end of mission statement on his visit to the UK.⁵¹ The UN Independent Expert’s full report on his visit to the UK is expected by June 2024.

48 CRPD/C/15/4, ‘UN CRPD Committee Inquiry Concerning the UK of Great Britain and NI Carried Out By the UN CRPD Committee Under Article 6 of the Optional Protocol to the UN CRPD: Report of the UN CRPD Committee’, 24 October 2017.

49 CRPD/C/GBR/FIR/1/Add.2, ‘UN CRPD Committee Inquiry Concerning the UK of Great Britain and NI Conducted Under Article 6 of the Optional Protocol of the UN CRPD: Follow-up Reported Submitted by the UK of Great Britain and NI’, 5 May 2023.

50 UK Independent Mechanism, ‘Seven Years On: disabled people’s rights to independent living, employment and standard of living in the UK’ (ECNI, EHRC, NIHRC and SHRC, 2023); NI Human Rights Commission and Equality Commission for NI, ‘Jurisdictional “Parallel” Submission on the Implementation, in NI, of the Recommendations by the UN CPRD Committee in its 2016 Report on an Inquiry, Carried Out Under Article 6 of the Optional Protocol, into the UK’ (NIHRC and ECNI, 2023).

51 Office of the High Commissioner for Human Rights, ‘UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz: Country Visit to the UK of Great Britain and NI (24 April-5 May 2023) – End of Mission Statement’ (OHCHR, 2023).

Chapter 2 – Significant Developments

In 2023, there were two ‘green’ issues, concerning the Armed Forces Covenant and safe access zones. Green issues are those that identify a subject that on human rights grounds requires action by the UK Government, NI Executive or relevant public authorities and a firm commitment has been made, followed by an effective response.

The remainder of the issues raised in this chapter have been categorised as ‘amber’ for 2023. These are issues that identify a subject that on human rights grounds requires action by the UK Government, NI Executive or relevant public authorities. Amber means initial steps have already been taken or been acknowledged as necessary by the relevant body, but the necessary action has not yet been completed.

There have been several significant developments in 2023, some are positive and others are negative – this chapter provides an overview. For details that provide the context to these, please see the Annual Statement 2022⁵² and the Annual Report on the Implementation of Article 2 of the Windsor Framework.⁵³

This chapter covers significant developments between 1 December 2022 and 10 November 2023.

⁵² NI Human Rights Commission, ‘The Annual Statement 2022’ (NIHRC, 2022).

⁵³ NI Human Rights Commission and Equality Commission for NI, ‘Annual Report on the Implementation of Article 2 of the Windsor Framework’ (NIHRC and ECNI, 2023).

Constitutional Protections

Human Rights Act and administrative law reform

In 2023, the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, expressed concern about the then proposed Bill of Rights Bill’s “potential to impact detrimentally existing human rights protections against violence and discrimination based on sexual orientation and gender identity”.⁵⁴ This is additional to the recommendation from several human rights bodies that the UK Government should ensure that there is no regression of human rights in any potential reform of the Human Rights Act 1998.⁵⁵ Furthermore, that any reform “does not diminish access to justice” and “complies with the duty under the... [Belfast (Good Friday) Agreement] to ensure full incorporation of the ECHR into NI law”.⁵⁶ Additionally, that the UK Government undertakes “broad” and “meaningful” public consultation on its proposals to revise human rights legislation within the UK.⁵⁷

54 UN Office of the High Commissioner for Human Rights, ‘UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz: Country Visit to the UK of Great Britain and NI (24 April-5 May 2023) – End of Mission Statement’, 11 May 2023, at para 16.

55 A/HRC/52/10, ‘Report of the Working Group on the Universal Periodic Review: UK of Great Britain and NI’, 9 January 2023, at paras 43.21; 43.23; 43.29; 43.30; 43.31; 43.32; 43.34; 43.40; 43.42; 43.44; 43.46; 43.48; 43.49 and 43.50; CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 5(c); E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 10; CERD/C/GBR/CO/21-23, ‘UN CERD Committee Concluding Observations on the Combined Twenty-first to Twenty-third Periodic Reports of the UK of Great Britain and NI’, 3 October 2016, at para 10; CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 11; CoE Commissioner for Human Rights, ‘Press Release: UK - backsliding on human rights must be prevented’, 4 July 2022.

56 NI Human Rights Commission, ‘Submission to the CoE European Commission Against Racism and Intolerance: Parallel Report for the Sixth Cycle in Monitoring the UK’ (NIHRC, 2023).

57 E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 10; CERD/C/GBR/CO/21-23, ‘UN CERD Committee Concluding Observations on the Combined Twenty-first to Twenty-third Periodic Reports of the UK of Great Britain and NI’, 3 October 2016, at para 10.

In 2022, the Bill of Rights Bill was introduced to the UK Parliament. In 2023, the House of Commons and House of Lords Joint Committee of Human Rights published its legislative scrutiny of the Bill of Rights Bill.⁵⁸ It found that the proposed Bill of Rights Bill undermined the universality of human rights, weakened human rights protection and that there was an overwhelming lack of support for the proposed reforms.⁵⁹ The Joint Committee on Human Rights concluded that the UK Government “should not progress the... [Bill of Rights Bill] in its current form through Parliament”.⁶⁰ This conclusion echoes the advice provided by the Commission.⁶¹

In June 2023, the UK Government confirmed that it was not proceeding with the Bill of Rights Bill, instead seeking to reform the UK’s human rights framework through a piecemeal approach, such as the now Illegal Migration 2023 Act and the now NI Troubles (Legacy and Reconciliation) Act 2023.⁶² The Commission has raised additional concerns with the compatibility of these proposed pieces of legislation with human rights law and Windsor Framework Article 2.⁶³ Specific to NI, the Commission remains concerned that the proposed changes, among other measures, will reduce access to domestic courts for individuals seeking human rights-based remedy, which is contrary to the ECHR and the Belfast (Good Friday) Agreement 1998.⁶⁴ Moreover, the protections in Windsor Framework

58 House of Commons and House of Lords Joint Committee on Human Rights, ‘Legislative Scrutiny: Bill of Rights Bill’ (HC and HoL, 2023).

59 Ibid, at Chapter 9.

60 Ibid, at para 339.

61 NI Human Rights Commission, ‘Evidence to Joint Committee on Human Rights Legislative Scrutiny of the Bill of Rights Bill’ (NIHRC, 2022).

62 ‘Government officially scraps Dominic Raab’s Bill of Rights plan’, *Politics.Co.UK*, 27 June 2023.

63 NI Human Rights Commission, ‘Submission to the House of Lords on the Illegal Migration Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Advice on NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2022); NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Additional Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023).

64 NI Human Rights Commission, ‘Evidence to Joint Committee on Human Rights Legislative Scrutiny of the Bill of Rights Bill’ (NIHRC, 2022); NI Human Rights Commission, ‘Advice on the Bill of Rights Bill’ (NIHRC, 2022); NI Human Rights Commission, ‘Submission to the House of Lords on the Illegal Migration Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Advice on NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2022); NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Additional Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023).

Article 2, while an important safeguard against the diminution of rights following UK withdrawal from the EU, are not a substitute for the comprehensive framework of human rights protections under the Human Rights Act.

National human rights institutions

The Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation reviews the Commission's compliance with the UN Paris Principles every five years.

In 2021, when considering whether the Commission should retain its accreditation as an 'A status' national human rights institution, the Sub-Committee on Accreditation identified funding, financial autonomy, diversity and pluralism, and the inability to visit places of deprivation of liberty without notice as areas of concern.⁶⁵ The Sub-Committee on Accreditation sought for these areas to be "improved" and for the Commission to be placed in a "sustainable position".⁶⁶

In 2022, the NI Office commissioned an independent review of the Commission. To enable time for the outcome of the independent review to be considered, the Sub-Committee on Accreditation decided to defer its decision on the Commission's reaccreditation. However, in March 2023, the Sub-Committee on Accreditation confirmed that it had made its final deferral.

In September 2023, the independent review's report and the response by the UK Government were published.⁶⁷ The UK Government accepted most of the independent review's recommendations.⁶⁸

The Commission had advised that there would be a potential breach of Windsor Framework Article 2(2) if its 'A status' was not retained.⁶⁹

⁶⁵ Email correspondence between the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation and the NI Human Rights Commission, 2 November 2021.

⁶⁶ Ibid.

⁶⁷ Simon Routh-Jones, 'Independent Review of the NI Human Rights Commission' (UK Gov, 2022); NI Office, 'UK Government Response to the Independent Review of the NI Human Rights Commission 2022' (NIO, 2023).

⁶⁸ Ibid.

⁶⁹ Letter from NI Human Rights Commission to Brandon Lewis MP, Secretary of State for NI, 17 November 2021.

In October 2023, the Sub-Committee on Accreditation decided that the Commission should retain its 'A-status'.⁷⁰ Consequently, the Commission has retained its voting rights at the Global Alliance of National Human Rights Institutions and has speaking rights at the UN Human Rights Council. The Commission's accreditation is due to be reviewed again in 2028.

Common Travel Area

Section 75 of the Nationality and Borders Act 2022 provides for the introduction of Electronic Travel Authorisations for all non-British citizens who require leave to enter the UK when travelling from Ireland to the UK. Irish citizens are excluded as individuals not requiring leave to enter the UK.⁷¹ However, a significant number of individuals who do not hold recognised UK immigration status will be affected despite free travel across the island of Ireland being available to them under the current system.

In March 2023, the UK Government updated its guidance on Electronic Travel Authorisations confirming that such non-visa nationals, who are lawfully resident in Ireland, will be exempt from the requirement.⁷² This partially addressed the Commission's concerns. However, as they come into effect, non-visa nationals not resident in Ireland will still need to apply for an Electronic Travel Authorisation when travelling from Ireland to NI.⁷³

In October 2023, the Sovereign Affairs Committee to the British Irish Parliamentary Assembly published a report on the Common Travel Area post-Brexit.⁷⁴ The Committee raised concerns about the incompatibility of the Electronic Travel Authorisation system with tourism on the island of Ireland and recommended that all permanent residents in NI or Ireland be exempt from the requirement to obtain a visa for short visits to other jurisdictions.⁷⁵

70 Letter from the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation to the NI Human Rights Commission, 1 November 2023.

71 Section 3ZA, Immigration Act 1971.

72 Home Office, 'Statement of Changes to the Immigration Rules - HC 1160', 9 March 2023. Home Office, 'Electronic Travel Authorisation: Irish Resident Exemption' (HO, 2023).

73 Home Office, 'Statement of Changes to the Immigration Rules - HC 1160', 9 March 2023. Note that Electronic Travel Authorisations are being introduced gradually for specified countries.

74 Sovereign Affairs Committee (Committee A) of the British Irish Parliamentary Assembly, 'Protecting the Common Travel Area in the Post-Brexit Era' (BIPA, 2023).

75 Ibid.

Following research published in 2020 which identified a range of significant concerns,⁷⁶ in September 2023, the Commission published a briefing on access to healthcare in NI, and on the island of Ireland, after the UK's withdrawal from the EU.⁷⁷ The Commission made several recommendations, including that the Common Travel Area and associated rights are enshrined in law by a comprehensive bilateral treaty and incorporated into domestic legislation; and that the residency requirements for Common Travel Area entitlements relating to cross-border and all-island healthcare are reviewed to ensure that the rights of access are clear, comprehensible and generous.⁷⁸

EU Settlement Scheme and frontier workers

In December 2022, the High Court of England and Wales confirmed that applicants with pre-settled status have the right to reside permanently in the UK after they have resided there for the required five-year period.⁷⁹ In February 2023, the Home Office confirmed that it would not appeal the High Court's decision.⁸⁰

In May 2023, a new interim policy was introduced by the Department of Work and Pensions.⁸¹ This allows any EU citizen in NI with pre-settled status who is unable to work, to be assessed individually to establish whether they, or their children, are living in hardship and unable to meet their most basic needs and if so, then they will be entitled to Universal Credit.⁸² This is in line with the decision in *CG v Department for Communities* (2021).⁸³ In November 2023, the requirement to undertake an individual assessment for EU citizens with Pre-settled Status who apply for Universal Credit was upheld by the England and Wales Court of Appeal.⁸⁴ The Court of Appeal

76 Tamara Hervey, 'Brexit, Health and Its Potential Impact on Article 2 of the Ireland/Northern Ireland Protocol' (NIHRC, 2022).

77 NI Human Rights Commission, 'Briefing Paper and Recommendations on Brexit, Health and Its Potential Impact on Article 2 of the Windsor Framework' (NIHRC, 2023).

78 Ibid.

79 *R (Independent Monitoring Authority for the Citizens' Rights) v Secretary of State for the Home Department* [2022] EWHC 3274 (Admin), at para 192.

80 Independent Monitoring Authority, 'Press Release: Independent Monitoring Authority welcomes confirmation that Home Office will not pursue appeal in EU Settlement Scheme case', 16 February 2023.

81 Law Centre NI, 'Press release: Positive change in social security policy', 25 May 2023.

82 Ibid.

83 *CG v The Department for Communities in NI*, Case C-709/20, 15 July 2021.

84 *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307.

found that the EU Charter of Fundamental Rights applies to the interpretation and application the UK-EU Withdrawal Agreement and that the approach taken by the CJEU in the *CG* case should be the benchmark for determining whether there is a breach of the right to human dignity in the EU Charter.⁸⁵

In June 2023, the Independent Monitoring Authority's inquiry into EU Settlement Scheme Certificate of Application delays found that in some cases the Home Office failed to comply with the obligation under the Withdrawal Agreement to issue a Certificate of Application on time.⁸⁶ Obtaining a Certificate of Application protects the applicant's rights pending a decision on their status.⁸⁷ In September 2023, the UK Government published a response to the report and agreed to consider whether the extraction of meaningful data from systems would enhance the ability to monitor and manage the process for issuing Certificates of Application. It did not accept the recommendations in respect of adopting a five working day time frame from point of application to issue of certificates.⁸⁸ In September 2023, the Independent Monitoring Authority responded to the UK Government reiterating its view that establishing a timescale for issuing Certificates of Application would be helpful as it would provide clarity for applicants.⁸⁹ The Independent Monitoring Authority launched a further inquiry to investigate EU Settlement Scheme application delays.⁹⁰

From September 2023, people with pre-settled status under the EU Settlement Scheme will automatically have their status extended by two years before it expires.⁹¹ This extension will be automated, the applicant will be notified and it will be reflected on their digital status. In addition, from 2024, the Home Office has committed to

85 Ibid, at para 113.

86 Independent Monitoring Authority for the Citizens' Rights Agreements, 'An Inquiry by the Independent Monitoring Authority for the Citizens' Rights Agreements into Certificates of Application' (IMA, 2023).

87 UK Government, 'Guidance: Apply to the EU Settlement Scheme (Settled and Pre-settled Status)'. Available at: <https://www.gov.uk/settled-status-eu-citizens-families>

88 Home Office, 'Response to the Independent Monitoring Authority for the Citizens' Rights Agreements Report: An Inquiry by the Independent Monitoring Authority into Certificates of Application' (HO, 2023).

89 Independent Monitoring Authority, 'Press Release: Independent Monitoring Authority issues statement following Home Office response to inquiry findings', 6 September 2023.

90 Ibid.

91 Home Office, 'News release: EU Settlement Scheme enhancements confirmed', 17 July 2023.

automatically convert applicants from pre-settled to settled status, if they are eligible. The Independent Monitoring Authority noted the changes, but expressed disappointment at the lack of engagement and clarity.⁹²

In July 2023, the Home Office announced several further changes to the EU Settlement Scheme application process.⁹³ From August 2023, the Home Office closed the Family Member and the Qualifying British Citizen routes for applications to the EU Settlement Scheme, on the basis that they were temporary measures.⁹⁴ On late applications to the scheme, the new guidelines stipulate that previous reasonable grounds for late applications, such as serious illness or undergoing significant medical treatment, will no longer be considered.⁹⁵ Further, an applicant who has had an in-time application refused will not be able to make a late application based on reasonable grounds for delay.⁹⁶

The Commission will continue to monitor the application process under the EU Settlement Scheme and its implementation.

Following research published in 2020 which identified a range of significant concerns,⁹⁷ in September 2023, the Commission published a briefing on access to healthcare in NI, and on the island of Ireland, after the UK's withdrawal from the EU.⁹⁸ The Commission's recommendations include that steps are taken to ensure that frontier workers continue to enjoy at least the same rights as before the UK's withdrawal from the EU; and that the relationship between the Frontier Workers' Permit Scheme and the Common Travel Area rules that govern access to healthcare for frontier workers is clarified.⁹⁹

92 Independent Monitoring Authority, 'Press release: Independent Monitoring Authority responds to Home Office plans to implement judgment following judicial review', 17 July 2023.

93 Home Office, 'Statement of Changes in Immigration Rules', 17 July 2023.

94 Ibid.

95 Home Office, 'EU Settlement Scheme: EU, Other EEA and Swiss Citizens and their Family Members. Version 20.0' (HO, 2023), at 38.

96 Ibid, at 39.

97 Tamara Hervey, 'Brexit, Health and Its Potential Impact on Article 2 of the Ireland/Northern Ireland Protocol' (NIHRC, 2022).

98 NI Human Rights Commission, 'Briefing Paper and Recommendations on Brexit, Health and Its Potential Impact on Article 2 of the Windsor Framework' (NIHRC, 2023).

99 Ibid.

In October 2023, the Commission published research on Article 2 of the Windsor Framework and the rights of frontier workers and their families.¹⁰⁰ The report highlights the complex, layered way in which rights of frontier workers are protected following UK withdrawal from the EU and the pre-existing and current gaps in the legal framework, including potential diminutions under Windsor Framework Article 2.¹⁰¹ The research recommends several changes to clarify and implement rights including through a new, domestically enforceable, UK-Ireland bilateral treaty on the Common Travel Area, better guidance directed at frontier workers and advisers and definitions of different categories of frontier workers.¹⁰²

Human Rights after UK Exit from the EU

The Commission is mandated in accordance with Windsor Framework Article 2 of the UK-EU Withdrawal Agreement to oversee the UK Government's commitment on rights and equality in NI after UK withdrawal from the EU. The UK signed the UK-EU Withdrawal Agreement in January 2020 and the Protocol on Ireland/NI (now known as the Windsor Framework), which is part of the treaty, took effect from 1 January 2021.¹⁰³

Article 2 of the Windsor Framework requires the UK Government to ensure that there is no diminution of rights, safeguards and equality of opportunity as set out in the relevant chapter of the Belfast (Good Friday) Agreement 1998, as a result of the UK's withdrawal from the EU.

100 Sylvia de Mars and Charlotte O'Brien, 'Frontier Workers and Their Families: Rights After Brexit' (NIHRC, 2023).

101 Ibid.

102 Ibid.

103 Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020. Following the Joint Declaration by the UK and the EU and the decision of the Joint Committee in March 2023, the Protocol on Ireland/NI has been renamed as the Windsor Framework. Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework; Joint Declaration No 1/2023 of the European Union and the United Kingdom in the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023.

This commitment to ensure ‘no diminution’ is measured by and against the relevant EU standards on 31 December 2020.¹⁰⁴

Windsor Framework Article 2 provides specific protection against discrimination with reference to six EU equality directives specified in Annex 1 to the Windsor Framework. By virtue of Article 13 of the Windsor Framework, NI law must keep pace with any changes made by the EU to improve minimum levels of protection, on or after 1 January 2021, including monitoring relevant current and future CJEU case law.

In December 2022, following engagement with key stakeholders, the Commission, together with the Equality Commission for NI, published a working paper on the scope of Windsor Framework Article 2.¹⁰⁵ This paper provides an initial assessment of what Windsor Framework Article 2 means in practice for the protection of human rights and equality in NI. Appendix 1 to the working paper sets out the EU law which the Commissions have identified, as of that date, as falling within the scope of Article 2.¹⁰⁶ A definitive interpretation of Windsor Framework Article 2 will ultimately be determined by the courts and the oversight bodies established by the UK-EU Withdrawal Agreement 2020. The Commission takes the view that this is a reasoned and robust interpretation of the ‘non-diminution’ and ‘keep pace’ obligation and that it provides an essential contribution to our understanding of the UK Government commitment in Windsor Framework Article 2.¹⁰⁷

104 In December 2022 the Commission, together with Equality Commission for NI, published a joint working paper on the scope of Article 2(1) of the Windsor Framework. Appendix 1 to the working paper sets out the EU law which the Commissions have identified as of that date as falling within the scope of Windsor Framework Article 2. The Commissions published a further table which sets out the EU directives identified in the Appendix together with the associated underpinning domestic transposing legislation. See NI Human Rights Commission and Equality Commission for NI ‘Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol’ (NIHRC and ECNI, 2022); NI Human Rights Commission and Equality Commission for NI, ‘Table of EU Directives which Underpin the Rights, Safeguards and Equality of Opportunity Provisions included in the Chapter of the Belfast (Good Friday) Agreement of the Same Name and Implementing Domestic Legislation’ (NIHRC and ECNI, 2022).

105 NI Human Rights Commission and Equality Commission for NI, ‘Working Paper: Scope of Article 2(1) of the Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement 2020’ (NIHRC and ECNI, 2022).

106 Ibid.

107 NI Human Rights Commission and Equality Commission for NI, ‘Annual Report on the Implementation of Article 2 of the Windsor Framework’ (NIHRC and ECNI, 2023).

In February 2023, UK Supreme Court dismissed an appeal on the legality of the Windsor Framework, noting that:

the answer to any conflict between the Protocol and any other enactment whenever passed or made is that those other enactments are to be read and have effect subject to the rights and obligations which are to be recognised and available in domestic law by virtue of section 7A(2) [of the EU (Withdrawal) Act 2018].¹⁰⁸

In February 2023, the UK Government and EU Commission reached a political agreement on a new way forward to address concerns relating to the operation on the Protocol on Ireland/NI.¹⁰⁹ In March 2023, the Joint Committee which oversees the implementation, application and interpretation of the UK-EU Withdrawal Agreement, met to formally adopt a decision to give effect to this political agreement.¹¹⁰ The Joint Committee agreed amendments to the text of the original Protocol and a series of recommendations and declarations, and confirmed that the Protocol, as amended, would be renamed the Windsor Framework.

In 2022, the NI Protocol Bill sought to empower Ministers to disapply the original Protocol and relevant parts of the EU-UK Withdrawal Agreement in domestic law. The Commission, along with the Equality Commission for NI, raised concerns that the Bill provided some safeguards for Windsor Framework Article 2, but that this protection was incomplete.¹¹¹ In 2022, following an exchange of correspondence with the House of Lords Sub-Committee on the Ireland/NI Protocol, the UK Government stated it had no intention of undermining the

108 *Re James Hugh Allister* [2023] UKSC 5, at para 66.

109 Political Declaration by the European Commission and the Government of the United Kingdom, 27 February 2023.

110 Decision No 1/2023 of the Joint Committee established by the agreement on the withdrawal of the United Kingdom Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, laying down arrangements relating to the Windsor Framework.

111 NI Human Rights Commission and Equality Commission for NI, 'Briefing on the NI Protocol Bill' (NIHRC and ECNI, 2022); NI Human Rights Commission and Equality Commission for NI, 'Submission to the House of Lords Sub-Committee on the Protocol's Call for Evidence for its New Inquiry into the UK Government's NI Protocol Bill' (NIHRC and ECNI, 2022).

provisions of Windsor Framework Article 2.¹¹² However, this response failed to fully address the Commission's concerns.¹¹³ In March 2023, following the political agreement between the UK and the EU on the Windsor Framework, the UK Government confirmed its intention not to proceed with the Protocol Bill.¹¹⁴ The Commission welcomed this development.¹¹⁵

In March 2023, the UK Government introduced Windsor Framework (Democratic Scrutiny) Regulations 2023, to implement aspects of the UK-EU political agreement relating to the 'Stormont brake' in domestic law. The 'Stormont brake', allows the UK Government to potentially stop the application of EU legal provisions in NI which amend or replace measures in Annex 2 of the original Protocol.¹¹⁶ Where Members of the NI Assembly can show that the EU rule has a significant and lasting impact specific to the everyday lives of communities in NI in a way that is liable to persist, the 'Stormont brake' can be invoked.¹¹⁷

In May 2023, the Commission and Equality Commission for NI, in evidence to the House of Lords Sub-Committee on the Ireland/NI Protocol, welcomed the exclusion of the Annex 1 Equality Directives from the changes to Article 13 of the original Protocol and raised a number of concerns.¹¹⁸ The Commission is concerned that there is potential for the 'Stormont brake' mechanism to have implications

112 UK Parliament Hansard, 'House of Lords: NI Protocol Bill - Parliamentary Under Secretary of State at the NI Office, Lord Caine - Vol 825 Column 111', 31 October 2022.

113 NI Human Rights Commission and Equality Commission for NI, 'Submission to the House of Lords Sub-Committee on the Protocol's Call for Evidence for its New Inquiry into the UK Government's NI Protocol Bill' (NIHRC and ECNI, 2022).

114 UK Government, 'The Windsor Framework: A New Way Forward' (UK Gov, 2023) at para 75. In response, the EU agreed not to continue with infringement proceedings against the UK relating to its implementation of the Ireland/Northern Ireland Protocol. See EU Commission, 'Press release: A new way forward on the Protocol on Ireland/Northern Ireland: political agreement in principle on the Windsor Framework', 27 February 2023.

115 NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the Implementation of Article 2 of the Windsor Framework' (NIHRC and ECNI, 2023).

116 This is subject to a procedure set out in the Unilateral Declaration by the UK appended as Annex 1 to Decision No 1/2023 of the Joint Committee established by the agreement on the withdrawal of the United Kingdom Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, laying down arrangements relating to the Windsor Framework.

117 This mechanism would be triggered by the UK Government under a process outlined in a new provision at Windsor Framework Article 13(3)(a).

118 NI Human Rights Commission and Equality Commission for NI, 'Submission to the House of Lords Sub-Committee on the Protocol's Call for Evidence for its Inquiry on the Windsor Framework' (NIHRC and ECNI, 2023).

for equality and human rights in NI and for divergence of rights in so far as it relates to EU law in Annex 2 of the Windsor Framework. The Commission is also concerned that new procedural hurdles may impede the inclusion of new EU equality and human rights measures in Annex 1.¹¹⁹ The Commission has called for equality and human rights considerations to be built into the revised process under Article 13(4) of the original Protocol.¹²⁰

In May 2023, the Court of Appeal in NI considered Windsor Framework Article 2 in the context of a challenge to the regulations which empowered the Secretary of State for NI to direct the Department of Health to commission abortion services.¹²¹ The Court of Appeal was not convinced that the commissioning of abortion services fell within scope of Windsor Framework Article 2 and welcomed the interventions from the Commission and Equality Commission for NI, including the working paper on the Scope of Windsor Framework Article 2.¹²² Nevertheless, the Court of Appeal confirmed that the UN CRPD was a part of the EU legal order prior to UK withdrawal and as such, the Assembly was prohibited from legislating contrary to the UN CRPD as EU law where matters fell within the competence of the EU.¹²³ The Court of Appeal also set out a six point test to establish a breach of Windsor Framework Article 2.¹²⁴

In October 2023, an asylum seeker challenged the lawfulness of the decision to remove him from NI to Scotland on several grounds including Windsor Framework Article 2.¹²⁵ While the applicant was unsuccessful, the High Court of Justice in NI reiterated that Windsor Framework Article 2 has direct effect, which can be relied on in the domestic courts.¹²⁶ The High Court further confirmed that the EU

119 For example, the application of Windsor Framework Article 13(4) will be subject to new applicability motions in the NI Assembly.

120 NI Human Rights Commission and Equality Commission for NI, 'Submission to the House of Lords Sub-Committee on the Protocol's Call for Evidence for its Inquiry on the Windsor Framework' (NIHRC and ECNI, 2023).

121 *Society for the Protection of the Unborn Child Pro-Life Ltd v Secretary of State for NI* [2023] NICA 35.

122 *Ibid*, paras 71-72.

123 *Ibid*, paras 57 and 68.

124 *Society for the Protection of the Unborn Child Pro-Life Ltd v Secretary of State for NI* [2023] NICA 35, para 54.

125 *In the Matter of an Application by AA for Judicial Review* [2023] NIKB.

126 *Ibid*.

Charter on Fundamental Rights falls within the ambit of Article 2(1) of the Windsor Framework and remains enforceable in NI.¹²⁷ The High Court also rejected the argument that the rights and safeguards in the relevant part of the Belfast (Good Friday) Agreement 1998 are frozen in time and limited to the political context of 1998.¹²⁸

Embedding consideration of Windsor Framework Article 2

In March 2023, the Leader of the House of Commons, Penny Mordaunt MP, advised that updated Explanatory Memorandum guidance for statutory instruments has been circulated to departments to ensure consideration of compliance with Windsor Framework Article 2 and that the next update of the Guide to Making Legislation will reference the importance of compliance with Article 2.¹²⁹ This guidance is not yet publicly available.

In July 2023, the Executive Office launched a consultation on the Draft Strategic Framework to End Violence Against Women and Girls and published an accompanying Windsor Framework Article 2 Impact Assessment.¹³⁰ In its response, the Commission welcomed this impact assessment and set out its initial views, highlighting that it would welcome further engagement with the Executive Office on the impact assessment.¹³¹ The Commission recommended that when screening for compliance, the Impact Assessment should consider all provisions of EU law engaged under the Windsor Framework Article 2 relevant to the legislation or policy being assessed, including EU law which underpins relevant ECHR rights. The Commission also recommended that the Executive Office develop and implement training and guidance for departmental officials on Windsor Framework Article 2, including Impact Assessments, to embed consideration of Article 2 throughout legislative and policy processes.¹³²

127 Ibid.

128 Ibid.

129 Letter from Leader of the House of Commons, Penny Mordaunt MP, to Chair of the NI Affairs Committee, Simon Hoare MP, 28 March 2023.

130 The Executive Office, 'Article 2(1) Windsor Framework Impact Assessment for the Draft Strategic Framework to End Violence Against Women and Girl' (TEO, 2023).

131 NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework' (NIHRC, 2023).

132 Ibid, at paras 7.0-7.41.

In November 2023, the NI Executive Office delivered an initial webinar for civil servants on the screening of Windsor Framework Article 2. The NI Executive Office has established an interdepartmental working group which meets on a monthly basis to share information and learning on Windsor Framework Article 2.¹³³

Island of Ireland dimension of Windsor Framework Article 2

In January 2023, the Equality Commission for NI, on behalf of the Commission and Irish Human Rights and Equality Commission, published a research report on the impact of UK withdrawal from the EU on the divergence of rights and best practice on the island of Ireland.¹³⁴ The research report analysed the effect, and potential effect, of withdrawal on the divergence of equality and human rights protections and EU best practice on the island of Ireland.¹³⁵ It highlighted EU law, policy and best practice developments from 1 January 2021 that have the potential to result in divergence of rights on the island of Ireland.¹³⁶ In April 2023, the three Commissions published key policy recommendations arising from this research.¹³⁷ The Equality Commission for NI has commissioned an update to the research on the divergence of rights on the island of Ireland on behalf of the three Commissions, which is to be finalised in 2024.

In June 2023, the three Commissions gave evidence to the Joint Oireachtas Committee on the Implementation of the Good Friday Agreement on its work on divergence of rights on the island.¹³⁸ The three Commissions also sought the support of the Joint Oireachtas Committee in considering divergence of rights on the island as part of its mandate.¹³⁹

133 Email correspondence from the NI Executive Office to the NI Human Rights Commission, 10 November 2023.

134 Sarah Craig et al, 'European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC, IHREC, 2022).

135 Ibid.

136 Ibid.

137 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union Developments in Equality and Human Rights - The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC and IHREC, 2023).

138 Oireachtas Committee on Implementation of the Good Friday Agreement, 'Alyson Kilpatrick, Chief Commissioner, NI Human Rights Commission', 29 June 2023.

139 Ibid.

Retained EU law

The EU (Withdrawal) Act 2018 repealed the European Communities Act 1972, which gave effect to EU law within the UK domestic legal framework before 1 January 2021. The 2018 Act then provided for the body of existing EU law to be ‘retained’ in the UK, so that it would continue to have effect after 1 January 2021, subject to amendment or repeal over time.

In 2022, the Retained EU Law (Revocation and Reform) Bill was introduced to the UK Parliament. In January 2023, the Commission, jointly with the Equality Commission for NI, raised several concerns with the then Retained EU Law (Revocation and Reform) Bill, including the sunset clause for all EU-derived subordinate legislation and retained direct EU law by 31 December 2023.¹⁴⁰ In March 2023, speaking on behalf of the UK Government, Lord Callanan, stated that the then Bill would not disturb Section 7A of the European Union (Withdrawal) Act 2018, and gave assurances that “the [UK] Government will ensure that all necessary legislation is in place by the [Retained EU Law (Revocation and Reform)] Bill’s sunset date to uphold all the commitments made under Article 2”.¹⁴¹

In May 2023, the UK Government brought forward an amendment to the then Retained EU Law (Revocation and Reform) Bill. The amendment replaced the sunset clause with a list of retained EU law measures in a Schedule to the Bill, which are intended to be revoked at the end of 2023. The Secretary of State for Business and Trade, Kemi Badenoch MP, acknowledged that this would provide clarity for businesses by making it clear which laws would remain in statute and which would be revoked.¹⁴² In June 2023, the Retained EU Law (Revocation and Reform) Act 2023 received Royal Assent.

140 NI Human Rights Commission and Equality Commission for NI, ‘Briefing on the Retained EU Law (Revocation and Reform) Bill’ (NIHRC/ECNI, 2023).

141 UK Parliament Hansard, ‘House of Lords: Retained EU Law (Revocation and Reform) Bill – Lord Callanan’, 2 March 2023.

142 UK Parliament Hansard, ‘Written Statement: Regulatory Reform Update – Kemi Badenoch – UIN HCWS764’, 10 May 2023.

In June 2023, Secretary of State for Business and Trade, in a letter to the House of Lords Sub-Committee on the Ireland/Ni Protocol, stated that the then Retained EU Law (Revocation and Reform) Bill did not disturb sections 7A and 7C of the EU Withdrawal Act 2018 and that the Bill includes a restatement power, enabling the UK Government to restate relevant retained rights and obligations where required by Windsor Framework Article 2.¹⁴³ The letter further stated that Windsor Framework Article 2 “does not itself apply EU law, and so domestic law giving effect to Article 2 rights may be affected by the abolition of retained EU interpretive effects”.¹⁴⁴ The Secretary of State for Business and Trade asserted that it may be necessary to restate a number of instruments within scope of Windsor Framework Article 2 “to codify any required effects”.¹⁴⁵

In July 2023, House of Lords Sub-Committee on the Ireland/Ni Protocol replied to the Secretary of State for Business and Trade setting out a number of questions.¹⁴⁶ These included why the UK Government did not amend the now Retained EU Law (Revocation and Reform) Act 2023 to signpost that a distinct interpretive approach is required under sections 7A and 7C of the EU Withdrawal Act 2018; whether the process of codification was unnecessarily complex and time-consuming; and what was the risk of incomplete, inaccurate or out-of-date codification.¹⁴⁷ The Sub-Committee also asked what consideration the UK Government had given to the working paper on the scope of Windsor Framework Article 2 published by the Commission and the Equality Commission for NI.¹⁴⁸

In September 2023, the Minister for Industry and Economic Security, Nusrat Ghani MP, responded stating that the EU (Withdrawal) Act 2018, as amended by the Retained EU Law (Revocation and Reform) Act 2023, is sufficiently clear that the loss of EU interpretive effects is subject to relevant separation agreement law and no further

143 Letter from the Secretary of State for Business and Trade, Kemi Badenoch MP, to the House of Lords Sub-Committee on the Ireland/Ni Protocol, 16 June 2023.

144 Ibid.

145 Ibid.

146 Letter from the Chair of the House of Lords Sub-Committee on the Ireland/Ni Protocol, Lord Jay, to Secretary of State for Business and Trade, Kemi Badenoch MP, 12 July 2023.

147 Ibid.

148 Ibid.

legislative signpost was required.¹⁴⁹ The Minister for Industry and Economic Security further stated that codifying EU interpretive effects from case law will provide legal certainty and clarity by consolidating specific effects resulting from EU principles of interpretation. The Minister for Industry and Economic Security also confirmed that UK Government departments are working to compile an authoritative account of where retained EU law sits across policy areas and sectors, including identifying where retained EU law falls within scope of Windsor Framework Article 2.

In October 2023, the House of Lords Sub-Committee on the Ireland/NI Protocol replied to the Minister for Industry and Economic Security asking the UK Government to consider producing a central list of EU measures falling in scope of Windsor Framework Article 2 and further information on the coordination of monitoring of Article 2 across departments.¹⁵⁰ In addition, the Sub-Committee sought confirmation from the UK Government that any identification of measures within scope of Article 2 cannot be definitive at this time.¹⁵¹ The Sub-Committee further requested that the UK Government publish guidance on the methodology, scope and approach in respect of the codification of EU interpretive effects from caselaw.¹⁵²

In October 2023, the High Court of Justice in NI confirmed that the effect of sections 5(4)-5(5) of the EU Withdrawal Act 2018, which restrict the EU Charter of Fundamental Rights and EU General Principles, is limited by the domestic incorporation of the UK-EU Withdrawal Agreement by section 7A of the 2018 Act. The High Court concluded that the EU Charter of Fundamental Rights remains enforceable in NI and falls within the ambit of Article 2(1) of the Windsor Framework.¹⁵³

149 Letter from the Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, to the House of Lords Sub-Committee on the Ireland/NI Protocol, 11 September 2023.

150 Letter from the Chair of the House of Lords Sub-Committee on the Ireland/NI Protocol, Lord Jay, to the Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, 19 October 2023.

151 Ibid.

152 Ibid.

153 *In the Matter of an Application by AA for Judicial Review* [2023] NIKB.

In May 2023, the Department for Business and Trade published a consultation on proposed reforms and repeal of several provisions of retained EU employment law.¹⁵⁴ The Commission identified two provisions where changes could apply to NI.¹⁵⁵ In response to the consultation, the Commission advised that consideration of Windsor Framework Article 2 should be embedded at all stages of policy and decision making to ensure compliance.¹⁵⁶ The Department for Business and Trade was considering responses to this consultation and will publish its response once this is completed.

Equality and Non-Discrimination

Age discrimination

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.¹⁵⁷ The Commission, alongside the Equality Commission for NI, consider that the proposed Directives amend provisions of EU Employment Equality (Framework) Directive which protects against discrimination on grounds of age.¹⁵⁸ As this is one of the directives listed in Annex 1 to the Windsor Framework, NI equality law should be amended to keep pace with these changes, if the proposals are adopted.¹⁵⁹

154 Department for Business and Trade, 'Retained EU Employment Law: Consultation on Reforms to the Working Time Regulations, Holiday Pay and the Transfer of Undertakings (Protection of Employment) Regulations' (DBT, 2023).

155 Letter from the NI Human Rights Commission to the Secretary of State for Business and Trade, Kemi Badenoch MP, 7 July 2023.

156 Ibid.

157 COM(2022) 688, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU', 7 December 2022; COM(2022) 689, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC', 7 December 2022.

158 Directive 2000/78/EC, 'Council of the EU Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000.

159 This 'keep pace' obligation derives from Article 13(3) of the Windsor Framework which requires that references to EU law in the Windsor Framework are interpreted as references to those measures as amended or replaced. For more detail see section on Human Rights after UK Exit from the EU.

In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government's view that the proposals fall within scope of Windsor Framework Article 2 and it will work with the Executive Office and the UK Mission to the EU to understand what changes to NI law the proposals may require.¹⁶⁰

Business and human rights

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive should:

- a) ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from the State Party's territory in relation to international and national human rights, labour, environmental and other standards;
- b) require companies to undertake assessments of, consultations on and full public disclosure of the environmental, health-related and children's rights impacts of their business activities and their plans to address such impacts.¹⁶¹

The Commission continues to support the NI Business and Human Rights Forum. In 2023, issues discussed by the Forum included public procurement, modern slavery and human trafficking, transparency in supply chains and the Sustainable Development Goals. The Forum, in conjunction with the Labour Relations Agency and the Commission, was also considering a toolkit to assist in assessing issues around compliance and good practice in the area of employment rights.

In 2023, the Commission received small grant funding from the European Network of National Human Rights Institutions to work with Queen's University Belfast to develop a NI Business Human Rights Index. The index is expected to be completed by March 2024.

¹⁶⁰ Letter from the Minister of State for NI, Steve Baker MP, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.

¹⁶¹ CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at paras 16(a) and 16(b).



Discrimination on grounds of sexual orientation

In June 2023, the UN CRC Committee noted that it remained concerned about “persistent discrimination... against children in disadvantaged situations including... lesbian, gay, bisexual and transgender children”.¹⁶² The UN CRC Committee issued a revised recommendation that the UK Government and NI Executive should “ensure that children who experience discrimination, bullying and harassment in relation to their sexual orientation or gender identity receive protection and support, including through targeted anti-bullying measures”.¹⁶³

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.¹⁶⁴ To the extent that the final Directives amend provisions of the EU Employment Equality (Framework) Directive, which protects against discrimination on grounds of sexual orientation,¹⁶⁵ NI equality law must be amended to keep pace with these changes.¹⁶⁶ In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government’s view that the proposals fall within scope of Windsor Framework Article 2.¹⁶⁷

Under the Criminal Justice (No 2) (NI) Order 2004, sexual orientation is recognised as a ground for inciting hatred. In 2020, the Independent Hate Crime Review recommended that statutory

¹⁶² Ibid, at para 19.

¹⁶³ Ibid, at para 20(e).

¹⁶⁴ COM(2022) 688, ‘Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU’, 7 December 2022,; COM(2022) 689, ‘Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC’, 7 December 2022.

¹⁶⁵ Directive 2000/78/EC, ‘Council of the EU Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000.

¹⁶⁶ This ‘keep pace’ obligation derives from Article 13(3) of the Windsor Framework which requires that references to EU law in the Windsor Framework are interpreted as references to those measures as amended or replaced. For more detail see section on Human Rights after UK Exit from the EU.

¹⁶⁷ Letter from the Minister of State for NI, Steve Baker MP, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.

aggravations should be added to all existing offences in NI, including homophobic hate crime, following the model adopted in Scotland.¹⁶⁸ The Department of Justice is considering how to implement the Independent Hate Crime Review's recommendations.¹⁶⁹ A two-staged consultation process is underway, but any progress on outcomes is subject to the return of the NI Executive and NI Assembly.¹⁷⁰

In 2023, the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy did not progress due to the absence of a functioning NI Executive.¹⁷¹

Gender Equality Strategy

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.¹⁷² The Commission, alongside the Equality Commission for NI, consider that the proposed Directives amend provisions of the gender equality directives specified in Annex 1 to the Windsor Framework.¹⁷³ Therefore, NI equality law should be amended to keep pace with these changes, if the proposals are adopted.¹⁷⁴

168 Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020).

169 Email correspondence from the Department of Justice to the NI Human Rights Commission, 20 June 2023.

170 Ibid.

171 Letter from Department for Communities to the NI Human Rights Commission, 16 June 2023.

172 COM(2022) 688, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU', 7 December 2022.; COM(2022) 689, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC', 7 December 2022.

173 Directive 2004/113/EC, 'Council of the EU Directive on Implementing the Principle of Equal Treatment between Men and Women in the Access to and Supply of Goods and Services', 13 December 2004; Directive 2006/54/EC, 'Council of the EU Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and Council of the EU Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.

174 This 'keep pace' obligation derives from Article 13(3) of the Windsor Framework which requires that references to EU law in the Windsor Framework are interpreted as references to those measures as amended or replaced. For more detail see section on Human Rights after UK Exit from the EU.

In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government's view that the proposals fall within scope of Windsor Framework Article 2.¹⁷⁵

Gender recognition

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.¹⁷⁶ To the extent that the final Directives adopted amend provisions of the gender equality directives specified in Annex 1 to the Windsor Framework,¹⁷⁷ NI equality law should be amended to keep pace with these changes.¹⁷⁸

In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government's view that the proposals fall within scope of Windsor Framework Article 2.¹⁷⁹

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- 175 Letter from the Minister of State for NI, Steve Baker MP, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.
- 176 COM(2022) 688, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU', 7 December 2022; COM(2022) 689, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC', 7 December 2022; Directive 2004/113/EC, 'Council of the EU Directive on Implementing the Principle of Equal Treatment between Men and Women in the Access to and Supply of Goods and Services', 13 December 2004; Directive 2006/54/EC, 'Council of the EU Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and Council of the EU Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.
- 177 Directive 2004/113/EC, 'Council of the EU Directive on Implementing the Principle of Equal Treatment between Men and Women in the Access to and Supply of Goods and Services', 13 December 2004; Directive 2006/54/EC, 'Council of the EU Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and Council of the EU Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.
- 178 This 'keep pace' obligation derives from Article 13(3) of the Windsor Framework which requires that references to EU law in the Windsor Framework are interpreted as references to those measures as amended or replaced. For more detail see section on Human Rights after UK Exit from the EU.
- 179 Letter from the Minister of State for NI, Steve Baker MP, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.



Hate crime

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI should “encourage the reporting of hate crimes against children; investigate and prosecute cases of racially, ethnically and religiously motivated crime; punish perpetrators with commensurate sanctions; and provide adequate compensation to the victims, as appropriate”.¹⁸⁰

In 2023, there have been increased reports of ‘organised’ hate crimes in NI, particularly racist hate crimes.¹⁸¹ In November 2023, a follow-up public meeting on tackling racist hate crimes in Belfast was cancelled due to persistent intimidation and concern for the safety of attendees.¹⁸²

In 2021, the Independent Hate Crime Review Team published its report on improving hate crime legislation in NI.¹⁸³ In 2022, the Department of Justice put in place a dedicated Hate Crime Branch to take forward the Independent Review’s recommendations in a two-stage consultation process.¹⁸⁴ Phase one of the consultation process has been completed. The Commission submitted a response highlighting the importance of carefully considering the provisions of the EU Victims’ Directive within the context of Windsor Framework Article 2 in the development of hate crime legislation.¹⁸⁵ In 2023, work continued on drafting a Hate Crime Bill and final policy positions, however implementation was not possible without a functioning NI Executive and NI Assembly.¹⁸⁶

180 CRC/C/GBR/CO/6-7, ‘Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 20(d).

181 ‘Why has there been a spike in racist attacks in south Belfast?’, *BBC News*, 17 October 2023; Meeting of refugee and ethnic minority business owners hosted by Participation and Practice of Rights, 31 August 2023; ‘Sandy Row: Belfast fire treated as racially motivated hate crime’, *BBC News*, 18 August 2023; ‘Belfast Multi-Cultural Association building for sale after arson attacks’, *BBC News*, 14 February 2023; ‘Belfast mosque leader’s worries after Nazi flags flown nearby’, *BBC News*, 23 August 2023; Sarah McKinley, ‘South Belfast businesses in emergency meeting over multiple racist attacks’, *UTV News*, 1 September 2023; Sara Girvan and Eimear Flanagan, ‘Syrian man to move shop after four racist attacks’, *BBC News*, 18 September 2023; Kevin Sharkey, ‘Belvoir: Anti-migrant signs treated as “hate incident”’, *BBC News*, 2 November 2023.

182 Email correspondence from PPR to NI Human Rights Commission, 2 November 2023.

183 Independent Hate Crime Review Team, ‘Hate Crime Legislation in NI: An Independent Review - Consultation Paper’ (IHCRT, 2020).

184 Department of Justice, ‘Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views’ (DoJ, 2022).

185 NI Human Rights Commission, ‘Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI’ (NIHRC, 2022), at para 5.18.

186 Email correspondence from Department of Justice NI to NI Human Rights Commission, 20 June 2023.

Persons with disabilities

Autism Strategy

The Autism (Amendment) Act NI 2022 provides for a regional autism strategy, which includes training for staff, an autism information service, an early intervention service, adult support services, measurable targets, and an independent autism reviewer to oversee implementation.

In 2023, the autism strategy and the appointment of the independent autism reviewer could not progress without a functioning NI Executive.¹⁸⁷

Windsor Framework Article 2 and disability rights

In May 2023, the Court of Appeal in NI considered Windsor Framework Article 2 and confirmed that since UN CRPD was a part of the EU legal order prior to UK withdrawal, the NI Assembly was prohibited from legislating contrary to the UN CRPD as EU law where matters fell within the competence of the EU.¹⁸⁸

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.¹⁸⁹ The Commission, alongside the Equality Commission for NI, consider that the proposed Directives amend provisions of the EU Employment Equality (Framework) Directive, which protects against discrimination on grounds of disability.¹⁹⁰ Therefore, NI equality law should be amended to keep pace with these changes, if the proposals are adopted.

187 Email correspondence from Department of Health to NI Human Rights Commission, 10 July 2023.

188 *Society for the Protection of the Unborn Child Pro-Life Ltd v Secretary of State for NI* [2023] NICA 35, paras 57 and 68.

189 COM(2022) 688, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU', 7 December 2022.; COM(2022) 689, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC', 7 December 2022.

190 Directive 2000/78/EC, 'Council of the EU Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000.

In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government's view that the proposals fall within scope of Windsor Framework Article 2.¹⁹¹

In March 2023, the Commission, along with the Equality Commission for NI and the Irish Human Rights and Equality Commission, published research on divergence of rights on the island of Ireland following the UK's withdrawal from the EU.¹⁹² This research highlighted developments in CJEU caselaw of relevance to the EU Employment Equality (Framework) Directive.¹⁹³ The research highlighted the CJEU ruling in the case of *Szpital Kliniczny* (2021),¹⁹⁴ which elaborated on the concept of disability within the EU Employment Equality (Framework) Directive.¹⁹⁵ Further CJEU rulings in the cases of *Jurors* (2021)¹⁹⁶ and *Tartu Vangla* (2021)¹⁹⁷ highlighted that justifications for the exclusion of persons with a disability from certain professional roles, including public service roles, must be scrutinised closely. NI equality law must keep pace with any changes made by the EU to these rights to improve the minimum levels of protection available, on or after 1 January 2021, including monitoring relevant current and future CJEU case law.¹⁹⁸

In May 2023, the Court of Appeal in NI considered Windsor Framework Article 2 and confirmed that since UN CRPD was a part of the EU legal order prior to UK withdrawal, the NI Assembly was prohibited from legislating contrary to the UN CRPD as EU law where matters fell within the competence of the EU.¹⁹⁹

191 Letter from the Minister of State for NI, Steve Baker MP, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.

192 Sarah Craig et al, 'European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 68.

193 Directive 2000/78/EC, 'Council of the EU Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000.

194 *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, Case C-16/19, 27 January 2021. The CJEU found that pursuant to Article 1 of the Directive the definition of 'disability discrimination' should include discrimination between persons with disabilities. It also ruled under Article 2 that any form of discrimination which is inextricably linked to a protected characteristic amounts to direct discrimination, rather than indirect discrimination

195 Sarah Craig et al, 'EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 69.

196 *TC and UB v Komisja za zashtita ot diskriminatsia and VA* ('Jurors'), Case C-824/19, 21 October 2021.

197 *XX v Tartu Vangla*, Case C-795/19, 15 July 2021.

198 Article 13, Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020.

199 *Society for the Protection of the Unborn Child Pro-Life Ltd v Secretary of State for NI* [2023] NICA 35, paras 57 and 68.

Assistance dogs

In 2021, the Commission and Equality Commission for NI raised concerns about the equality and human rights implications of changes to rules around taking pets, including assistance dogs, from Great Britain to NI.²⁰⁰ Checks on pets and assistance dogs entering NI from Great Britain were subsequently delayed indefinitely to allow for the UK and EU to find a long-term solution.²⁰¹ In February 2023, the UK and EU reached a resolution on pet passports which allows pets to “easily accompany” their owners when travelling within the UK.²⁰² The UK Government has confirmed that “for NI pet owners there will be no new requirements of any kind” and “pet owners can come and go from Great Britain without ever having to think about any paperwork process”.²⁰³ The Commission welcomes this development and the UK Government’s commitment to work with ferry companies to ensure their online guidance reflects these new arrangements and gives travellers confidence to travel once again with their pets.²⁰⁴

Access to medicines

In February 2023, the UK and EU announced that a permanent resolution had been found to ensure that patients in NI “will have access to new medicines at the same time and under the same conditions as Great Britain”.²⁰⁵ The UK and EU confirmed that this would result in “fully safeguarding the supply of medicines from Great Britain into NI”.²⁰⁶ The Commission welcomed the announcements by the UK and EU and will continue to monitor the changes to ensure there is no diminution of rights in breach of Windsor Framework Article 2 and to ensure the right to the highest attainable standard of health is upheld.

200 Letter from the NI Human Rights Commission and Equality Commission for NI to Minister for Agriculture, Environment and Rural Affairs, Edwin Poots MLA, 10 June 2021.

201 Department of Agriculture, Environment and Rural Affairs, ‘Press Release: Permanent solutions needed for pet checks’, 15 September 2021.

202 Political Declaration by the European Commission and the Government of the UK, 27 February 2023.

203 UK Government, ‘The Windsor Framework: A New Way Forward’ (UK Gov, 2023), at 17.

204 Ibid, at para 46.

205 Political Declaration by the European Commission and the Government of the UK, 27 February 2023.

206 Ibid.

Racial equality

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive “address the overrepresentation of children belonging to minority groups in detention and develop measures, in consultation with affected children and their families, to prevent racial profiling by law enforcement authorities”.²⁰⁷

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.²⁰⁸ The Commission, alongside the Equality Commission for NI, consider that the proposed Directives will amend provisions of the EU Race Equality Directive,²⁰⁹ which is specified in Annex 1 to the Windsor Framework. Therefore, NI equality law should be amended to keep pace with these changes, if the proposals are adopted.²¹⁰ In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government’s view that the proposals fall within scope of Windsor Framework Article 2.²¹¹

In 2015, the Executive Office committed to reviewing the Race Relations (NI) Order 1997.²¹² In March 2023, the Executive Office published a consultation on its review of the Race Relations (NI) Order 1997, with the view to bringing forward stronger

207 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 22 June 2023, at para 54(g).

208 COM(2022) 688, ‘Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU’, 7 December 2022.; COM(2022) 689, ‘Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC’, 7 December 2022.

209 Directive 2000/43/EC, ‘Council of the EU Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000.

210 This ‘keep pace’ obligation derives from Article 13(3) of the Windsor Framework which requires that references to EU law in the Windsor Framework are interpreted as references to those measures as amended or replaced. For more detail see section on Human Rights after UK Exit from the EU.

211 Letter from the Minister of State for NI, Steve Baker MP, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.

212 The Executive Office, ‘Racial Equality Strategy 2015-2025’ (TEO, 2015).

legislation to protect minority ethnic communities from racism and discrimination.²¹³ The review consulted on several proposals, including provision of goods and services, education and employment.²¹⁴ It also proposed to introduce a provision to enact Ethnic Equality Monitoring through secondary legislation after it pushes forward with Public Sector Ethnic Equality Monitoring.²¹⁵ In June 2023, the Commission responded to the consultation, noting the importance of a human rights-based approach and compliance with Windsor Framework Article 2, including the obligation to keep pace with any changes to the EU Race Equality Directive.²¹⁶

In 2022, the Nationality and Borders Act introduced Electronic Travel Authorisations, which will be required for all non-British citizens who require leave to enter the UK.²¹⁷ Irish citizens are excluded as individuals not requiring leave to enter the UK.²¹⁸ The Commission expressed concern about associated checks, and the risk of increased racial profiling.²¹⁹ In March 2023, the UK Government announced that individuals who are lawfully resident in Ireland and from a nationality that does not usually require a visa to visit the UK, would be exempt from requiring an Electronic Travel Authorisation to enter the UK, which partially addresses the Commission's concerns. However, such individuals not resident in Ireland do still need to apply for an Electronic Travel Authorisation when travelling from Ireland to NI.²²⁰

In 2015, the Executive Office committed to an independent review of the progress of implementation of the Racial Equality Strategy 2015-2025.²²¹ In August 2023, the Executive Office commissioned an Independent Review of progress on the implementation of the Racial

213 The Executive Office, 'Review of the Race Relations (NI) Order 1997: Consultation Document' (TEO, 2023).

214 Ibid.

215 Ibid; Directive 2000/43/EC, 'Council of the EU Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

216 NI Human Rights Commission, 'Response to The Executive Office's Consultation on the Review of the Race Relations (NI) Order 1997' (NIHRC, 2023).

217 NI Human Rights Commission and Equality Commission for NI, 'Joint Submission to House of Lords on the Nationality and Borders Bill' (NIHRC and ECNI, 2022), at 11-12.

218 Section 3ZA, Immigration Act 1971.

219 See 'Constitutional Protections - Common Travel Area' above for further detail on Electronic Travel Authorisations.

220 Home Office, 'Statement of Changes to the Immigration Rules - HC 1160', 9 March 2023.

221 The Executive Office, 'Racial Equality'. Available at: [Racial Equality | The Executive Office \(executiveoffice-ni.gov.uk\)](https://www.executiveoffice-ni.gov.uk/racial-equality)

Equality Strategy 2015-2025. In November 2023, the Commission met with the Independent Review team and raised several issues including ethnic equality monitoring, multiple intersectional discrimination, racial profiling and the UK Government and NI Executive's commitment under Windsor Framework Article 2, particularly in relation to the obligation to 'keep pace' with the EU Racial Equality Directive.²²²

Sectarianism

In 2021, following a recommendation from Judge Marrinan,²²³ the Department of Justice agreed in principle that there should be a definition of sectarian offences provided in legislation and acknowledged the merit in considering the Scots law definition carefully in relation to its implementation in NI.²²⁴ The Department of Justice also agreed in principle to include a new statutory aggravation for sectarian prejudice (subject to an agreed definition of sectarianism), which could be monitored by the Victims of Crime Commissioner.²²⁵

In 2023, work on drafting a Hate Crime Bill and final policy positions, including on sectarianism, continued. As part of this process, the Commission provided advice in support of the Department of Justice's proposals on sectarianism and highlighting the need to ensure compliance with Windsor Framework Article 2 and the EU Victims' Directive.²²⁶ However, the Hate Crime Bill cannot progress without a functioning NI Executive and NI Assembly.²²⁷

222 Meeting between NI Human Rights Commission and the Independent Review of Progress on the Implementation of the Racial Equality Strategy 2015-2025, 3 November 2023; Directive 2000/43/EC, 'Council of the EU Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

223 Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020), at Recommendation 12.

224 Department of Justice, 'Review of Hate Crime Legislation in NI - Departmental Response' (DoJ, 2021), at 6-7.

225 Ibid.

226 NI Human Rights Commission, 'Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI' (NIHRC, 2022).

227 Email correspondence from Department of Justice to NI Human Rights Commission, 20 June 2023.

Sport and human rights

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

- a) develop a strategy, with sufficient resources, aimed at ensuring children’s right to rest, leisure and recreation, including free outdoor play;
- b) integrate children’s right to play into school curricula and ensure that children have sufficient time to engage in play and recreational activities that are inclusive and age-appropriate;
- c) strengthen measures to ensure that all children, including children with disabilities, young children, children in rural areas and children in disadvantaged socioeconomic backgrounds, have access to accessible, safe, public outdoor play spaces;
- d) involve children in decisions regarding urban-planning processes, including public transportation, and in the development of spaces for children to play.²²⁸

The NI Sport and Human Rights Forum is supported by the Commission. It enables sporting bodies, grassroots sporting groups, public authorities, government representatives and civil society to engage with each other on sport and human rights issues.

In March 2023, in response to requests from the NI Sport and Human Rights Forum, a guide on including transgender people in grassroots sports was published.²²⁹ This resource was developed by Gendered Intelligence and funded by the Commission. It was accompanied by a legal analysis developed by the Commission.²³⁰

228 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 48.

229 Gendered Intelligence, ‘Including Transgender People in Grassroots Sport’ (GI, 2023).

230 NI Human Rights Commission, ‘Transgender Inclusion in Sport: A Legal Analysis’ (NIHRC 2023).

Right to Life

Rule of law: Non-State actors

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive “strengthen measures to protect children from intimidation, racist attacks and other forms of violence committed by non-State actors, including so-called ‘paramilitary organisations’ in NI, and from recruitment by such actors into violent activities”.²³¹

In 2022, the Independent Reporting Commission published its fifth annual report, which concluded that:

2022 has been another mixed year in respect of efforts to bring paramilitarism to an end. As was the case in 2021, some of the data around paramilitary activity showed reductions again in 2022 and there has been good progress in several of the initiatives being developed by the [NI Executive] Programme [for Tackling Paramilitary Activity and Organised Crime]. In particular Phase Two of the Programme is demonstrating tangible benefits. On the other hand, reaction to political developments, particularly relating to the Protocol on Ireland and NI of the EU-UK Withdrawal Agreement, led to new instability at political level, which in turn fed speculation about the potential for a resurgence of paramilitary activity. A number of paramilitary-related incidents served to heighten that speculation. Overall, we have not altered our view that the risks posed to society by the continuing existence of paramilitary groups and structures mean that paramilitarism remains a clear and present danger in and for NI.²³²

231 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 34(b).

232 Independent Reporting Commission, ‘Fifth Report’ (IRC, 2022), at para 1.28.

The Independent Reporting Commission also found that the Paramilitary Crime Task Force “continued to have an impact on paramilitary criminality”.²³³ It also welcomed “the increased focus on co-operation taking place between the Police Service of NI and others”.²³⁴

In 2023, the Executive Programme on Paramilitarism and Organised Crime was allocated £16.3 million.²³⁵ Of this £8 million was ring-fenced funding from the Executive Office’s budget and £8.3 million was provided by the UK Government.²³⁶ Additionally, the Communities in Transition project continued to be funded by the Department of Justice.²³⁷

Freedom from Torture, Inhuman and Degrading Treatment



Abuse in health and social care settings

In March 2023, following a public consultation,²³⁸ the Department of Health published a new regional policy on the use of restrictive practices in health and social care settings, and regional operational procedures for the use of seclusion.²³⁹ The policy aims to eliminate the use of restrictive practices, starting by ensuring the use of restrictive practices is minimised and only used when absolutely necessary.²⁴⁰

233 Ibid, at para 1.35.

234 Ibid, at para 1.35.

235 Email correspondence from the Department of Justice to NI Human Rights Commission, 1 August 2023.

236 Ibid.

237 Department of Justice, ‘Press Release: Ending the harm inflicted on people and communities by paramilitaries and criminals is Executive priority, says Long’, 28 April 2021.

238 Department of Health, ‘Regional Policy on the Use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion – Consultation Document’ (DoH, 2022); NI Human Rights Commission, ‘Submission to Department of Health on the Regional Policy on the use of Restrictive Practices in Health and Social Care Settings’ (NIHRC, 2021); Department of Health, ‘Regional Policy on the Use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion – Consultation Report’ (DoH, 2023).

239 Department of Health, ‘Regional Policy on the Use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion’ (DoH, 2023).

240 Department of Health, ‘Press Release: Policy to minimise restrictive practices in health and social care published’, 20 March 2023.

Between 2020 and 2022, several reports were published following an independent review of the health and social care system's response to care failings at Dunmurry Manor Care Home.²⁴¹ In 2022, a Care Homes Working Group was established to monitor and report on the implementation of recommendations made by the Independent Review Team.²⁴² In 2023, the Care Homes Working Group's work continued.

In 2022, the Muckamore Abbey Hospital Inquiry commenced.²⁴³ In February 2023, the Chair of the Inquiry, Tom Kark KC, advised that "it is unlikely that all of that evidence will finish before the end of 2023, and it is probable that some evidence will need to be called in the early part of 2024".²⁴⁴ By June 2023, 38 people had been arrested in connection with the investigation into Muckamore Abbey Hospital.²⁴⁵

The UK COVID-19 Inquiry is looking at resilience and preparedness, core UK decision-making and political governance, impact of the COVID-19 pandemic on healthcare, and vaccines and therapeutics.²⁴⁶ Each module is investigating issues within health and social care settings across the UK, including in NI. In 2023, the work of the UK COVID-19 Inquiry continued, which included the Commission providing a written statement. In October 2023, the Commission was notified that is a provisional oral witness for a UK COVID-19 Inquiry public hearing in April and May 2024.²⁴⁷

Deprivation of citizenship

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government:

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- 241 Department of Health, 'Press Release: Minister announces plans for Adult Safeguarding Bill for NI', 10 September 2020.
- 242 Department of Health, 'Press Release: Care home review reports published', 27 October 2022.
- 243 Muckamore Abbey Hospital Inquiry, 'Hearings'. Available at: <https://www.mahinquiry.org.uk/hearings>
- 244 Muckamore Abbey Hospital Inquiry, 'Chair's Statement as to the Evidence Plan for 2023 - Issued on 13 February 2023' (MAHI, 2023).
- 245 Paul Ainsworth, '38th arrest made in Muckamore Abbey Hospital probe', *The Irish News*, 15 June 2023.
- 246 UK Covid-19 Inquiry, 'Structure of the Inquiry'. Available at: <https://covid19.public-inquiry.uk/structure-of-the-inquiry/>.
- 247 Letter from UK COVID-19 Inquiry to NI Human Rights Commission, 25 October 2023.

amend the Nationality and Borders Act of 2022 to ensure that the best interests of the child are taken as a primary consideration in all proceedings related to deprivation of nationality, that the [2022] Act is not applied to any children who would be put at risk of statelessness or would otherwise be stateless, and that citizens are not deprived of their citizenship as a result of actions they allegedly committed as children.²⁴⁸

In 2023, following a dismissed appeal at the UK Supreme Court,²⁴⁹ the UK Special Immigration Appeals Commission upheld the UK Government's decision to strip Shamima Begum of British citizenship.²⁵⁰ Ms Begum travelled to Syria to join the Islamic State in Iraq and the Levant when she was 15 years old.²⁵¹ In dismissing her appeal, the Special Immigration Appeals Commission stated that there was reasonable suspicion that Ms Begum had been trafficked and there were arguable failures in the positive duty to protect the applicant by allowing her to travel to Syria.²⁵²

Domestic and sexual violence and abuse

In September 2023, research found that 98 per cent of surveyed women in NI and 73 per cent of surveyed girls aged 12 to 17 years in NI reported having experienced at least one form of violence in their lifetime.²⁵³

In 2023, the Department of Health and Department of Justice consulted on a draft domestic and sexual abuse strategy.²⁵⁴ In its consultation response, the Commission recommended that human rights standards are embedded into the strategy's priorities, including

248 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 24(b).

249 *R (On the application of Begum) v Secretary of State for the Home Department* [2021] UKSC 7.

250 *Special Immigration Appeals Commission Shamima Begum v Secretary of State for the Home Department* [2023] Appeal No SC/163/2019.

251 Ibid.

252 Ibid.

253 Susan Lagdon et al, 'Every Voice Matters: Violence Against Women in NI' (UU, 2023), at 1; Siobhán McAlister et al, 'It's Just What Happens: Girls' and Young Women's Views and Experiences of Violence in NI' (QUB, 2023), at 50.

254 Department of Health and Department of Justice, 'Draft Domestic and Sexual Abuse Strategy: 2023-2030' (DoH and DoJ, 2023).

the EU Victims' Directive²⁵⁵ and highlighted compliance with Windsor Framework Article 2.²⁵⁶ The Commission further recommended that the final strategy explicitly adopts a gender-sensitive approach, including providing for specialised, gender-sensitive, accessible support for victims of domestic and sexual abuse.²⁵⁷ The Commission also recommended that the necessary resources are ring-fenced for the development and effective implementation of the strategy.²⁵⁸

In 2023, the Executive Office consulted on a strategic framework and action plan for ending violence against women and girls.²⁵⁹ The Commission provided a response welcoming the proposed framework and action plan. However, the Commission highlighted the need to adopt the Barnahus model and for there to be greater consideration of specific needs, disaggregated data and adequate funding.²⁶⁰ The Commission also welcomed the inclusion of a Windsor Framework Impact Assessment regarding the proposed strategic framework. However, the Commission recommended that the Impact Assessment consider all relevant provisions of EU law engaged under the Windsor Framework Article 2 including the EU Victims' Directive,²⁶¹ the Child Sexual Exploitation Directive²⁶² and the EU Trafficking Directive.²⁶³

In June 2023, the new stand-alone offence of non-fatal strangulation came into force.²⁶⁴ The offence will apply to any case where intentional asphyxiation or strangulation occurs.²⁶⁵ Where it results in serious harm, the fact that the victim consented in the context of a sexual act will not be a defence.²⁶⁶

255 Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

256 NI Human Rights Commission, 'Consultation Response to the Draft Domestic and Sexual Abuse Strategy' (NIHRC, 2023), at 11.

257 Ibid, at 13.

258 Ibid, at 15.

259 The Executive Office, 'Strategic Framework to End Violence Against Women and Girls' (TEO, 2023).

260 NI Human Rights Commission, 'Consultation Response to the Strategic Framework to End Violence Against Women and Girls' (NIHRC, 2023).

261 Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

262 Directive 2011/92/EU, 'Directive of the European Parliament and of the Council of the EU on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography and Replacing Council Framework Decision 2004/68/JHA', 13 December 2011.

263 Directive 2011/36/EU, 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims', 5 April 2011.

264 Section 28, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022; Department of Justice, 'Press Release: New non-fatal strangulation offence comes into force', 26 June 2023.

265 Section 28, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022).

266 Section 28, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022).

In September 2023, anonymity laws came into force.²⁶⁷ The laws exclude the public from court in serious sexual offence cases and extend anonymity for victims of sexual offending for a period of 25 years after the victim has died.²⁶⁸ The anonymity of suspects in sexual offence cases is also protected up to the point of charge.²⁶⁹ Individuals not subsequently charged will have anonymity for their lifetime and for 25 years after their death.²⁷⁰ The laws further prohibit the publication of information which leads to the identification of a victim or suspect in a sexual offence case.²⁷¹

Female genital mutilation

The Female Genital Mutilation Protection Order (Relevant Third Party) Order (NI) 2021 enables health and social care trusts in NI to obtain a third-party protection order without the need to seek the leave of a court. It is intended to speed up the process of obtaining a protection order should a Health and Social Care Trust in NI have concerns about the safety of any girl or woman under its care.²⁷²

Section 116 of the Adoption and Children (NI) Act 2022, amends Article 8(4) of the Children (NI) Order 1995, so that proceedings for Female Genital Mutilation Protection Orders will be classified as family proceedings.

Beginning in 2022/2023, the 2022 Act is to be implemented on a phased basis over a period of five years. By March 2024, section 116 of the 2022 Act is due to be commenced under phase two.²⁷³

267 Sections 8-19, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022; Department of Justice, 'Press Release: New non-fatal strangulation offence comes into force', 26 June 2023.

268 Sections 8-19, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.

269 Sections 8-19, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.

270 Sections 8-19, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.

271 Sections 8-19, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.

272 Email correspondence from the Department of Finance to the NI Human Rights Commission, 7 July 2023.

273 Email correspondence from the Department of Health to the NI Human Rights Commission, 3 July 2023.



Historical abuse of children and adults

In 2017, the Historical Institutional Abuse Inquiry report on abuse in residential institutions in NI between 1922 and 1995 was published.²⁷⁴ In 2020, the establishment of a Historical Institutional Abuse Redress Board followed for the purposes of receiving and processing applications for compensation from those who experienced abuse covered by the Historical Institutional Abuse Inquiry.²⁷⁵ These initiatives did not extend to adult residents of Magdalene laundry type institutions or those abused in private settings.

In 2021, following a research report,²⁷⁶ the Department of Health committed to conducting an independent investigation into Mother and Baby and Magdalene Laundry Institutions.²⁷⁷ A Truth Recovery Design Panel worked with victims and survivors to recommend the most appropriate form of investigation. It recommended that a non-statutory independent panel of experts was appointed, which included individuals with personal experience.²⁷⁸ The purpose of the independent panel was to gather information, support victims, survivors and relatives to receive information previously denied, investigate human rights violations, and inform the terms of reference for a statutory public inquiry.²⁷⁹ The NI Executive agreed to implement the recommendations in full.²⁸⁰

In April 2023, a Truth Recovery Independent Panel consisting of experts and victim-survivor representatives was appointed.²⁸¹ It is due to complete its work by April 2025.

274 Anthony Hart, 'Historical Institutional Abuse Inquiry Report' (HIAI, 2017).

275 Historical Institutional Abuse Redress Board, 'Annual Report 2021-2022' (HIARB, 2023).

276 The Executive Office, 'Press Release: Executive announces independent investigation into mother and baby homes', 26 January 2021.

277 Leanne McCormick and Sean O'Connell et al, 'Mother and Baby Homes and Magdalene Laundries in NI: 1922-1990' (UU and QUB, 2021).

278 Deirdre Mahon et al, 'Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI Truth, Acknowledgement and Accountability' (DoH, 2021).

279 Ibid.

280 The Executive Office, 'Press Release: Appointment of Truth Recovery Independent Panel', 27 April 2023.

281 Ibid.

In 2023, draft legislation for the purposes of introducing a statutory public inquiry on Mother and Baby and Magdalene Laundry Institutions was in development, with a public consultation expected in due course.²⁸² However, the legislation cannot progress without a functioning NI Executive and NI Assembly.

Prison conditions

In 2023, the NI Prison Service and Department of Justice informed the Commission of concerns regarding overcrowding in NI prisons.²⁸³ The NI Prison Service has been actively recruiting to ensure that the number of prison staff is sufficient for the number of prisoners.²⁸⁴ However, the NI Prison Service has stated that there is a limit to what can be done with current budgets.²⁸⁵ Recruiting additional staff also will not address the reasons for the rising numbers of prisoners, including the significant increase in prisoners on remand.²⁸⁶

In March 2023, the Criminal Justice Inspection NI published a report examining how effectively Probation Board approved premises are operating across NI regarding resettlement, rehabilitation and public protection outcomes.²⁸⁷ The Criminal Justice Inspection NI found that the demand for approved premises was high and that decisions about placements were being taken too close to the planned release date.²⁸⁸ This has implications on other processes to support transition, such as registering with a General Practitioner, opening a bank account or applying for benefits. The Criminal Justice Inspection NI noted a lack of sustainable long-term accommodation is hampering efforts to support individuals to move on from approved premises.²⁸⁹

282 Email correspondence from The Executive Office to the NI Human Rights Commission, 9 August 2023; The Executive Office, 'Press Release: Appointment of Truth Recovery Independent Panel', 27 April 2023; Email correspondence from The Executive Office to the NI Human Rights Commission, 9 August 2023.

283 Meeting between NI Human Rights Commission and NI Prison Service, 24 February 2023; Meeting between Department of Justice and NI Prison Service, 4 August 2023.

284 Meeting between NI Human Rights Commission and NI Prison Service, 24 February 2023.

285 Ibid.

286 Ibid.

287 Criminal Justice Inspection NI, 'A Review of Probation Approved Premises in NI' (CJINI, 2023).

288 Ibid, at paras 2.17, 3.7-3.8.

289 Criminal Justice Inspection NI, 'A Review of Probation Approved Premises in NI' (CJINI, 2023), at 7.

In June 2023, the Criminal Justice Inspection NI published its latest inspection of Maghaberry Prison.²⁹⁰ It highlighted concerns regarding access to psychologically informed treatments and how the social care needs of prisoners are being met. It also identified “a serious drug problem”, with 41 per cent of prisoners indicating it was easy to obtain drugs and 28 per cent having developed a drug problem while there. The Criminal Justice Inspection NI found a lack of governance or effective action to reduce the demand for, and supply of, drugs. In response, the NI Prison Service advised that the introduction of x-ray body scanners in March 2023 is having a significant effect on detecting and deterring drug trafficking.²⁹¹

Additionally, the Criminal Justice Inspection NI highlighted that purposeful activity, rehabilitation and release planning had been badly affected as a result of the COVID-19 pandemic in Maghaberry Prison.²⁹² Many prisoners were released without adequate plans and concerns were also identified regarding the adequacy of safeguarding.²⁹³ The Criminal Justice Inspection NI highlighted access to education, skills and work activities as a priority and further recommended that prisoners are provided with effective support to address their offending behaviour and prepare for release.²⁹⁴

Furthermore, the Criminal Justice Inspection NI found that when prisoners had died at Maghaberry Prison, prison governors waited for the Prisoner Ombudsman for NI’s and Coroner’s report to be delivered before taking action, rather than conducting their own immediate investigation and putting mitigating measures in place.²⁹⁵ The NI Prison Service is in the process of developing new arrangements in consultation with the Prisoner Ombudsman for NI.²⁹⁶

290 Criminal Justice Inspection NI, ‘Report on an Unannounced Inspection of Maghaberry Prison 20 September-6 October 2022’ (CJINI, 2023).

291 Department of Justice, ‘Press Release: Record population means prison pressures to continue for some time - Prison Chief’, 16 June 2023.

292 Criminal Justice Inspection NI, ‘Report on an Unannounced Inspection of Maghaberry Prison 20 September-6 October 2022’ (CJINI, 2023).

293 Ibid, at 6.

294 Ibid, at 6.

295 Ibid.

296 Department of Justice, ‘Press Release: Record population means prison pressures to continue for some time - Prison Chief’, 16 June 2023.

Spit and bite guards

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive “take legislative measures to explicitly prohibit, without exception, the use of harmful devices including spit hoods... against children”.²⁹⁷

In 2023, spit and bite guards were permitted to be used on children aged ten years old and upwards, in line with the current age of criminal responsibility in NI.²⁹⁸ The Police Service of NI’s policy on the use of spit and bite guards includes requirements to consider the best interests of the child as a primary concern when deciding whether to use a spit and bite guard on children.²⁹⁹ It also states that “where officers or staff are aware or believe that a member of the public is under 18 [years old], the presumption will be that a spit and bite guard should not be used”.³⁰⁰ However, in 2022/2023, spit and bite guards were used seven times on children under 18 years old in NI.³⁰¹ Four instances involved a child under 16 years old and three instances were on a child aged between 16 and 17 years old.³⁰²

The Police Service of NI’s policy does not set out specific circumstances in which a spit and bite guard can be used on a child in NI.³⁰³ The policy instead states that “in all cases where a spit and bite guard was deployed on a person under 18, officers must be able to demonstrate that it was absolutely necessary in the circumstances”.³⁰⁴

Within the Police Service of NI, the use of spit and bite guards is monitored through utilising officers’ body worn video and a dip sampling of recordings by line managers.³⁰⁵ In instances where a spit

297 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the United Kingdom of Great Britain and Northern Ireland’, 2 June 2023, at para 30(a).

298 Letter from Police Service of NI Assistant Chief Constable, Chris Todd, to NI Human Rights Commission, 15 June 2022.

299 Ibid.

300 Ibid.

301 Email correspondence from Police Service of NI to NI Human Rights Commission, 11 July 2023.

302 Ibid.

303 Police Service of NI, ‘Manual of Policy, Procedure and Guidance on Conflict Management’ (PSNI, 2023), at para 16.19.

304 Ibid.

305 Letter from Police Service of NI Assistant Chief Constable, Chris Todd, to NI Human Rights Commission, 15 June 2022.

and bite guard is used on a child, the video footage must be reviewed by the deploying officer's supervisor and an officer of at least the rank of Chief Inspector.³⁰⁶

In terms of an independent review, the Police Ombudsman for NI is no longer reviewing each instance of the use of a spit and bite guard.³⁰⁷ However, the Police Ombudsman for NI has agreed to review all footage that involves a child.³⁰⁸ In 2023, the Policing Board NI's Independent Human Rights Advisor continued to review the use of spit and bite guards through a dip sampling process that will be reported on within the Human Rights Advisor's annual report.³⁰⁹

Strip searches

Children

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive, "take legislative measures to explicitly prohibit, without exception...the use of strip searches on children".³¹⁰

Prior to October 2022, data was not systematically collected for strip searches occurring outside of custody in NI.³¹¹ However, a new record-keeping system has been implemented and police officers are required to seek the approval of a supervisor and to request the presence of an appropriate adult before proceeding with a strip search outside of the custody setting.³¹²

In 2023, the NI Policing Board's Human Rights Advisor, John Wadham, recommended that the Police Service of NI updated its guidance and reevaluated its governance frameworks on strip searches in police

306 Ibid.

307 Police Service of NI Stakeholder Event on the Use of Spit and Bite Guards, 25 October 2022.

308 Ibid.

309 Email correspondence from Policing Board NI to NI Human Rights Commission, 4 August 2023.

310 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 30(a)(ii).

311 NI Policing Board, 'Human Rights Review - Children and Young People: Strip Searching in Police Custody' (NIPB, 2023), at 16.

312 Ibid.

custody.³¹³ The Human Rights Advisor also recommended amending the legal framework to increase the likelihood of compliance with Article 8 of the ECHR and ensure that fewer children are strip searched. This included making sure that the ‘reasonable suspicion’ test applies “both to search and seizure in custody so custody officers are required to have an honest and objective basis for their belief that the detained person has concealed a prohibited item before a strip search can be authorised”.³¹⁴ That it is “clear that strip searches of children should only occur when the new proposed reasonable suspicion test is met and when there is no other alternative available to find the item or protect the detained person or others”.³¹⁵ Furthermore, child safeguarding should be a primary consideration during strip searches.³¹⁶

Prisons

In March 2023, the NI Prison Service began introducing new x-ray body scanners into Maghaberry, Magilligan and Hydebank.³¹⁷ Currently these can only be used on male prisoners in NI aged 18 years and older for a maximum of 50 times per calendar year.³¹⁸ Prisoners will only be scanned where there is justification for using the technology and where the prisoner has consented to its use, otherwise strip searches may be conducted.³¹⁹ The NI Prison Service has developed bespoke policy and guidance on the deployment and operation of the x-ray scanners.³²⁰ This is accompanied by staff training and new risk assessment and safeguarding procedures.³²¹ In respect of oversight arrangements, the NI Prison Service advised there will be spot checking, a post-implementation review and regular external inspections, such as those conducted by the Criminal Justice Inspection NI.³²² However, there are currently no longer-term arrangements for regular internal reviews.³²³

313 Ibid.

314 NI Policing Board, ‘Human Rights Review - Children and Young People: Strip Searching in Police Custody’ (NIPB, 2023), at 5.

315 Ibid.

316 Ibid.

317 Department of Justice, ‘Press Release: New technology a ‘game changer’ against illegal contraband in prisons’ 1 March 2023.

318 Meeting between the NI Human Rights Commission and the NI Prison Service, 24 February 2023; Meeting between the NI Human Rights Commission and Department of Justice, 4 August 2023.

319 Meeting between the NI Human Rights Commission and the NI Prison Service, 24 February 2023.

320 Ibid; Meeting between the NI Human Rights Commission and Department of Justice, 4 August 2023.

321 Ibid.

322 Ibid.

323 Ibid.

In April 2023, the High Court of Justice in NI endorsed the lawfulness and proportionality of the deployment policy following a judicial review on the operational management of x-ray scanners in Maghaberry.³²⁴ However, the High Court noted that there was insufficient evidence to determine whether the policy was properly implemented in respect of the applicant.³²⁵ It recommended any potential outstanding issues are addressed through civil action.³²⁶



Victims' payments

In 2021, following the Victims' Payments Regulations 2020, the Troubles Permanent Disablement Payment Scheme was established. This Scheme aims to provide "those living with permanent disablement (either physical or psychological) caused by injury through no fault of their own in a Troubles-related incident with payments primarily in acknowledgement of the harm they have suffered".³²⁷ The Victims' Payments Board was also established, which makes decisions on applications to the Troubles Permanent Disablement Payment Scheme.³²⁸ The Scheme is due to run until August 2026.³²⁹

As of 31 March 2022, the Victims' Payments Scheme had received 2,047 applications, of which 61 were withdrawn.³³⁰ Of these, 21 determinations have been made.³³¹ Six of these cases concluded with a payment being recommended and 15 of these cases were deemed ineligible.³³² Four cases have been adjourned and a further 75 cases have been listed for hearing.³³³ As of 31 March 2022, £150,135 had been paid to successful applicants.³³⁴

324 *In the Matter of An Application by Sean O'Halloran for Judicial Review* [2023] NIKB 51.

325 *Ibid.*, at para 19.

326 *Ibid.*

327 Victims Payments Board, 'Procedural Guidance' (VPB, 2021), at para 4.

328 Victims Payments Board, 'About Us'. Available at: <https://www.victimspaymentsboard.org.uk/about-us-0>; NI Direct, 'Troubles Permanent Disablement Payment Scheme'. Available at: <https://www.nidirect.gov.uk/articles/troubles-permanent-disablement-payment-scheme>

329 *Ibid.*

330 Victims' Payments Board, 'Troubles Permanent Disablement Scheme: Annual Report 2021-2022' (VPB, 2023), at 17.

331 *Ibid.*

332 *Ibid.*

333 *Ibid.*

334 *Ibid.*

By September 2023, approximately 90 appeals had been lodged against a determination made by the Victims' Payments Board.³³⁵ There have been criticisms of the Victims' Payments Board's decision-making process and the length of time it takes.³³⁶ The Secretary of the Victims' Payments Board, Paul Bullick, has acknowledged the frustrations, but has stated that:

this is not a scheme that you apply to, and you have a decision or a determination or a payment out the door in six weeks. We are going back some 50 years in some cases, if not more. We have many multiple incident applications... and we are at the mercy of our evidence providers.³³⁷

The Victims' Payments Board is changing the application form in a bid to make it easier for victims to initially provide more information and have their case assessed quicker.³³⁸

Freedom from Slavery



Modern slavery and human trafficking

Modern Slavery and Human Trafficking Strategy

In 2022, the Department of Justice consulted on its three-year strategy on Modern Slavery and Human Trafficking, which sought to operationalise the measures brought in under the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.³³⁹ In January 2023, the Commission's response highlighted the need to ensure that

335 Jayne McCormack, 'Troubles victims pensions: One third of applicants denied access to scheme', *BBC News*, 28 September 2023.

336 Ibid.

337 Ibid.

338 Ibid.

339 Department of Justice, 'NI Draft Modern Slavery and Human Trafficking Strategy: Consultation' (DoJ, 2022).

Windsor Framework Article 2, including the EU Trafficking Directive,³⁴⁰ is built into and actively considered during the development and implementation of policy and legislation on modern slavery and human trafficking.³⁴¹ The Commission also emphasised the importance of specialist support being made available to victims of modern slavery, appropriately tailored to take account of age, gender and culture.³⁴²

As part of this consultation on a range of tools to tackle modern slavery and human trafficking, the Department of Justice sought views on the use of Slavery and Trafficking Risk Orders.³⁴³ In responding to the consultation, the Commission recommended that Slavery and Trafficking Risk Orders are promptly introduced and accompanied by robust statutory guidance in line with international human rights obligations, which explicitly acknowledges the best interests of the child principle.³⁴⁴ In addition, the Commission stressed the need for cross-departmental working to tackle human trafficking and the need for regular consultation with victims.³⁴⁵

In 2023, implementation of the Department of Justice's proposals, including the use of Slavery and Trafficking Risk Orders, was unable to progress without a functioning NI Executive and NI Assembly.³⁴⁶

Illegal Migration Act 2023

In March 2023, the UK Government introduced the then Illegal Migration Bill which made provisions regarding modern slavery and human trafficking in respect of people who have entered the UK in breach of immigration control.³⁴⁷ The Commission provided initial

340 Directive 2011/36/EU, 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims', 5 April 2011.

341 NI Human Rights Commission, 'Submission to the Department of Justice's Consultation on the Draft Modern Slavery and Human Trafficking Strategy' (NIHRC, 2023).

342 Ibid.

343 Department of Justice, 'Public Consultation on Measures to Strengthen Response to Modern Slavery and Human Trafficking - Proposed Amendments to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015' (DoJ, 2022).

344 NI Human Rights Commission, 'Submission to Department of Justice Consultation on Measures to Strengthen the Response to Modern Slavery and Human Trafficking' (NIHRC, 2022).

345 NI Human Rights Commission, 'Submission to the Department of Justice Consultation on the Draft Modern Slavery and Human Trafficking Strategy' (NIHRC, 2023).

346 Department of Justice, 'Draft Modern Slavery and Human Trafficking Strategy' (DoJ, 2022), at 24.

347 Sections 22-29, Illegal Migration Act 2023.

advice on the then Illegal Migration Bill to the House of Commons and House of Lords Joint Committee on Human Rights and a more detailed briefing to House of Lords peers.³⁴⁸

In July 2023, the Illegal Migration Act 2023 received Royal Assent. The Commission remains concerned that the 2023 Act denies victims of modern slavery, who have arrived in the UK irregularly, access to existing support.³⁴⁹ The Commission notes that the EU Trafficking Directive³⁵⁰ remains relevant for determining the minimum standards for protecting victims of human trafficking in NI under Windsor Framework Article 2 and that a systematic denial of support and assistance to potential victims of human trafficking, without individual consideration, does not appear to be compliant with Windsor Framework Article 2.³⁵¹

In September 2023, the Commission issued a judicial review against the Secretary of State for the Home Department, Suella Braverman MP, and the Secretary of State for NI, Chris Heaton-Harris MP, arguing that the Illegal Migration Act 2023 is not compliant with the ECHR and Windsor Framework Article 2. In January 2024, the case is due to be heard in the High Court of Justice in NI.

Right to Liberty and Security of the Person



Women in detention

Separate facility

In 2021, the Department of Justice and NI Prison Service confirmed they remain committed to the development of a separate new women's facility on the site of Hydebank Wood and expenditure for

348 NI Human Rights Commission, 'Submission to Joint Committee on Human Rights Inquiry on Illegal Migration Bill' (NIHRC, 2023); NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023).

349 Ibid.

350 Directive 2011/36/EU, 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

351 NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023), at para 6.10.

the first phase had been approved by the Department of Finance.³⁵² In 2023, the target date for the delivery of the new women's facility, subject to the necessary funding being made available, remained mid-2025.

Domestic abuse and offending

UK-wide research indicates a strong link between domestic abuse and women offenders.³⁵³ In 2023, the Department of Justice and Department of Health consulted on a new domestic and sexual abuse strategy.³⁵⁴ The Commission responded to the consultation, highlighting the need for measures to prevent online-based and technology-related domestic and sexual abuse.³⁵⁵ The Commission further recommended provisions for gender-sensitive training of criminal justice professionals with a specific focus on the links between domestic abuse and offending.³⁵⁶

Women immigration detainees

Women immigration detainees are held with men in Larne House short-term holding facility. Women are accommodated in a separate area, but this area cannot be locked off from the men's section and there is no separate communal room available.³⁵⁷ In 2023, Larne House submitted tenders to the Home Office for alterations, including a separate communal room for women immigration detainees.³⁵⁸

352 Email correspondence from Department of Justice to NI Human Rights Commission, 3 November 2021.

353 Ministry of Justice, 'Supporting Data Tables: Female Offender Strategy' (MoJ, 2018); Prison Reform Trust, 'There's a Reason We're in Trouble: Domestic Abuse as a Driver to Women's Offending' (PRT, 2017), at 4.

354 Department of Justice and Department of Health, 'Draft Domestic and Sexual Abuse Strategy 2023-2030' (DoJ and DoH, 2023).

355 NI Human Rights Commission, 'Response to the Department of Health and Department of Justice's Consultation on a Draft Domestic and Sexual Abuse Strategy' (NIHRC, 2023).

356 Ibid.

357 HM Inspectorate of Prisons, 'Report on an Unannounced Inspection of the Residential Short-term Holding Facilities at Larne House, Manchester Airport and Yarl's Wood by HM Chief Inspector of Prisons' (HMIP, 2021), at para 2.27.

358 Ibid; Email correspondence from Larne Visitors House to NI Human Rights Commission, August 2023.

The Illegal Migration Act 2023 allows for pregnant women to be detained for up to 72 hours, or up to seven days if “authorised personally by a Minister of the Crown”.³⁵⁹ A pregnant woman who has been released, can be detained again for the specified periods.³⁶⁰ The Royal College of Midwives previously stated that even a 72-hour detention period can be harmful and that the practice of detaining pregnant women for immigration purposes must end.³⁶¹

Right to Fair Trial and Administration of Justice

Access to justice

Litigants in person

In 2018, University of Ulster in conjunction with the Commission published research on the experience of individuals who take or defend civil and family law cases without legal representation and how this impacts their human rights.³⁶²

In 2019, a Litigant in Person Reference Group was established by the Department of Justice that comprised of litigants in person, statutory bodies, academics, and legal professionals.³⁶³ In 2023, the Reference Group continued to meet quarterly and published progress reports.³⁶⁴

Additionally, the Department of Justice has added a new page to its website to assist individuals without representation.³⁶⁵ In 2023, the Department of Justice considered several initiatives for improving access to justice, including videos on practical elements of attending court.³⁶⁶

359 Section 2(2D), Illegal Migration Act 2023.

360 Sections 2(2E), Illegal Migration Act 2023.

361 Royal College of Midwives, 'Position statement: Detention of Pregnant Women' (RCM, 2017).

362 Gráinne McKeever et al, 'Litigants in Person in NI: Barriers to Legal Participation' (UU, NIHRC and Nuffield Foundation, 2018).

363 Department of Justice, 'Terms of Reference: Litigants in Person Reference Group' (DoJ, 2019).

364 Department of Justice, 'Litigants in Person Reference Group Publications'. Available at: <https://justice-ni.gov.uk/publications/litigants-person-reference-group/>

365 Department of Justice, 'Information for Litigants in Person'. Available at: <https://www.justice-ni.gov.uk/articles/information-litigants-person>.

366 Litigants in Person Reference Group, 'Fifteenth Progress Report of the Litigants in Person Reference Group: Meeting 14 March 2023' (LPRG, 2023).

New technologies

In 2020 and 2022, the Department of Justice and NI Court and Tribunals Service published digital strategies, which commit to embracing technological advancements and new ways of working.³⁶⁷ Additionally, the Department of Justice has consulted on the use of new technologies by the Police Service of NI and NI Court and Tribunals Service.³⁶⁸ This work is linked to implementing the Gillen review's recommendations on improving law and procedures regarding serious sexual offences in NI.³⁶⁹

In its consultation responses, the Commission highlighted that the adoption of new technologies and ways of working should not inadvertently hinder access to justice for individuals with specific needs, including children, persons with disabilities and unrepresented litigants.³⁷⁰ This includes ensuring there is clear guidance and safeguards in place to ensure technology and ways of working for the purpose of promoting access to justice are accessible and used appropriately.³⁷¹ The Commission also highlighted the relevance of Windsor Framework Article 2 and advised the Department of Justice to carefully consider the provisions of the EU Victims' Directive³⁷² and the EU Directive on Interpretation and Translation in Criminal Proceedings³⁷³ in respect of the person suspected or accused, victims with disabilities and people who do not speak English as a first language.³⁷⁴

367 Department of Justice, 'Digital Justice Strategy 2020-2025' (DoJ, 2020); NI Courts and Tribunals Service, 'Digital Strategy 2021-2026' (NICTS, 2022).

368 Department of Justice, 'Consultation on Proposals on the Use of Live Links for Police Detention/Interviews' (DoJ, 2020); Department of Justice, 'Consultation on Use of Live Links for Courts and Tribunals' (DoJ, 2022).

369 Sir John Gillen, 'Report into the Law and Procedures in Serious Sexual Offences in NI: Recommendations' (DoJ, 2019).

370 NI Human Rights Commission, 'Consultation on Proposals on the Use of Live Links for Police Detention/Interviews' (DoJ, 2020); NI Human Rights Commission, 'Response to the Department of Justice's Consultation on Audio and Video Links for NI Court and Tribunal Hearings' (NIHRC, 2022).

371 Ibid.

372 Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

373 Recital 14, Directive 2010/64/EU, 'Directive of the European Parliament and of the Council of the EU on the Right to Interpretation and Translation in Criminal Proceedings', 20 October 2010.

374 NI Human Rights Commission, 'Response to the Department of Justice's Consultation on Audio and Video Links for NI Court and Tribunal Hearings' (NIHRC, 2022).

In September 2023, the Department of Justice laid regulations extending the provisions relating to live links for courts and tribunals for a further six months.³⁷⁵

In September 2023, the Department of Justice introduced a Belfast Remote Evidence Centre.³⁷⁶ Drawing from the Gillen Review's recommendations, this aims to ensure that certain witnesses will not meet defendants within a court building.³⁷⁷ It provides a space for witnesses to give evidence via video link and to have direct access to support from Victims Support and the Young Witness Service.³⁷⁸

Avoidable delay

Since 2014, the Criminal Justice Inspection NI has raised concerns with there being no statutory custodial time limits in NI.³⁷⁹ These findings have been supported by Sir John Gillen's review into how the NI criminal justice system handles cases of serious sexual assault.³⁸⁰

In 2020, the New Decade, New Approach Agreement included a commitment to implement the Criminal Justice Inspection NI and Gillen review recommendations on avoidable delay.³⁸¹ Consequently, an Implementation Team was established to co-ordinate phased actions aimed at addressing Gillen Review's recommendations, as agreed by the Criminal Justice Board.³⁸²

It has been slow progress,³⁸³ however in 2022, phase one of commencement of the Criminal Justice (Committal Reform) Act 2022

375 The Coronavirus Act 2020 (Extension of Provisions Relating to Live Links for Courts and Tribunals) (No 2) Order (NI) 2023.

376 Department of Justice, 'Press Release: Official opening of Belfast Remote Evidence Centre', 28 September 2023.

377 Ibid.

378 Ibid.

379 NI Assembly Hansard, 'Committee for Justice - Criminal Justice Inspector', 25 June 2014; Criminal Justice Inspection NI, 'No Excuse: Public Protection Inspection II: A Thematic Inspection of the Handling of Domestic Violence and Abuse Cases By the Criminal Justice System in NI' (CJINI, 2019), at 10.

380 Sir John Gillen, 'Report into the Law and Procedures in Serious Sexual Offences in NI - Part 1' (DoJ, 2019), at 13-14.

381 NI Office, 'New Decade, New Approach' (NIO, 2020), at 7-8.

382 Department of Justice, 'Press Release: We must work together to deliver real change for victims of serious sexual assault: Long', 3 February 2020.

383 Andrew Madden, 'Only a third of recommendations outlined in 2019's Gillen Review Report on sex offences have been fully implemented', *Belfast Telegraph*, 24 June 2022.

was completed.³⁸⁴ This phase focused on removing the use of oral evidence as part of the committal process, which means that victims and witnesses cannot be put on the stand to be examined and cross-examined in a committal hearing before the actual trial.

By March 2024, phase two of commencing the 2022 Act is due to be implemented.³⁸⁵ This phase focuses on allowing cases involving some of the most serious offences to bypass a traditional committal hearing ensuring that those cases are transferred to the NI Crown Court at an earlier stage.

Non-jury trials

In 2023, following a public consultation,³⁸⁶ the Justice and Security (NI) Act 2007 was extended for a seventh time extending the use of non-jury trials in NI until July 2025.³⁸⁷ The Secretary of State for NI, Chris Heaton-Harris MP, stated that “the continued need for the provisions is regrettable. However, the concerns raised during the consultation of the potential risk to the administration of justice and to individuals if the non-jury trial provisions were to expire imminently, cannot be ignored”.³⁸⁸ The UK Government “does not want these temporary measures to become normalised, and remains fully committed to seeing an end to their use, when it is safe to do so and compatible with the interests of justice”.³⁸⁹

In 2021, a Non-Jury Trial Working Group, which included the Commission, was established by the Home Office to identify practical measures which could help reduce the number of non-jury trials taking place, and identifying elements indicating that non-jury trials should no longer be deemed necessary.³⁹⁰ In 2022, the Non-jury Trial Working Group provided its report to the Independent

384 Department of Justice, 'Press Release: Long welcomes progress on plans to implement reforms of the court committal process', 9 March 2022.

385 Ibid.

386 UK Government, 'Press Release: Consultation launched on the use of non-jury trials in NI', 3 November 2022.

387 Justice and Security (NI) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2023.

388 HM Government, 'Consultation Response: Non-jury Trials Justice and Security (NI) Act 2007' (UK Gov, 2023), at para 64.

389 Ibid, at para 17.

390 Non-Jury Trials Working Group Meeting, 27 July 2021.

Reviewer of the Justice and Security Act (NI) Act 2007, Marie Breen-Smyth.³⁹¹ In June 2023, the Independent Reviewer publicly supported indicators proposed by the Non-jury Trial Working Group to assist the Secretary of State in NI in determining whether non-jury trials remain necessary.³⁹²

Right to Private and Family Life

Alternative care arrangements for children

Social care reform

In June 2023, the Independent Review of Children’s Social Care Services made 54 recommendations outlining how children’s social care services in NI should be reshaped.³⁹³ In particular, the Independent Review reiterated a range of issues in NI foster care including placement stability, children having many moves between foster and residential care, shortage of placements, high vacancy rates, retention issues, the need for regulations and standards and an inspection regime.³⁹⁴

The Independent Review’s core proposal is for a single region-wide children and families’ arms-length body to be created that would replace all children’s services across the current five Health and Social Care Trusts in NI.³⁹⁵ In welcoming the Independent Review, the Department of Health has committed to undertaking “a public consultation on the organisational and service changes recommended, and make the necessary preparations for an incoming Minister”.³⁹⁶

391 NI Office, ‘Non-Jury Trials Working Group: Report to the Independent Reviewer of the Justice and Security (NI) Act 2007’ (NIO, 2022).

392 Professor Marie Breen-Smyth, ‘Report of the Independent Reviewer Justice and Security (NI) Act 2007 Fifteenth Report: 1 August 2021–31 July 2022’ (NIO, 2023) at 109.

393 Department of Health, ‘An Independent Review: Children’s Social Care Services in NI’ (DoH, 2023).

394 Ibid, at paras 13.4-13.30.

395 Department of Health, ‘An Independent Review: Children’s Social Care Services in NI’ (DoH, 2023), at 116.

396 Department of Health, ‘Press Release: Department welcomes Children’s Social Care Services review report’, 21 June 2023.

Secure accommodation

In 2022, the NI Executive advised that the plans for a new regional campus will not go ahead and that the secure care and justice centres will continue to operate independently.³⁹⁷ Consequently, the Department of Health commenced roll-out of a new Integrated Therapeutic Care Framework across both centres.³⁹⁸

Reflecting the Criminal Justice Inspection NI's concerns,³⁹⁹ the Independent Review also stated concerns regarding the "significant waste of the funding" in maintaining two secure care and justice centres.⁴⁰⁰ The Independent Review recommended that the Regional Justice and Care Campus was integrated within the much better resourced Woodlands site,⁴⁰¹ and that Lakewood was repurposed to provide either a step-down service or to provide services for children who would otherwise be placed in residential services outside of NI.⁴⁰²

Climate change and environmental regulation

In 2022, a report on air pollution found that "some pollutants in some parts of NI continue to exceed air quality objectives".⁴⁰³ In March 2023, further research estimated that air pollution was attributable to 900 premature deaths annually in NI.⁴⁰⁴

397 Letter from Department of Justice and Department of Health to Regional Facilities for Children and Young People Stakeholder Reference Group Members, 24 March 2022.

398 Department of Health, 'An Overview of the NI Framework for Integrated Therapeutic Care for Care Experienced Children and Young People' (DoH, 2022).

399 Criminal Justice Inspection NI, 'Press Release: Inspectors praise high standards of care at Woodlands JJC and call for greater collaboration with Lakewood Secure Care Centre', 28 September 2022.

400 Department of Health, 'An Independent Review: Children's Social Care Services in NI' (DoH, 2023), at para 16.12; Letter from Department of Justice and Department of Health to Regional Facilities for Children and Young People Stakeholder Reference Group Members, 24 March 2022; Department of Health, 'An Overview of the NI Framework for Integrated Therapeutic Care for Care Experienced Children and Young People' (DoH, 2022).

401 Department of Health, 'An Independent Review: Children's Social Care Services in NI' (DoH, 2023), at para 16.14.

402 Ibid, at para 16.15.5.

403 Department for Agriculture, Environment and Rural Affairs, 'Air Pollution in NI: 2021' (DAERA, 2022).

404 Queen's University Belfast and Technology University Dublin 'Air Pollution and Mortality on the Island of Ireland' (QUB and TUD, 2023).

In April 2023, the UK’s Climate Change Committee said that planning for climate change in NI “remains at an early stage” with very limited evidence of delivery and implementation.⁴⁰⁵ The Climate Change Committee is of the view that the lack of an NI Executive threatens to seriously hamper NI’s ability to meet the net zero target unless “radical action” is taken.⁴⁰⁶ In 2023, the Department of Agriculture, Environment and Rural Affairs consulted on ways to become net zero in NI.⁴⁰⁷ The Commission provided a response which highlighted that all decisions taken by NI Executive Departments in relation to climate action should be informed by international human rights standards.⁴⁰⁸ The Commission also underlined the need to give consideration to Windsor Framework Article 2.⁴⁰⁹ The outcome of the consultation cannot progress without a functioning NI Executive and NI Assembly.

In July 2023, the Department for Agriculture, Environment, and Rural Affairs missed the deadline for publishing its first Environmental Improvement Plan, a statutory requirement under the UK Environment Act 2021. The Department for Agriculture, Environment, and Rural Affairs stated that “officials are very conscious of the deadline for publication of a new Environmental Improvement Programme and are currently working through the decision-making process to determine what action is possible in the absence of ministers and an Executive”.⁴¹⁰

Health and Social Care (Control of Data Processing) Act 2016

Encompass is a single digital health and social care record, whereby all health and care records are brought together in digital form. The Department of Health has stated that “having one health record will reduce the need for information to be stored across multiple, ageing systems and minimise paper records”.⁴¹¹

405 UK Climate Change Committee, ‘Adapting to Climate Change: Progress in NI’, (UKCC, 2023).

406 Louise Cullen, ‘Climate change: Lack of executive ‘hampering NI plan’, *BBC News*, 21 April 2023.

407 Department of Agriculture, Environment and Rural Affairs, ‘Consultation on NI’s 2030 and 2040 Emissions Reduction Targets and First Three Carbon Budgets and Seeking Views on Climate Change Committee Advice Report: The Path to a Net Zero NI’ (DAERA, 2023).

408 Letter from the NI Human Rights Commission to the Department for Agriculture, Environment, and Rural Affairs, 11 October 2023.

409 Ibid.

410 Louise Cullen, ‘NI misses deadline for Environmental Improvement Plan’, *BBC News*, 27 July 2023.

411 Department of Health, ‘Press Release: Date set for patient record revolution’, 9 February 2023.

In November 2023, the South Eastern Health and Social Care Trust was the first Health and Social Care Trust in NI to go live with encompass. Other Health and Social Care Trusts will follow on a phased basis, with all scheduled to be live by mid-2025.⁴¹²

Stop and search

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

- a) effectively enforce the prohibition of the use of non-statutory stop and search checks against children, prohibit their use in NI...;
- b) ensure that their statutory use is proportionate and non-discriminatory, including by implementing the best use of stop and search scheme, and conducting mandatory training for law enforcement officials;
- c) improve the monitoring of the use of stop and search checks on children, including through the collection and publication of related data, and investigate all allegations of their disproportionate or discriminatory use on children.⁴¹³

In 2022, the Independent Reviewer of the Justice and Security (NI) Act 2007, Marie Breen-Smyth, highlighted a lack of progress on the provision of safeguards for the use of these ‘no-suspicion’ powers against children.⁴¹⁴ In June 2023, the Independent Reviewer recommended that the Police Service of NI conduct a review of its policies and practices in relation to stops and searches of children between the ages of 10 and 14 years of age.⁴¹⁵

412 Ibid.

413 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 28.

414 Professor Marie Breen-Smyth, ‘Report of the Independent Reviewer Justice and Security (NI) Act 2007: Fourteenth Report: 1 August 2020-31 July 2021’ (NIO, 2022).

415 Professor Marie Breen-Smyth, ‘Report of the Independent Reviewer Justice and Security (NI) Act 2007 Fifteenth Report: 1 August 2021-31 July 2022’ (NIO, 2023), at 54.

Visitation in health and social care settings

In 2022, a UK COVID-19 Inquiry commenced under the Inquiries Act 2005 to examine, consider and report on preparations and the response to the COVID-19 pandemic in England, Wales, Scotland and NI.⁴¹⁶ The UK-wide inquiry will consider aspects related to NI, but an additional NI-specific COVID-19 inquiry has not been established.⁴¹⁷ The inquiry includes a review of the response of the health and care sector across the UK, including the management of the pandemic in care homes and other care settings.⁴¹⁸

In 2023, the Commission submitted a written statement to the UK COVID-19 inquiry. In October 2023, the Commission was notified that it is a provisional oral witness for a UK COVID-19 Inquiry public hearing in April and May 2024.⁴¹⁹

Freedom of Religion and Belief, Expression, Association and Right to Participate in Public and Political Life

Freedom of expression of journalists

In 2023, the UN Working Group on the Universal Periodic Review issued recommendations that the UK Government and NI Executive “continue efforts within the Media Freedom Coalition to defend media freedom at home and abroad, and improve the safety of journalists and media workers who report across the world”.⁴²⁰ The UN Working Group on the Universal Periodic Review also recommended that the UK Government and NI Executive “take concrete steps to improve the

416 UK COVID-19 Inquiry, ‘COVID-19 Inquiry Terms of Reference’ (UKCI, 2022).

417 NI Human Rights Commission, ‘Submission to the UN Human Rights Committee Regarding the UK’s Eighth Periodic Report on Compliance with the UN ICCPR’ (NIHRC, 2020).

418 UK COVID-19 Inquiry, ‘Terms of Reference’ (UKCI, 2022).

419 Letter from UK COVID-19 Inquiry to NI Human Rights Commission, 25 October 2023.

420 A/HRC/52/10, ‘Report of the UN Working Group on the Universal Periodic Review UK of Great Britain and NI’, 9 January 2023, at para 43.117.

safety of journalists, investigate incidents of attacks on journalists and implement the UN Plan of Action on the Safety of Journalists and the Issue of Impunity”.⁴²¹

In 2019, NI-based journalist Patricia Devlin received a threatening direct message to her personal social media account regarding her newborn baby.⁴²² In 2020, a complaint was filed with the Police Ombudsman for NI alleging that the Police Service of NI had inadequately investigated the threat made towards her newborn baby.⁴²³ In 2021, the Police Ombudsman for NI upheld the complaint.⁴²⁴ In March 2023, the Public Prosecution Service NI decided not to pursue prosecution due to insufficient evidence.⁴²⁵ Amnesty International NI raised concerns that the Public Prosecution Service NI’s decision “showed a system failing to protect press freedom in NI”.⁴²⁶

In March 2023, it was confirmed that the UK Investigatory Powers Tribunal was investigating whether the Police Service of NI acted lawfully in monitoring the phones of the journalist Barry McCaffery in 2013. It is alleged that the Police Service of NI started monitoring the journalist’s phone to identify a whistleblower after Mr McCaffery contacted the Police Service of NI’s press office to make an inquiry regarding a story he was investigating. However, the journalist was unaware until recently that the Investigatory Powers Tribunal had authorised this investigation ten years ago.⁴²⁷ This followed an earlier High Court of Justice in NI judgment that search warrants issued against journalists Barry McCaffery and Trevor Birney were “disproportionate”.⁴²⁸

421 Ibid, at para 43.120.

422 Julian O’Neill, ‘Journalist Patricia Devlin complains over Police Service of NI online threat “failure”’, *BBC News*, 13 October 2020.

423 Ibid.

424 ‘Journalist Patricia Devlin’s complaint upheld over Police Service of NI “failure”’, *BBC News*, 10 September 2021.

425 ‘No prosecution over threats to NI journalist and her baby’, *Irish Legal News*, 7 March 2023.

426 Amnesty International, ‘Press Release: Decision not to prosecute in Patricia Devlin threats case shows system is failing to protect press freedom’, 6 March 2023.

427 ‘Police Service of NI monitored phone of journalist Barry McCaffery’, *BBC News*, 24 July 2023.

428 *In the Matter of an Application by Fine Point Films and Trevor Birney for Judicial Review and the in the Matter of an Application by Barry McCaffery and the in the Matter of an Application by Police Service of NI and Durham Constabulary for Search Warrants* [2020] NIQB 55, at para 55.

In 2022, the then Economic Crime and Corporate Transparency Bill was introduced to the UK Parliament. In June 2023, the UK Government introduced amendments to the then Bill which aimed to provide additional safeguards for free speech and investigative journalism by addressing exploitation of the legal system. The proposed amendments sought to strengthen judges' abilities to dismiss unfounded claims or Strategic Lawsuits Against Public Participation. The UK Government is of the view that these legal actions were frequently wielded in an aggressive manner by affluent individuals or large corporations with the aim of intimidating and financially draining their adversaries, putting them at risk of incurring exorbitant expenses while defending against the claims.⁴²⁹ In October 2023, the Economic Crime and Corporate Transparency Act 2023 received Royal Assent.

Right to Work and to Just and Favourable Conditions of Work



Accessible childcare

In June 2023, the Department of Education published an independent review of childcare services in NI.⁴³⁰ It involved a survey of parents/carers conducted in 2022, which received 4,751 responses.⁴³¹ The findings of the independent review indicated that parents spend on average £542 per month on formal childcare, which is equivalent to a quarter of the average NI household income in 2019/2020 (before housing costs).⁴³² The independent review revealed that issues with the cost and accessibility of childcare in NI are having a significant effect on parents' employment, particularly for women, one parent families, low-income households and parents whose children have additional needs.⁴³³ 51 per cent of parents/carers surveyed said that

429 UK Government, 'Press Release: Crackdown on criminals silencing critics to be added to Economic Crime Bill', 13 June 2023.

430 Department of Education, 'Review of Childcare Services in NI - Final Report' (DE, 2023).

431 Ibid.

432 Ibid, at Figure 71.

433 Ibid, at 132-142.

there was not enough information about childcare provision.⁴³⁴ This has a particular effect on parents whose main language is not English.⁴³⁵

The independent review reinforced the need for a comprehensive childcare strategy to tackle the range of issues facing the sector.⁴³⁶ It identified nine key areas to address, including centralised childcare data for parents; alternative models of wrap-around care for school aged children; professionalising the sector; pay and conditions; access to multidisciplinary support; more training on a range of needs; more work-based learning; centralised register for childcare professionals; and centralised information on financial support for providers.⁴³⁷

Armed Forces Covenant

In 2020, commitments were made to introduce UK-wide legislation to further incorporate the Armed Forces Covenant and support its implementation, to appoint a NI Veterans' Commissioner, to initiate a review of the aftercare service for veterans in NI, and to ensure the work of the War Memorials Trust is better promoted and understood in NI.⁴³⁸ Consequently, the Armed Forces Act 2021 aims to ensure service personnel and veterans are not disadvantaged when accessing essential services like healthcare, education and housing, as well as to improve access to justice.

In 2021 and 2022, a review of aftercare service for veterans in NI was undertaken.⁴³⁹ It considered whether the remit of the aftercare service should be widened to cover all British Armed Forces veterans living in NI with service-related injuries and conditions.⁴⁴⁰

434 Ibid, at 21.

435 Ibid, at 56.

436 Ibid, at 143.

437 Ibid.

438 NI Office, 'New Decade, New Approach' (NIO, 2020), at 49.

439 NI Office, 'Written Statement - Update on Delivery of the UK Government's Commitments in New Decade, New Approach - Lord Caine', 23 March 2022.

440 NI Office, 'NI Office Outcome Delivery Plan: 2021-2022' (NIO, 2021), at Section E.7.

In April 2023, a new expanded service, which incorporates Veterans UK Welfare Managers, was introduced. All veterans in NI have access to this service, irrespective of cap badge or service.⁴⁴¹ In 2023, the NI Office also regularly engaged with the NI Veterans Commissioner, Danny Kinahan, which included discussions on legacy issues and health and welfare support for veterans in NI.⁴⁴²

Employment equality

In March 2023, the Commission, along with the Equality Commission for NI and the Irish Human Rights and Equality Commission, published research on the divergence of rights on the island of Ireland following the UK's withdrawal from the EU.⁴⁴³ This research highlighted developments in CJEU caselaw of relevance to the EU Employment Equality (Framework) Directive.⁴⁴⁴ The research highlighted that in *WABE and Müller* the CJEU found that differentiating between religious symbols based on characteristics such as size or scale, amounts to direct discrimination under Article 2(2) of the EU Employment Equality (Framework) Directive, and cannot be justified, except by reference to a narrow list of occupational requirements, rather than by a commercial policy of neutrality.⁴⁴⁵ The CJEU also found that the EU Directive must be interpreted as meaning that a rule prohibiting workers from wearing any visible sign of political, philosophical or religious beliefs in the workplace, does not constitute direct discrimination on the grounds of religion or belief, provided that this rule is applied in a general and undifferentiated way.⁴⁴⁶

In December 2022, the EU Commission published proposals for two Directives on standards for equality bodies.⁴⁴⁷ The Commission,

441 Email correspondence from NI Office to NI Human Rights Commission, 31 July 2023.

442 Ibid.

443 Sarah Craig et al, 'European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 68.

444 Directive 2000/78/EC, 'Council of the EU Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000.

445 *IX v WABE eV*, Case C-804/18 and *MH Müller Handels GmbH v MJ*, Case C-341/19, 15 July 2021.

446 *IX v WABE eV*, Case C-804/18 and *MH Müller Handels GmbH v MJ*, Case C-341/19, 15 July 2021.

447 COM(2022) 688, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU', 7 December 2022.; COM(2022) 689, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC', 7 December 2022.

alongside the Equality Commission for NI, consider that the proposed EU Directives amend provisions of EU Employment Equality (Framework) Directive,⁴⁴⁸ EU Race Equality Directive,⁴⁴⁹ the EU Equal Treatment (Employment) Directive⁴⁵⁰ and EU Equal Treatment (Self-Employment) Directive.⁴⁵¹ Therefore, NI equality law should be amended to keep pace with these changes, if the proposals are adopted. In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government’s view that the proposals fall within scope of Windsor Framework Article 2.⁴⁵²

Gender pay gap

In May 2023, the EU adopted the Pay Transparency Directive.⁴⁵³ The proposed EU Directive is designed to “strengthen the application of the principle of equal pay for equal work or work of equal value between men and women”.⁴⁵⁴ It also aims to give effect to the ‘principle of equal pay’, enshrined in Article 157 of the Treaty on Functioning of the EU and the prohibition of discrimination laid down in Article 4 of the EU Gender Equality (Employment) Directive, in particular through pay transparency and reinforced enforcement mechanisms.⁴⁵⁵

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- 448 Directive 2000/78/EC, ‘Council of the EU Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000.
- 449 COM(2022) 688, ‘Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU’, 7 December 2022.; COM(2022) 689, ‘Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC’, 7 December 2022.
- 450 Directive 2006/54/EC, ‘Council of the EU Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006.
- 451 Directive 2010/41/EU, ‘EU Parliament and Council of the EU Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity’, 7 July 2010.
- 452 Letter from the Minister of State for NI, Steve Baker MP, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.
- 453 Directive 2023/970, ‘Directive of the European Parliament and of the Council of the EU to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms’, 10 May 2023.
- 454 Article 1, Directive 2023/970, ‘Directive of the European Parliament and of the Council of the EU to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms’, 10 May 2023.
- 455 Ibid.

The obligation under Windsor Framework Article 2 to ‘keep pace’ with the Annex 1 Equality Directives includes the EU Gender Equality (Employment) Directive which protects against discrimination in employment on the grounds of gender.⁴⁵⁶ NI equality law must align with any improvements made by the EU to these rights, on or after 1 January 2021, including monitoring relevant current and future CJEU case law.⁴⁵⁷ The Commission, with the Equality Commission for NI, has initiated ongoing work to explore the extent to which this proposed EU Pay Transparency Directive⁴⁵⁸ amends or replaces the EU Gender Equality (Employment) Directive.

In March 2023, in response to a call for evidence by the Joint Committee on Human Rights inquiry on human rights at work, the Commission called on the UK Government and NI Executive to commit to ensuring that, where the EU Pay Transparency Directive⁴⁵⁹ amends or replaces the Annex 1 EU Gender Equality (Employment) Directive,⁴⁶⁰ NI law is amended to keep pace with that change.⁴⁶¹

In March 2023, the Commission, along with the Equality Commission for NI, published research on divergence of rights across the island of Ireland, which noted that the EU Pay Transparency Directive will have to be reflected by Ireland, potentially creating a divergence of rights.⁴⁶² The research also identified that NI legislation already lags behind Great Britain.⁴⁶³

456 Directive 2006/54/EC, ‘Council of the EU Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006.

457 Article 13, Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020.

458 Directive 2023/970, ‘Directive of the European Parliament and of the Council of the EU to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women Through Pay Transparency and Enforcement Mechanisms’, 10 May 2023.

459 Ibid.

460 Directive 2006/54/EC, ‘Council of the EU Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006.

461 NI Human Rights Commission, ‘Evidence to the House of Commons and House of Lords Joint Committee on Human Rights Inquiry on Human Rights at Work’ (NIHRC 2023).

462 Sarah Craig et al, ‘EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland’, (NIHRC, ECNI, IHREC).

463 Ibid, at 36.



Menopause

Equality laws in NI protect against discrimination relating to pregnancy and maternity.⁴⁶⁴ In addition, the obligation under Windsor Framework Article 2 to ‘keep pace’ with the Annex 1 Equality Directives includes the EU Gender Equality (Employment) Directive which protects against discrimination in employment on the grounds of gender.⁴⁶⁵ NI equality law must align with any improvements made by the EU to these rights, on or after 1 January 2021, including monitoring relevant current and future CJEU case law.⁴⁶⁶

There is currently no specific protection against discrimination relating to menopause. Menopause-related claims in the UK are often argued on the grounds of sex, age and disability discrimination.⁴⁶⁷ The current law does not reflect the intersectional nature of menopause in many cases.⁴⁶⁸ Certain groups may face particular challenges related to menopause including lesbian, gay, bisexual, transgender, queer, intersex+ people, younger women and ethnic minority women.⁴⁶⁹

In 2023, the British Standards Institute published guidance on menstruation, menstrual health and menopause in the workplace.⁴⁷⁰ This is additional to guidance on promoting equality in employment for women affected by menopause in NI that was published in 2021.⁴⁷¹ The British Standards Institute’s guidance aims “to support the health and well-being of all employees who menstruate or experience peri/menopause”.⁴⁷² It aims to “encourage a more open and inclusive work

464 See for example Equal Pay Act (NI) 1970, Sex Discrimination (NI) Order 1976; Maternity and Parental Leave etc. Regulations (NI) 1999.

465 Directive 2006/54/EC, ‘Council of the EU Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006.

466 Article 13, Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020.

467 *Merchant v BT plc* [2012] ET/140135/11; *A v Bonmarche Ltd (In Administration)* [2019] 4107766/2019; *Donnachie v Telent Technology Services Ltd* [2020] 1300005/2020.

468 House of Commons Women and Equalities Committee, ‘Menopause and the Workplace’ (HoC, 2022), at 30.

469 House of Commons Women and Equalities Committee, ‘Menopause and the Workplace’ (HoC, 2022), at 11.

470 Maria Tomlinson, ‘Menstruation, Menstrual Health and Menopause in the Workplace – Guide’ (BSI, 2023).

471 NI Committee Irish Congress of Trade Unions, Equality Commission for NI and Labour Relations Agency, ‘Promoting Equality in Employment for Women Affected by Menopause: Guidance for Employers, Trade Union Representatives and Employees’ (ICTUNI, 2021).

472 Maria Tomlinson, ‘Menstruation, Menstrual Health and Menopause in the Workplace – Guide’ (BSI, 2023).

culture around menstrual health and peri-menopause”.⁴⁷³ It is viewed as particularly beneficial to “managers, human resources, diversity and inclusion specialists, health and safety personnel, occupational health, architects and designers of office spaces”.⁴⁷⁴

Right to an Adequate Standard of Living and to Social Security

Access to food

In June 2023, the UN CRC issued revised recommendations that the UK Government and NI Executive:

strengthen measures to address child malnutrition, food insecurity and growing trends in overweight and obesity, including by:

- i) ensuring all children’s access to nutritious foods and reducing their reliance on food banks, regardless of their or their parents’ migration status;
- ii) expanding the free school meals programme to all children in disadvantaged situations, including children whose parents receive Universal Credit;
- iii) addressing the root causes of food insecurity including poverty;
- iv) providing nutrition services in schools and communities; and
- v) promoting healthy lifestyles and physical activity.⁴⁷⁵

473 Ibid.

474 Ibid.

475 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 41(e).

In 2023, there was a notable rise in food insecurity in NI, meaning that individuals are likely to experience reduced food quality, variety or desirability of diet, or disrupted eating patterns and reduced food intake.⁴⁷⁶

Trussell Trust and Ipsos research has found that people with disabilities, working age adults, particularly individuals living alone, people with caring responsibilities, women, and children are overrepresented among individuals using foodbanks in NI.⁴⁷⁷ It has also been reported that individuals with food allergies or intolerances are particularly affected by the rise in food costs and face challenges in accessing appropriate foods, including in foodbanks.⁴⁷⁸

In 2023, following a review of free school meal eligibility in NI,⁴⁷⁹ the Department of Education was finalising proposals and is expected to undertake a public consultation in due course.⁴⁸⁰ However, any progress in implementation requires a functioning NI Executive.

Unlike elsewhere in the UK, there is no long-term commitment to continue free school meals during school holidays as standard.⁴⁸¹ Between 2020 and 2022, the School Holiday Food Grant scheme provided direct payments to families in receipt of free school meals during COVID-19 term-time school closures and across summer holidays.⁴⁸² However, in March 2023, the Department of Education ended free school meals during school holidays in NI, in light of significant budgetary pressures.⁴⁸³

476 Food Standards Agency, 'NI Food Advisory Committee (NIFAC) Update from Director of Regulatory Compliance, People and NI to NI Food Advisory Committee 18th January 2023'. Available at: <https://www.food.gov.uk/our-work/northern-ireland-food-advisory-committee-nifac-update-from-director-of-regulatory-compliance-people-and-northern-ireland-to-1>; Trussell Trust, 'Emergency food parcel distribution in NI: April 2022 – March 2023' (Trussell Trust, 2023).

477 Trussell Trust and Ipsos, 'Hunger in NI' (TT and Ipsos, 2023), at 26.

478 NI Commissioner for Children and Young People, 'A Place to Call Home – Report Launch', 23 February 2023; Sara Neill, 'Cost of Living: NI woman with coeliac disease says food bill has doubled', *BBC News*, 24 July 2023.

479 NI Assembly Hansard, 'Written Answers: Free School Meals – Minister of Education, Michelle McIlveen MLA – AQW 974/22-27', 21 June 2022.

480 Email correspondence from Department of Education to NI Human Rights Commission, 26 July 2023.

481 NI Assembly Hansard, 'Written Answers: Free School Meals – Peter Weir MLA – AQW 7681/17-22', 8 October 2020; Robbie Meredith, 'Free school meals: Meals to be funded during holidays until 2022', *BBC News*, 20 November 2020.

482 Department of Education, 'Press Release: Ministers take action in relation to Free School Meals payment', 26 March 2020; Department of Finance, 'Press Release: Murphy allocates funds for Health, Childcare and Free School Meals', 30 June 2020; NI Assembly Hansard, 'Written Answers: Free School Meals – Minister of Education, Michelle McIlveen MLA – AQW 947/22-27', 20 June 2022.

483 Robbie Meredith, 'Free school meals: NI 'holiday hunger' payments axed', *BBC News*, 30 March 2023.

Asylum and refugee law and resettlement

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

- a) urgently amend the Illegal Migration Bill to repeal all draft provisions that would have the effect of violating children’s rights under the Convention and the 1951 Refugee Convention[...];
- b) amend the Nationality and Borders Act to abolish the designation of “Group 2” status to certain groups of refugee children, and ensure that all asylum-seeking and refugee children, including unaccompanied children, are not criminalized and have access to necessary support and services;
- c) review and strengthen the asylum process to ensure that children receive age-appropriate information and legal advice [...]; that their best interests are given primary consideration in all asylum processes; that their views are heard, taken into account and given due weight; and that they have access to child-friendly justice mechanisms and remedies.⁴⁸⁴

In respect of unaccompanied children seeking asylum, the UN CRC Committee recommended that the UK Government ends the use of “unreliable and invasive procedures for determining a child’s age”.⁴⁸⁵ The UN CRC Committee also reiterated its recommendation that the UK Government “review its system of family reunification involving unaccompanied children, with a view to ensuring that children have an unqualified right to apply for family reunification”.⁴⁸⁶ The UN CRC Committee further recommended that the UK Government “strengthen measures to phase out temporary and “contingency” accommodation schemes”.⁴⁸⁷

484 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 50(a)-50(c).

485 Ibid, at para 50(e).

486 Ibid, at para 50(h).

487 Ibid, at para 46(a).

In July 2023, the UN High Commissioner for Human Rights, Volker Türk, and the UN High Commissioner for Refugees, Filippo Grandi, advised that the Illegal Migration Act 2023:

will exacerbate the already vulnerable situation of people who arrive irregularly in the UK, drastically limiting the enjoyment of their human rights, and putting them at risk of detention and destitution. As a result, their rights to health, an adequate standard of living, and to work are at risk, exposing them to the risk of exploitation and abuse...

In addition to raising very serious legal concerns from the international perspective, this Bill sets a worrying precedent for dismantling asylum-related obligations that other countries, including in Europe, may be tempted to follow, with a potentially adverse effect on the international refugee and human rights protection system as a whole.⁴⁸⁸

Reform of UK asylum system

In July 2023, the High Court of England and Wales found that the Home Office acted unlawfully in routinely and systematically accommodating newly arrived unaccompanied asylum-seeking children in hotels since 2021.⁴⁸⁹

In July 2023, the Illegal Migration Act 2023 received Royal Assent. The 2023 Act denies access to the UK asylum system for those who arrive through unofficial routes.⁴⁹⁰ It prevents such individuals from presenting claims for protection, no matter how compelling their case may be.⁴⁹¹ Instead, individuals could face detention before being removed to another country.⁴⁹² The Commission remains concerned regarding the 2023 Act's compliance with human rights obligations and Windsor Framework Article 2, including the limitations on

488 UN Refugee Agency, 'Press Release: UK Illegal Migration Bill: UN Refugee Agency and UN Human Rights Office warn of profound impact on human rights and international refugee protection system', 18 July 2023.

489 *Every Child Protected Against Trafficking UK v Kent County Council and Anor* [2023] EWHC 1953.

490 Section 1(1), Illegal Migration Act 2023.

491 Section 1(2), Illegal Migration Act 2023.

492 Section 1(4), Illegal Migration Act 2023.

judicial oversight, the removal of support to victims and potential victims of modern slavery and human trafficking, and the weakening of child protection arrangements.⁴⁹³ The Commission continues to advise that pursuant to Windsor Framework Article 2, EU asylum law remains relevant and raised concerns about the compliance of several provisions of the Act with the EU Procedures Directive,⁴⁹⁴ EU Reception Directive,⁴⁹⁵ EU Qualification Directive⁴⁹⁶ and the Dublin III Regulation.⁴⁹⁷

In September 2023, the Commission issued a judicial review against the Secretary of State for the Home Department, Suella Braverman MP, and the Secretary of State for NI, Chris Heaton-Harris MP, arguing that the Illegal Migration Act 2023 is not compliant with the ECHR and Windsor Framework Article 2. In January 2024, the case is due to be heard in the High Court of Justice in NI.

Use of contingency accommodation

The Mears Group PLC is sub-contracted by the Home Office to provide accommodation and support for people seeking asylum in NI.⁴⁹⁸ It is intended that there are two types of asylum accommodation – initial accommodation (short-term housing for first three to four weeks) and dispersal accommodation (longer-term housing while awaiting determination of asylum claim).⁴⁹⁹ However, in 2020, the use of ‘contingency accommodation’ increased significantly across the UK.⁵⁰⁰

493 NI Human Rights Commission, ‘Submission to the House of Lords on the Illegal Migration Bill’ (NIHRC, 2023).

494 Directive 2005/85/EC, ‘Council of the EU Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005.

495 Directive 2003/9/EC, ‘Council of the EU Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’ 27 January 2003.

496 Directive 2004/83/EC ‘Council of the EU Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004.

497 Regulation 2013/604/EU, ‘Regulation of the European Parliament and of the Council of the EU Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person’, 26 June 2013.

498 UK Government, ‘Contracts Finder – Asylum Accommodation and Support Services Contract NI’. Available at: <https://www.contractsfinder.service.gov.uk/Notice/af043016-dd83-4308-8b3c-0d134a3a89c9>.

499 UK Visas and Immigration, ‘A Home Office Guide to Living in Asylum Accommodation’ (HO, 2019).

500 Independent Chief Inspector of Borders and Immigration, ‘An Inspection of Contingency Asylum Accommodation May 2021–November 2021’ (UK Gov, 2022).

In 2023, the UK Government started to introduce alternative forms of accommodation, such as barges and tents on former military bases.⁵⁰¹

To date, hotels have primarily been used as ‘contingency accommodation’ in NI. Contingency accommodation in the form of hotels is being used for much longer than three to four weeks in NI, often with no set timeframe for being moved to dispersal accommodation.⁵⁰² There have also been reports that when the move from contingency to dispersal accommodation occurs it is conducted in a threatening way, without any form of advance notice and without any meaningful support to ensure access to education, healthcare and support services.⁵⁰³

In 2022, the Commission conducted two site visits to hotels being used as contingency accommodation in NI.⁵⁰⁴ During the visits, hotel managers and Mears Welfare Officers confirmed awareness of the difficulties people seeking asylum are having in accessing healthcare, education and Migrant Help, but advised that delays often come down to capacity in local services, which they are unable to resolve in isolation.⁵⁰⁵

In May 2023, the Independent Chief Inspector of Borders and Immigration commenced an inspection of contingency asylum accommodation for families with children in NI.⁵⁰⁶ The inspection aims to examine key safeguarding concerns, provider compliance with safeguarding requirements, reporting of data and governance processes for safeguarding. The report is awaited.

501 Andrew McDonald, ‘UK to house migrants in ex-army barracks, mulls use of barges’, *Politico*, 29 March 2023; Home Office, ‘Factsheet: Asylum accommodation on a vessel in Portland Port’ 18 July 2023; Kiran Stacey, ‘UK ministers accused over asylum backlogs after 2,000 tents bought’, *The Guardian*, 28 July 2023; Rajeev Syal, ‘First occupants of Bibby Stockholm barge are taken onboard’, *The Guardian*, 7 August 2023.

502 UK Visas and Immigration, ‘A Home Office Guide to Living in Asylum Accommodation’ (HO, 2019); Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

503 Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

504 Meeting between NI Human Rights Commission, Home Office and Mears Group PLC, 15 December 2022.

505 Ibid.

506 Independent Chief Inspector of Borders and Immigration, ‘Press Release: An inspection of contingency asylum accommodation for families with children in Northern Ireland’. Available at: <https://www.gov.uk/government/news/an-inspection-of-contingency-asylum-accommodation-for-families-with-children-in-northern-ireland>

In October 2023, an asylum seeker challenged the lawfulness of the decision to remove him from NI to Scotland on several grounds including procedural fairness, Article 8 of the ECHR and Windsor Framework Article 2.⁵⁰⁷ While the applicant was unsuccessful, the High Court of Justice in NI confirmed that Article 7 of the EU Reception Directive is capable of falling within scope of Windsor Framework Article 2, insofar as it seeks to protect the human rights of asylum seekers.⁵⁰⁸

Asylum financial support

In July 2023, the High Court of England and Wales found that the Secretary of State for the Home Department, Suella Braverman MP, acted unlawfully in failing to promptly provide basic support to people seeking asylum, including young children and pregnant women.⁵⁰⁹ This followed an earlier mandatory order requiring the Secretary of State for the Home Department to increase support payments after they unlawfully failed to act on internal advice to increase the rate to keep pace with inflation and mitigate the consequential rises in the cost of living throughout 2022.⁵¹⁰

Under section 9 of the Illegal Migration Act 2023, individuals who are not detained and whose cases have been declared inadmissible under the UK asylum process will be eligible for support on similar terms as those whose asylum claims have been finally refused. However, it is anticipated that the 2023 Act will significantly increase the number of people reliant on this support, which may increase the number at risk of destitution and exploitation.⁵¹¹

In 2023, the ‘no recourse to public funds’ condition remained a particular concern in NI.⁵¹² In such scenarios, the UK Government is relying on local authority provision as an alternative source of support, however NI local councils do not have responsibility for housing, social services or education.⁵¹³ No steps have been taken to address this.

507 *In the Matter of an Application by AA for Judicial Review* [2023] NIKB.

508 *Ibid.*

509 *HA, SXK, K, NY, and AM v Secretary of State for the Home Department* [2023] EWHC 1876.

510 *R (CB) v Secretary of State for the Home Department* [2022] EWHC 3329.

511 British Red Cross, ‘At Risk: Exploitation and the UK Asylum System’. Available at: <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/at-risk-exploitation-and-the-uk-asylum-system>.

512 NI Human Rights Commission, ‘Response to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI’ (NIHRC, 2021).

513 *Ibid.*



In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

address the root causes of homelessness among children, strengthen measures to phase out temporary and ‘contingency’ accommodation schemes...;

ensure that the best interests of the child are given primary consideration in all eviction matters, that evictions are not targeted at families belonging to minority groups and that any evictions are always subject to adequate alternatives.⁵¹⁴

In 2023, research by the NI Commissioner for Children and Young People found that “the right to family life and an adequate standard of living is the basic minimum a child should expect... [but] for too many NI has a long way to go to achieve the basic minimum for its children”.⁵¹⁵ The Simon Community NI also published a report about mental health and homelessness in NI which found difficulties in people accessing mental health support and registering with a General Practitioner.⁵¹⁶

In 2023, the NI Housing Executive’s Chief Executive, Grainia Long, stated that:

our statutory obligation is to provide solutions for homelessness, when it has occurred. However, demands for services meant that too often we are in ‘emergency’ or ‘response’ mode. A holistic approach to homelessness requires a strategic shift towards prevention. Widening NI Housing Executive’s statutory obligations to ‘prevention’ of homelessness would enable use to focus and invest more in preventative measures.⁵¹⁷

514 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 46(b) and 46(c).

515 Mary Louise Corr et al, ‘A Place to Call Home: A Rights Based Approach to Understanding the Lived Experience of Children and Families Facing Homelessness or Housing Insecurity’ (NICCY, 2023), at 5.

516 Simon Community NI, ‘Mental Health and Homelessness’ (SCNI, 2023), at 11-15.

517 NI Housing Executive, ‘Press Release: NI Housing Executive calls for legislation to prevent homelessness’, 24 February 2023.

The Private Tenancies Act (NI) 2022 committed the Department for Communities to holding a consultation on rent decreases and controls within six months of the legislation coming into force.⁵¹⁸ In March 2023, following a consultation on the new intermediate rent policy,⁵¹⁹ the Department for Communities released a new housing policy.⁵²⁰ The new policy aims to increase the availability of affordable rented homes, with a specific focus on generating a fresh supply of ‘intermediate rent’ homes.⁵²¹

Social housing

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive “significantly increase the availability of adequate and long-term social housing for families in need, with a view to ensuring that all children have access to affordable quality housing”.⁵²²

In March 2023, following a public consultation,⁵²³ the Department for Communities published a new affordable housing policy, which aims to create an additional supply of ‘intermediate rent’ homes and provide a new affordable housing option.⁵²⁴ The intermediate rent policy aims to develop a framework for more high quality, secure and affordable housing in the long-term.

Social security

In 2023, the UN CRC Committee revised its recommendations that the UK Government:

518 Article 5C(6), Private Tenancies Act (NI) 2022.

519 Department for Communities, ‘Consultation on Intermediate Rent Development of Policy and Model’ (DfC, 2021).

520 Department for Communities, ‘Press Release: New housing policy to deliver more affordable rented homes’, 30 March 2023.

521 Intermediate Rent introduces a novel housing rental approach within the local housing market. Its primary aim is to offer a supplementary rental option for lower to moderate-income households, granting them access to well-maintained, high-quality homes with extended lease terms at rents lower than the market rates. This model serves as a viable solution for households facing challenges in affording the prevailing rental prices in the open market, as well as for those aspiring to venture into affordable homeownership in the long run.

522 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 46(b) and 46(c).

523 Department for Communities, ‘Consultation on the New Housing Supply Strategy Call For Evidence’ (DfC, 2022).

524 Department for Communities, ‘Press Release: New housing policy to deliver more affordable rented homes’, 30 March 2023.

assess the impact of welfare changes on children with disabilities and their families, and increase social welfare payments accordingly to ensure that policies do not have a discriminatory effect on them and that such payments are sufficient in ensuring their right to an adequate standard of living.⁵²⁵

The UN CRC Committee also expressed concern at the level of child poverty, food insecurity and homelessness in the UK, recommending that the UK Government and NI Executive:

develop or strengthen existing policies, with clear targets, measurable indicators and robust monitoring and accountability mechanisms, to end child poverty and ensure that all children have an adequate standard of living, including by increasing social benefits to reflect the rising cost of living and abolishing the two-child limit and benefit cap for social security benefits.⁵²⁶

Mitigation package

In 2022, the Department for Communities published a review of social security mitigations by an Independent Advisory Panel.⁵²⁷

The review made several recommendations to further mitigate the adverse impact of tax and social security changes, targeting need at those who had been most negatively impacted by these changes.⁵²⁸

These recommendations included offsetting the two-child limit in Universal Credit, Child Tax Credit and Housing Benefit.⁵²⁹ In 2023, the Department for Communities indicated that its bid for further funding for a new mitigations package was not met in the 2023/2024 budget and, in the absence of funding, the Department is unable to progress this work.⁵³⁰ The Department for Communities acknowledged that this means that opportunities to improve the financial circumstances of section 75 groups, especially women, will be lost.⁵³¹

525 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 40(a).

526 Ibid, at para 46(a).

527 Independent Review Panel, 'Welfare Mitigations Review: Independent Advisory Panel Report' (DfC, 2022).

528 Ibid.

529 Ibid.

530 Ibid.

531 Department for Communities, 'Budget 2023-2024: Draft Equality Impact Assessment Stage 1 Outcome Report' (DfC, 2023), at 127-128,

Five-week wait for Universal Credit

In 2023, there continues to be a five-week wait for applicants to receive their first Universal Credit Payment.⁵³² In 2022, the Independent Advisory Panel recommended an interim solution to deal with the five-week wait by “increasing the Universal Credit Contingency Fund budget for paying grants during the five week wait to at least £5million”.⁵³³ The Advisory Panel made several additional recommendations to mitigate the impact of the wait.⁵³⁴ The Advisory Panel also proposed a longer-term solution “through urgently setting up a Departmental led working party to examine alternative solutions”.⁵³⁵ In June 2023, the Department for Communities identified that it had received full funding for existing social security mitigations in its 2023/2024 budget, and this included funding for the Universal Credit Contingency Fund.⁵³⁶

Personal Independent Payment

In May 2023, the NI Public Services Ombudsman published a follow-up report to its 2021 review on the Personal Independence Payment.⁵³⁷ The follow-up report welcomed the work done to progress recommendations to date, but noted further work was required.⁵³⁸ In the follow-up report, the NI Public Services Ombudsman recommended that the Department of Communities should liaise with Capita to revise the initial information pack for claimants, to ensure that claimants are correctly informed as to whether or not health professionals have been contacted, and the specific details of health professionals who have been contacted when processing their claims. The follow-up report identifies that this

532 Gov.UK, ‘Universal Credit’. Available at: <https://www.gov.uk/universal-credit/how-youre-paid>

533 Independent Advisory Panel, ‘Welfare Mitigation Review: Independent Advisory Panel Report’ (DfC, 2022), at 15.

534 Ibid.

535 Ibid.

536 Department for Communities, ‘Budget 2023-2024: Draft Equality Impact Assessment Stage 1 Outcome Report’, (DfC, 2023), at 117.

537 NI Public Services Ombudsman, ‘Personal Independence Payment and the Value of Further Evidence: A Follow-up Report on the Progress of Personal Independence Payment Recommendations by the NI Public Services Ombudsman’ (NIPSO, 2023). See also; NI Public Services Ombudsman, ‘Personal Independence Payment and the Value of Further Evidence: An Investigation by the NI Public Ombudsman into Personal Independence Payment’ (NIPSO, 2021).

538 NI Public Services Ombudsman, ‘Personal Independence Payment and the Value of Further Evidence: A Follow-up Report on the Progress of Personal Independence Payment Recommendations by the NI Public Services Ombudsman’ (NIPSO, 2023), at 19.

recommendation has not been met, and claimants “continue to not be adequately informed at the assessment stage whether, or not, their health professionals have been contacted”.⁵³⁹

Budget allocation

In 2023, the Department for Communities consulted on its 2023/2024 Budget Equality Impact Assessment.⁵⁴⁰ The Department for Communities identified that it was facing “the most challenging budget allocation in recent history” noting that “the 2023/2024 Budget allocations result in a Non-Ring-Fenced Resource funding gap of £111.2m (15.5 per cent) and a £59m (27.3 per cent) shortfall in Capital required for 2023/2024”.⁵⁴¹ To deal with the constrained budget, the Department for Communities made several proposed cuts to services, including closing departmental offices one day a week, scaling back Discretionary Support Grants, employment support and cuts to the baseline budget of the NI Housing Executive.⁵⁴² In its response, the Commission recommended that all final mitigations to budget constraints should be compliant with international human rights standards.⁵⁴³

Prior to the consultation period ending, the Department for Communities published a response to consultation responses it received in the initial four weeks of the consultation, to “allow decisions to be made on final allocations to support the Department in living within its 2023-24 Budget Settlement”.⁵⁴⁴ The Commission noted in its response disappointment at the short timeframe and deviation from effective consultation approaches.⁵⁴⁵

539 Ibid, at 32.

540 Department for Communities, ‘Budget 2023-2024 Equality Impact Assessment’ (DfC, 2023).

541 Ibid, at paras 1.1-1.7.

542 Ibid.

543 NI Human Rights Commission, ‘Submission to the Department for Communities on its Budget 2023-2024 Allocations’ (NIHRC, 2023).

544 Department for Communities, ‘Press Release: Department outlines final budget allocations’, 21 June 2023.

545 NI Human Rights Commission, ‘Submission to the Department for Communities on its Budget 2023-2024 Allocations’ (NIHRC, 2023), at para 2.4.

Right to Health



Access to healthcare for migrants

In May 2023, the Independent Monitoring Authority identified as part of their monitoring work that some EU citizens might have been wrongfully charged for National Health Service treatment.⁵⁴⁶ Furthermore, in June 2023, the Independent Monitoring Authority concluded that the Home Office “failed to comply with its obligation under the Withdrawal and Separation Agreements to issue a Certificate of Application immediately to EU Settlement Scheme applicants, for particular types of application”.⁵⁴⁷ The Independent Monitoring Authority stated that a delay in issuing a Certificate of Application immediately would put the applicant at risk of not being able to receive free healthcare.⁵⁴⁸

In 2022, the High Court of England and Wales confirmed that applicants with pre-settled status have the right to reside permanently in the UK after they have resided there for the required five-year period.⁵⁴⁹ In February 2023, the Home Office confirmed that an appeal against the decision would not be pursued.⁵⁵⁰

In July 2023, the Home Office announced changes to the EU Settlement Scheme, confirming that from September 2023, people with pre-settled status will automatically have their status extended by two years before it expires.⁵⁵¹ This extension will be automated, the applicant will be notified and it will be reflected on their digital status. In addition, the Home Office has committed to automatically converting applicants from pre-settled to settled status, if they are

546 Independent Monitoring Authority, ‘Press Release: EU citizens may have been wrongfully charged for National Health Service treatment’, 10 May 2023.

547 Independent Monitoring Authority, ‘An Inquiry by the Independent Monitoring Authority for the Citizens’ Rights Agreements into Certificates of Application’ (IMA, 2023), at 3.

548 Ibid, at para 117.

549 *R (Independent Monitoring Authority for the Citizens’ Rights) v Secretary of State for the Home Department* [2022] EWHC 3274, at para 192.

550 Independent Monitoring Authority, ‘Press Release: Independent Monitoring Authority welcomes confirmation that Home Office will not pursue appeal in EU Settlement Scheme case’, 16 February 2022.

551 Home Office, ‘Press Release: EU Settlement Scheme enhancements confirmed’, 17 July 2023.

eligible from 2024. The Independent Monitoring Authority noted how the Home Office aims to comply with the High Court of England and Wales' decision, but expressed disappointment at the lack of meaningful engagement and the lack of clarity in the proposals.⁵⁵²

In August 2023, the Home Office published guidelines which include changes to procedures, such as a further restriction on what will be accepted as reasonable grounds for a late application.⁵⁵³ There are concerns that this change might lead to further delays in issuing a Certificate of Application and inhibit further access to healthcare for EU Settlement Scheme applicants.⁵⁵⁴

In 2022, the Commission published research which examined health in the context of UK withdrawal from the EU and identified a range of significant concerns.⁵⁵⁵ In September 2023, the Commission published a briefing which sets out next steps in ensuring that access to healthcare is protected in NI and on the island of Ireland after the UK's withdrawal from the EU.⁵⁵⁶ The Commission made several recommendations, including clarifying existing rules on accessing cross-border and all-island health services for EU and third-country nationals living in NI and ensuring there are no immigration or visa recognition barriers impeding access to these services. The Commission further recommended that the Department of Health took effective steps to clarify and promote awareness amongst health practitioners, individuals, and representative groups of the rights of potential and confirmed victims of human trafficking. The Commission also recommended that the Department of Health and Health and Social Care Trusts in NI undertake effective steps to identify and minimise procedural barriers to migrant people accessing to health services.⁵⁵⁷

552 Independent Monitoring Authority, 'Press Release: Independent Monitoring Authority responds to Home Office plans to implement judgment following judicial review', 17 July 2023.

553 Home Office, 'EU Settlement Scheme: EU, Other EEA and Swiss Citizens and their Family Members. Version 20.0' (HO, 2023).

554 Engagement meeting with the Home Office Future Borders and Immigration System Advisory Group, 18 July 2023.

555 Tamara Hervey, 'Brexit, Health and Its Potential Impact on Article 2 of the Ireland/Northern Ireland Protocol' (NIHRC, 2022).

556 NI Human Rights Commission, 'Briefing Paper and Recommendations on Brexit, Health and Its Potential Impact on Article 2 of the Windsor Framework' (NIHRC, 2023).

557 Ibid.

In 2023, the Commission continued to monitor the barriers to accessing healthcare for all migrants, including irregular migrants and EU Settlement Scheme applicants.

Emergency healthcare

In January 2023, the Royal College of Emergency Medicine warned that delays in emergency care could be causing the deaths of up to 500 deaths in the UK each week.⁵⁵⁸ In 2022/2023, the number of patients waiting more than 12 hours to be seen in NI emergency departments had risen by 25 per cent, with the Royal College of Emergency Medicine noting that patient safety was at high-risk.⁵⁵⁹

In July 2023, the Regulation and Quality Improvement Authority published its report on an unannounced inspection of the Royal Victoria Hospital’s emergency department.⁵⁶⁰ The report identified several issues within the emergency department which were affecting the provision of safe, effective patient care, including staffing, crowding, infection prevention control/environmental issues, patient care, medicines management and governance.⁵⁶¹ However, while agreeing that the Royal Victoria Hospital’s emergency department was “unsafe”, staff at the hospital have stated that the Regulation and Quality Improvement Authority’s report is “wholly unsatisfactory” with a lack of “explicit focus on patient safety”.⁵⁶²

Mental health

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive “develop adequately funded mental health services that are tailored to the specific needs of lesbian, gay, bisexual, transgender and intersex

558 Marie-Louise Connolly, ‘NI health service in need of intensive care’, *BBC News*, 6 January 2023.

559 Catherine Smyth and Marie-Louise Connolly, ‘A and E waiting times are catastrophic, NI doctors say’, *BBC News*, 27 April 2023.

560 Regulation and Quality Improvement Authority, ‘Inspection Report 8 November 2022-3 February 2023: Emergency Department, Royal Victoria Hospital’ (RQIA, 2023); Aileen Moynagh, ‘Royal Victoria Hospital: A and E crowded and staff burnt out – report’, *BBC News*, 27 July 2023.

561 Ibid.

562 Marie-Louise Connolly, ‘Royal Victoria Hospital: Emergency Department staff “disappointed” by patient safety report’, *BBC News*, 22 August 2023.

children, migrant children, children with disabilities and ‘young carers’, including through sufficient investments in specialist services” and “strengthen measures to address the underlying causes of poor mental health, eating disorders and other self-harming behaviours among children, and invest in preventive measures”.⁵⁶³

Mental Health Strategy

In 2021, a new ten-year mental health strategy was launched setting the strategic direction for mental health in NI.⁵⁶⁴

In March 2023, the NI Mental Health Champion, Siobhán O’Neill who has advised that “poor mental health costs NI £3.4 billion annually. A piecemeal or reduced implementation cannot achieve the necessary reform. People in NI will wait longer or never receive the treatments and support they urgently need”.⁵⁶⁵

In May 2023, the NI Audit Office found that the mental health strategy will require sustained additional investment throughout its lifetime, and that without dedicated long-term funding, the delivery of the strategy was at risk.⁵⁶⁶ The NI Audit Office further noted that “mental Health funding in NI represents around six per cent of the overall health and social care budget and, over time, has not kept pace with increases in the wider health budget”⁵⁶⁷ and that “bringing funding levels in NI closer to that elsewhere in the UK would require substantial additional investment of £80 - £190 million per annum”.⁵⁶⁸

563 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 43(e) and 43(g).

564 Department of Health, ‘Press Release: Minister of Health publishes new 10 year Mental Health Strategy’, 29 June 2021.

565 Mental Health Champion, ‘Press Release: NI mental health strategy funding needs tenfold increase to meet demand, says Professor Siobhán O’Neill’, 15 March 2023.

566 NI Audit Office, ‘Mental Health Services in NI’ (NIAO, 2023), at 10.

567 Ibid, at 11.

568 Ibid.

Suicide prevention

The current suicide prevention strategy was due to expire in 2024.⁵⁶⁹ In September 2023, the Department of Health announced that the strategy would be extended until the end of 2027.⁵⁷⁰ The Department of Health stated that:

while solid progress has been made in delivering on the strategy's objectives since it was published in September 2019, challenges in relation to the budget and the impact of the COVID-19 pandemic have prevented full delivery. The three year extension will allow more time for fuller implementation and for the existing actions to be delivered.⁵⁷¹

The Department of Health has committed to undertaking a review of the strategy and action plan “to help identify areas where additional priority is required and if there are any new actions which should be considered”.⁵⁷² The review is expected to be completed by Spring 2024.⁵⁷³

Perinatal mental health

In 2021, funding was approved by the Department of Health for a new perinatal mental health delivery model for the development of a new specialist perinatal mental health service for NI.⁵⁷⁴

In 2022/2023, there was a commitment to progress scoping work for a Mother and Baby Unit.⁵⁷⁵ During 2023, the Department of Health commissioned an independent team to develop a detailed report outlining recommendations for a suitable model for a Mother and Baby Unit that aimed to best meet the needs of the population, as well as to identify the Trust in NI best placed to deliver this service.⁵⁷⁶

569 Department of Health, 'Protect Life 2: Suicide Prevention Strategy' (DoH, 2019).

570 Department of Health, 'Press Release: Suicide prevention strategy extended', 5 September 2023.

571 Ibid.

572 Ibid.

573 Ibid.

574 Department of Health, 'Press Release: Suicide Prevention Care Pathway launched', 10 September 2021.

575 Department of Health, 'Mental Health Strategy Delivery Plan for 2022/2023' (DoH, 2022).

576 Email correspondence from Department of Health to NI Human Rights Commission, 25 July 2023.

The next stage, following receipt of the report, is for the identified Health and Social Care Trust to develop a strategic outline case for the Department of Health’s consideration.⁵⁷⁷

In June 2023, all Health and Social Care Trusts in NI had fully operational community perinatal mental health team in place, offering a referral and consultancy service for mothers experiencing mental health issues during the perinatal period.⁵⁷⁸ Additionally, a regional implementation team, hosted by the Public Health Agency has been established to oversee implementation and to ensure regional consistency.⁵⁷⁹ In 2023, the Department of Health was working to embed the new provision into existing services and to develop clear and consistent referral pathways.⁵⁸⁰

Monitoring

In 2023, a judicial review was brought against the Regulation and Quality Improvement Authority for allegedly failing in its role as an independent watchdog to scrutinise community-based mental health treatment.⁵⁸¹

In May 2023, the High Court of Justice in NI declared that the Regulation and Quality Improvement Authority has a statutory duty to regulate the provision of mental health services to patients in the community by keeping their care and treatment under review.⁵⁸² The High Court also declared that there is an obligation under the Mental Health (NI) Order 1986 for the Regulation and Quality Improvement Authority to make inquiries into cases where it appears there may be a deficiency in care or treatment.⁵⁸³

577 Ibid.

578 Ibid.

579 Ibid.

580 Ibid.

581 Alan Erwin, ‘Co Antrim carer’s mental health oversight court victory “rectifies long-overdue human rights failing”’, *Belfast Telegraph*, 12 May 2023.

582 Ibid.

583 Ibid.

Oral health

In May 2023, the Department of Health published its budget cut proposals.⁵⁸⁴ The British Dental Association raised concerns about the vulnerable state of dental services and warned that the proposed cuts could further undermine National Health Service dentistry in NI.⁵⁸⁵

Period poverty

The Period Products (Free Provision) Act 2022 requires that relevant NI Departments must ensure that period products are obtainable free of charge by all persons who need to use them. This includes there being sufficient products to meet the person's needs while in NI. At minimum free period products must be available in health and education settings.

Regulations are required to clarify which public bodies and premises have duties under the 2022 Act.⁵⁸⁶ In 2022, the Department of Education conducted a public consultation on this issue.⁵⁸⁷ In 2023, the required regulations were due to be operational, however they could not progress without a functioning NI Executive and NI Assembly.⁵⁸⁸ Furthermore, in May 2023, in response to broader cuts to the Department of Education's budget,⁵⁸⁹ the Department of Education announced that it was reducing funding to schools for the provision of free period products by more than 40 per cent.⁵⁹⁰

584 Department of Health, 'Press Release: Department details 2023/2024 Budget measures', 22 May 2023.

585 British Dental Association, 'Press Release: Open Letter to the Permanent Secretary of the Department of Health', 12 May 2023.

586 Section 2(1), Period Products (Free Provision) Act 2022.

587 Department of Education, 'Consultation on Period Products (Free Provision) Regulations' (DE, 2022).

588 Email correspondence from the Executive Office to the NI Human Rights Commission, 16 August 2023.

589 UK Parliament Hansard, 'Written Statement: NI Finances 2023-2024 - Chris Heaton-Harris - HCWS748', 27 April 2023.

590 Robbie Meredith, 'Period Poverty: No free tampons in school "adds stress to families"', *BBC News*, 4 May 2023.

Relationships and sexuality education

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

integrate comprehensive, age-appropriate and evidence-based education on sexual and reproductive health into mandatory school curricula at all levels of education and into teacher training, and ensure that it includes education on sexual diversity, sexual and reproductive health rights, responsible sexual behaviour and violence prevention, without the possibility for faith-based schools or parents to opt out of such education.⁵⁹¹

In 2019, the UN CEDAW Committee reiterated its inquiry recommendations.⁵⁹² In 2018, the UN CEDAW Committee's Inquiry into the impact of restrictive access to termination of pregnancy for women and girls in NI, found that "NI youth are denied the education necessary to enjoy their sexual and reproductive health and rights"⁵⁹³ and "that access to abortion services and contraceptives are not statutory requirements of the advisory curriculum".⁵⁹⁴ The UN CEDAW Committee stated that "these factors point to State negligence in pregnancy prevention through failure to implement its recommended curriculum on relationship and sexuality education and ensure age-appropriate, culturally sensitive, comprehensive and scientifically accurate sexuality education".⁵⁹⁵

The UN CEDAW Committee recommended that the UK Government and NI Executive "make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation".⁵⁹⁶

591 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 44(b).

592 CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019.

593 CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018.

594 Ibid.

595 Ibid.

596 Ibid.

In June 2023, the Commission published an investigation report into relationships and sexuality education in schools in NI.⁵⁹⁷ The report found that there are some positive examples of post-primary schools providing comprehensive and scientifically accurate relationships and sexuality education. However, in most NI schools this is not the case, where resources are not always considered to be comprehensive, pluralistic and objective and do not comply with the UN CEDAW Committee's recommendations. The Commission made 13 recommendations that primarily focused on amending the Education (Curriculum Minimum Content) Order (NI) 2007 and proposed steps that are necessary for ensuring the recommended reforms are implemented effectively.⁵⁹⁸

In June 2023, the UK Government introduced the Relationships and Sexuality Education (NI) (Amendment) Regulations 2023. These regulations amended the Education (NI) Order 2006, and the Education (Curriculum Minimum Content) Order (NI) 2007 to make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion, a compulsory component of curriculum.⁵⁹⁹

The 2023 Regulations place a duty on the Department of Education to issue guidance on the content and delivery of relationships and sexuality education by 1 January 2024⁶⁰⁰ and to publish a report on the implementation of relationships and sexuality education by September 2026.⁶⁰¹ The Commission is to be consulted in the drafting of this report.⁶⁰²

The 2023 Regulations further require the Department of Education to make provision about the circumstances in which, at the request of a parent, a pupil may be excused from receiving relationships and sexuality education, or specified elements of that education.⁶⁰³

597 NI Human Rights Commission, 'Relationships and Sexuality Education in Post Primary Schools in NI: A Compelling Case for Reform' (NIHRC, 2023).

598 Ibid.

599 Regulation 2(2), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023; Regulation 3, Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

600 Regulation 2(3), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

601 Regulation 4(1), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

602 Regulation 4(2)(c), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

603 Regulation 2(3), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

In September 2023, the Department of Education conducted a public consultation on the arrangements for pupils to be excused from relationships and sexuality education and the content of the statutory guidance.⁶⁰⁴

Safe access zones

In 2018, the UN CEDAW Committee recommended that the NI Executive “protect women from harassment by pro-life protesters by investigating complaints and prosecuting and punishing perpetrators”.⁶⁰⁵

In 2021, a Private Member’s Bill was introduced to the NI Assembly which aimed to “introduce safe access zones around registered pregnancy advisory bureaux and clinics, in which anti-termination activity could not take place”. It aimed to ensure individuals have “access to sexual and reproductive healthcare services without impediment or harassment, while carefully balancing the right to freedom of assembly”.

In 2022, the Attorney General for NI referred the then Abortion Services (Safe Access Zones) (NI) Bill to the UK Supreme Court for clarity on whether the offence created by the Bill was a proportionate interference with the rights of individuals who wished to express opposition to abortion services. The Commission intervened in this case. The UK Supreme Court concluded that it was satisfied that the restrictions in the then Bill were “justifiable” and did not “interfere disproportionately with a protestor’s rights under Articles 9, 10 and 11 of the [ECHR]”.⁶⁰⁶ The UK Supreme Court found the restrictions were “required to protect the rights of women seeking treatment or advice, and are also in the interests of the wider community, including other patients and staff of clinics and hospitals”.⁶⁰⁷

604 Department of Education, ‘Relationships and Sexuality Education Consultation’ (DE, 2023).

605 CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW’, 6 March 2018, at para 86(g).

606 *Reference by the Attorney General for NI – Abortion Services (Safe Access Zones) (NI) Bill* [2022] UKSC 32.

607 *Reference by the Attorney General for NI – Abortion Services (Safe Access Zones) (NI) Bill* [2022] UKSC 32.

In February 2023, the Abortion Services (Safe Access Zones) (NI) Act received Royal Assent. The 2023 Act enables safe access zones to be established in the vicinity of healthcare premises providing lawful abortions, as well as at premises where information, advice or counselling about abortion treatments are provided. The safe access zone will include the premises where the services are provided, as well as an area between 100 metres and 250 metres from entrances or exits of the protected premises. Once a safe access zone has been established, designated activities including anti-abortion protests are prohibited within the protected area.

Until September 2023, except for a brief reprieve when COVID-19 restrictions were in place, protestors carrying graphic placards and being abusive towards individuals and staff outside family planning and abortion clinics in NI continued.⁶⁰⁸ In September 2023, safe access zones were introduced by all Trusts in NI.⁶⁰⁹ In October 2023, the first arrests were made for violations of the 2023 Act.⁶¹⁰

The Department of Health has also developed a process for non-Trust premises to establish their safe access zones.⁶¹¹ Information on the location of each safe access zone is to be displayed at all protected premises and published on the Department of Health and Trusts' websites.⁶¹² The Department of Health has also published a policy statement on safe access zones and is committed to publishing an annual report on implementation.⁶¹³ All safe access zones must be formally logged with the Department of Health.⁶¹⁴ A Special Task and Finish Group will monitor implementation.⁶¹⁵ The Police Service of NI has been training officers and ensuring the necessary protocol is in place.⁶¹⁶

608 The Police Service of NI does not hold regular data on this issue, but between January 2021 and January 2022, the Police Service of NI was requested to attend 55 incidents at family planning and abortion clinics across NI. These requests were by either members of the public or staff employed within the facility. See *Reference by the Attorney General for NI – Abortion Services (Safe Access Zones) (NI) Bill* [2022] UKSC 32, at para 39; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021); Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; Correspondence from the Royal College of Nursing in NI to the NI Human Rights Commission, 19 July 2023.

609 Department of Health, 'Press Release: Safe Access Zones update', 3 July 2023.

610 Maria McCann, 'Abortion: Two arrests under new protest buffer zone law', *BBC News*, 4 October 2023.

611 Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

612 Section 7, Abortion Services (Safe Access Zones) (NI) Act 2023.

613 Section 8, Abortion Services (Safe Access Zones) (NI) Act 2023; Department of Health, 'Press Statement: Safe Access Zones update', 3 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

614 Section 4, Abortion Services (Safe Access Zones) (NI) Act 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

615 Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

616 Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

These are significant developments that will hopefully resolve the issue. However, some concerns have emerged that will need to be monitored to ensure they do not hinder implementation. For example, there is no financial support in place to establish a safe access zone.⁶¹⁷

Right to Education

Academic selection

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive “end practices, including academic selection and testing measures, which contribute to the high levels of stress felt by students owing to academic pressure, and ensure that children benefit from a creative learning environment”.⁶¹⁸

In November 2023, a common transfer test is due to replace the current dual testing system in NI.⁶¹⁹ Currently, children can sit up to five exam papers. This will be the biggest change to the post-primary transfer system since 2008.⁶²⁰

Bullying in schools

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive “ensure that children who experience discrimination, bullying or harassment in relation to their sexual orientation or gender identity receive protection and support, including through targeted anti-bullying measures”.⁶²¹ The UN CRC Committee also recommended that the UK Government and NI Executive:

617 Email correspondence from the Department of Health to the NI Human Rights Commission, 12 September 2023.

618 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 47(k).

619 NI Assembly Hansard, 'Written Question: Single Post-primary Transfer Test - Claire Sugden MLA - AQW 2295/22-27', 15 July 2022.

620 Robbie Meredith, 'Transfer test: New exam body reveals details of first papers', *BBC News*, 6 October 2022.

621 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 20(e).

increase efforts to eliminate discrimination and bullying, including cyberbullying, on the grounds of race, sexual orientation, gender identity or sex characteristics, disability, migration or other status in the school context, and ensure that such measures:

- i) are adequately resourced and developed in consultation with children;
- ii) address the root causes of bullying; and
- iii) encompass prevention, early detection mechanisms, awareness-raising on its harmful effects, the empowerment of children, mandatory training for teachers, intervention protocols and consistent and robust recording and monitoring of bullying behaviour.⁶²²

In 2023, the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities recommended that the UK Government and NI Executive:

take priority measures to tackle racist bullying in schools, in particular against Gypsies, Roma and Travellers, including through... adding ethnic identifiers on [the recording of racist bullying] in NI, strengthening mechanisms and remedies in cases of racist bullying, and collecting data disaggregated by gender, geographical location and ethnicity on absenteeism.⁶²³

In 2023, despite the Addressing Bullying in Schools (NI) Act 2016 coming into force,⁶²⁴ Queen's University Belfast reported that racist bullying remains prevalent and that schools' responses to such incidents were often considered inadequate.⁶²⁵ The final report recommends several measures to ensure that schools are properly identifying racist bullying, including by strengthening monitoring arrangements and introducing anti-racism and anti-bias training

622 Ibid, at para 47(f).

623 ACFC/OP/V, 'CoE Advisory Committee on the Framework Convention for the Protection of National Minorities: Fifth Opinion on the UK', 25 May 2023, at para 194.

624 Department of Education, 'Press Release: Schools to implement Addressing Bullying Act', 21 April 2021.

625 Rebecca Loader et al, 'Experiences of Education among Minority Ethnic Groups in NI' (QUB, 2023), at para 6.3.

as a core component of Initial Teacher Education and in-service professional development.⁶²⁶

Educational needs of specific groups of children

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

strengthen measures to address inequalities in educational attainment and improve educational outcomes for children in disadvantaged situations, including children in socioeconomically disadvantaged situations, children belonging to ethnic minority groups, asylum-seeking, refugee and migrant children, children with disabilities and ‘young carers’, including by:

- i) providing financial and other support for such children to finish school;
- ii) developing guidelines for responding to cases of school absenteeism; and
- iii) collecting and analysing data disaggregated by ethnic origin, educational outcomes and other relevant indicators on completion rates, educational outcomes and exclusions to inform policies and programmes.⁶²⁷

The UN CRC Committee also recommended that the UK Government and NI Executive “remove ‘colonising’ and discriminatory language from textbooks and curricula and develop educative materials that foster respect for and appreciation of racial, cultural, gender and other diversities”.⁶²⁸

626 Ibid, at para 9.2.1.

627 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 47(a).

628 Ibid, at para 47(h).

In May 2023, the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities issued revised recommendations that the UK Government and NI Executive explore “possibilities for sharing education data between the UK and Ireland, in order to ensure continuity in access to education for Gypsies, Roma and Travellers across jurisdictions”.⁶²⁹ The Advisory Committee also recommended that the UK Government and NI Executive “introduce training for teachers on Gypsy, Roma and Traveller cultures, their way of life and dealing with instances of anti-gypsyism in schools”.⁶³⁰

In 2021, the Expert Panel on Educational Underachievement in NI identified socio-economic inequalities, boys underachieving in comparison to girls, inequalities between and within religiously defined groups.⁶³¹ The Expert Panel also found that children from Traveller communities, Roma children and children with experience of care have some of the lowest levels of attainment of all equality groups.⁶³² The final report and accompanying action plan contain 47 actions needed to address educational underachievement at all levels, outlining a cumulative cost of over £180 million across five years.⁶³³ In June 2023, the Department of Education advised that 67 per cent of the Expert Panel’s actions are underway.⁶³⁴ However, due to budget cuts, the Department of Education has only been able to allocate £2.5 million of the recommended £21 million funding for the second year of the action plan.⁶³⁵ The Department of Education acknowledged that this “will invariably have a significant limiting impact on the scale and pace of change that can be achieved”.⁶³⁶

In June 2023, Queen’s University Belfast reported on the challenges within education that remain distinctive to minority ethnic and

629 ACFC/OP/V, ‘CoE Advisory Committee on the Framework Convention for the Protection of National Minorities’, 25 May 2023, at para 195.

630 Ibid, at para 196.

631 Department of Education, ‘Expert Panel on Educational Underachievement: A Fair Start - Final Report and Action Plan’ (DE, 2021).

632 Department of Education, ‘Expert Panel on Educational Underachievement: A Fair Start - Final Report and Action Plan’ (DE, 2021).

633 Ibid.

634 Department of Education, ‘A Fair Start Progress Report: Actions to Support Educational Underachievement’ (DE, 2023), at 5.

635 Ibid, at 5.

636 Ibid, at 5.

migrant families, including individuals who seeking sanctuary in NI.⁶³⁷ These include:

school admissions processes that may indirectly discriminate against children from migrant backgrounds; racism and discrimination at school, which is often not appropriately addressed (and is sometimes perpetuated) by staff; a curriculum that some experience as lacking representation of increasing cultural pluralism or diversity in literature, religion and historical perspectives; the absence of a coordinated, system-wide approach to the teaching of English as an additional language or to support for home languages; and ongoing barriers to home-school relationships, particularly in the form of language differences.⁶³⁸

Integrated education

In May 2023, the CoE Advisory Committee on the Framework Convention on the Protection of National Minorities issued a revised recommendation that the UK Government and NI Executive “increase the share of pupils and students attending integrated schools, and seek to actively motivate parents and provide incentives for pupils and students studying in such schools, with a view to creating a fully integrated education system in NI”.⁶³⁹

The Integrated Education Act 2022 amends the statutory duty on the Department of Education to encourage, facilitate and the development of Integrated Education.⁶⁴⁰ It also provides a more inclusive definition for integrated education, relating to the education together pupils of different cultures, religions, socio-economic backgrounds and abilities.⁶⁴¹

637 Rebecca Loader et al, ‘Experiences of Education Among Minority Ethnic Groups in NI’ (QUB, 2023).

638 Ibid, at para 9.6.

639 ACFC/OP/V, ‘CoE Advisory Committee on the Framework Convention for the Protection of National Minorities: Fifth Opinion on the UK’, 25 May 2023, at para 183.

640 Section 6, Integrated Education Act 2022.

641 Section 1(1), Integrated Education Act 2022.

In April 2023, the Department of Education published an updated strategy for integrated education in NI, as required by the Integrated Education Act 2022.⁶⁴² However, the strategy does not set specific and measurable targets for increasing pupil or school numbers in integrated education and does not specify budget allocations for its implementation.⁶⁴³ The Department of Education intends to conduct a public consultation on an action plan in due course.⁶⁴⁴

In May 2023, the Integrated Education Fund's report emphasised that integrated education is a complex issue and that no single data source will provide the type or range of information needed.⁶⁴⁵ It recommended a suite of measures for a mixed-method approach to assessing demand, including survey and qualitative research and policy analysis.⁶⁴⁶ The report also highlighted that the preferences of children and young people need to be considered and taken more seriously, as current approaches are primarily targeted at parents.⁶⁴⁷

In June 2023, the Department of Education announced the establishment of 26 part-time places in pre-school provision at Enniskillen Integrated Primary School, a statutory nursery unit at Rowandale and a statutory nursery unit at Drumlins Integrated Primary Schools.⁶⁴⁸ NI's largest school, Bangor Academy, also voted for the school to change to integrated status.⁶⁴⁹

Religious education

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive repeal “legal provisions for compulsory attendance in collective worship and establishing statutory guidance to ensure the right of all children, including children under 16 years of age, to withdraw from religious

642 Department of Education, 'A Strategy for Integrated Education in NI' (DE, 2023).

643 Robbie Meredith, 'Integrated education expansion plan branded 'action plan with no action'', *BBC News*, 27 April 2023.

644 Department of Education, 'A Strategy for Integrated Education in NI' (DE, 2023), at 33.

645 Erin Early et al, 'Report on Research Methods for Assessing Demand for Integrated Education in NI' (IEF and QUB, 2023), at 53.

646 *Ibid*, at 63.

647 *Ibid*, at 62.

648 Council for Integrated Education, 'Press Release: Decisions on Development Proposals in relation to Integrated Provision', 9 June 2023.

649 Council for Integrated Education, 'Press Release: Great news for Integrated Education in Bangor', 9 June 2023.

classes without parental consent”.⁶⁵⁰ The UN CRC Committee also recommended that the UK Government and NI Executive revise “the religious education syllabus in NI to include education on and respect for a diversity of religion”.⁶⁵¹

Article 11 of the Education (NI) Order 2006, as implemented through Article 3 of the Education (Core Syllabus for Religious Education) Order (NI) 2007, enables the Department of Education to “specify a core syllabus for the teaching of religious education in grant-aided schools”.

In 2022, a case was brought to the High Court of Justice in NI by non-religious parents that were concerned that, by the time their daughter was seven years old, she had “absorbed and adopted a religious (specifically Christian) worldview which was not consistent with their own views and beliefs”.⁶⁵² The parents’ specific concern was that their daughter was “learning Christianity and not learning ‘about’ Christianity in a school context that effectively assumes its absolute truth and which, whether intentionally or otherwise, encourages her to do the same”.⁶⁵³ Considering the domestic law and the provisions for religious education teaching in the child’s primary school, the High Court ruled that the core religious education syllabus in NI is not of an objective, pluralist and critical manner, as required by Article 2 of Protocol No 1 of the ECHR.⁶⁵⁴ However, the High Court stressed that “the school is statutorily obliged to adhere to... [the] syllabus and has no powers to amend it... The school’s hands are tied in terms of its mandatory obligation to deliver the core syllabus in accordance with the relevant legislation”.⁶⁵⁵

Regarding guidance provided by the Department of Education, the High Court stated that:

650 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 26(d).

651 Ibid, at para 26(e).

652 *In the Matter of an Application by JR87 and Her Father for Judicial Review* [2022] NIQB 53, at para 7.

653 Ibid.

654 Ibid.

655 Ibid, at para 16.

there can be no doubt that the guidelines demonstrate an awareness of the types of criticism identified by the applicants in terms of the core syllabus. Guidelines seek to guide teachers away from any risk of religious instruction or indoctrination. However, these efforts ultimately flounder on the mandatory obligation to teach the core curriculum which by statute requires that religious education must be based upon the Holy Scriptures. The guidelines, whilst helpful, do not take away from the court’s analysis of what the core curriculum and collective worship requires.⁶⁵⁶

In 2023, the Religious Education Advisory Committee, which was established by the Department of Education, was working with the Council for the Curriculum Examinations and Assessment to produce guidance for schools on ensuring that religious education is inclusive.⁶⁵⁷ However, any change is subject to the approval of a functioning NI Executive.⁶⁵⁸

In October 2023, the Court of Appeal in NI heard an appeal from the Department of Education to the High Court’s decision.⁶⁵⁹ The Department of Education will consider further action pending the outcome of the appeal.⁶⁶⁰ If required, any policy or legislative change is subject to approval of a functioning NI Executive and NI Assembly.⁶⁶¹

Shared education

In May 2023, the CoE Advisory Committee on the Framework Convention on the Protection of National Minorities issued a revised recommendation that the UK Government and NI Executive:

provide further guidance to schools implementing shared education to address their large discretionary power with the aim of improving the consistency of shared education,

656 Ibid, at para 97.

657 Meeting between NI Human Rights Commission and Department of Education, 17 August 2023.

658 Ibid.

659 Ibid.

660 Ibid.

661 Ibid.

guaranteeing a more uniform approach to it across schools and ensuring its positive contribution to the integration of society.⁶⁶²

In 2022/2023, 35,595 children in NI were engaged in shared learning projects linked to PEACE IV funding, which involved two projects.⁶⁶³ This was additional to the 121,000 children recorded since the projects began.⁶⁶⁴ The CASE project had a target of 135,000 children being involved in shared education classrooms and the Sharing from the Start project had a target of engaging 9,914 children in shared education.⁶⁶⁵ Despite difficulties in delivering shared education during the COVID-19 pandemic, the combined target of 141,000 is expected to be exceeded.⁶⁶⁶ Additionally, in 2022/2023, it is predicted that over 42,500 pupils have benefited from shared learning experiences funded by phase one of implementing the Department of Education's strategy on mainstreaming shared education.⁶⁶⁷

In September 2023, the PEACE IV programme ended. The PEACE PLUS 2021-2027 programme is intended as the successor to PEACE IV.⁶⁶⁸ In June 2023, the PEACE PLUS 2021-2027 programme opened to applications.⁶⁶⁹ However, successful projects are not expected to be operational until 2024/2025.⁶⁷⁰ It remains unclear how shared education programmes that relied on PEACE IV funding will be sustained in the 2023/2024 academic year and if there are any delays to PEACE PLUS funding.

There is an additional concern that will affect the funding of programmes under the Department of Education's mainstreaming shared education strategy. In 2023, cuts to the NI budget placed the Department of Education in a constrained financial position.⁶⁷¹

662 ACFC/OP/V, 'CoE Advisory Committee on the Framework Convention for the Protection of National Minorities: Fifth Opinion on the UK', 25 May 2023, at para 184.

663 Email correspondence from Department of Education to NI Human Rights Commission, 9 August 2023.

664 Ibid.

665 Ibid.

666 Ibid.

667 Ibid.

668 Department of Education, 'Shared Education'. Available at: <https://www.education-ni.gov.uk/articles/what-shared-education>.

669 Email correspondence from Department of Education to NI Human Rights Commission, 9 August 2023.

670 Ibid.

671 Department of Education, 'Equality Impact Assessment Consultation Report on the 2023-2024 Resource Budget' (DE, 2023).

In May 2023, the Education Authority NI advised that the funding provided to schools for shared education provision will be about 50 per cent less than the budget provided in 2022/2023.⁶⁷² It is hoped that further resourcing will become available in 2024/2025.⁶⁷³

Special educational needs

In June 2023, UN CRC Committee issued a revised recommendation that the UK Government and NI Executive:

ensure inclusive education in mainstream schools for all children with disabilities, including by adapting curricula and training and assigning specialised teachers and professionals in integrated classes, so that children with disabilities and learning difficulties receive individual support and due attention.⁶⁷⁴

In July 2023, it was reported that 390 children with special educational needs in NI were still waiting for a suitable school place for the 2023/2024 academic year.⁶⁷⁵ This is a similar situation to that which occurred in 2022.⁶⁷⁶ In August 2023, it was reported that most of the children affected had been provided with a place, but 20 children were not expected to receive a school place before the start of the new academic year.⁶⁷⁷ Furthermore, in October 2023, 42 nursery school children were being educated in the community and voluntary sector due to a lack of special school places.⁶⁷⁸ Yet, determining the exact number of children affected by the present situation is difficult. Several parents reported that, even where places have been provided, the placement identified by the Education Authority NI may not be deemed appropriate for the specific needs of the child involved.⁶⁷⁹

672 Robbie Meredith and Matt Fox, 'Education funding: Schools face 50 per cent cut in shared education cash', *BBC News*, 17 May 2023.

673 Ibid.

674 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 47(b)

675 Robbie Meredith, 'NI Education: Almost 400 children with special needs waiting on school place', *BBC News*, 6 July 2023.

676 Robbie Meredith, 'Special needs: No school places for more than 300 pupils', *BBC News*, 23 June 2022.

677 'Almost 150 Special Educational Needs children in NI do not have a confirmed school place for September 2023', *ITV News*, 27 July 2023; 'Special educational needs: No school guarantee for 20 children', *BBC News*, 17 August 2023.

678 Lauren Harte, 'Education Authority statement as 42 nursery children with special educational needs educated outside school setting', *Belfast Live*, 4 October 2023.

679 'Almost 150 Special Educational Needs children in NI do not have a confirmed school place for September 2023', *ITV News*, 27 July 2023; Robbie Meredith, 'Special needs: No school places for more than 300 pupils', *BBC News*, 23 June 2022.

The delay and lack of communication experienced while awaiting a decision by the Education Authority NI has caused the parents and children affected “huge anxiety” and has been reported to be “mentally, emotionally and physically draining”.⁶⁸⁰ Without the necessary supports in place before the start of the school term parents are not able “plan accordingly”, which can result in children not being able to avail of or continue with their school placement.⁶⁸¹

In 2022, following a series of critical reviews,⁶⁸² Ipsos was commissioned to conduct an independent review of special educational needs services and processes in NI.⁶⁸³ In May 2023, the Independent Review report was published.⁶⁸⁴ The Independent Review reported that effective steps have been taken to improve services, with only nine per cent of statements taking longer than 26 weeks, compared to the 85 per cent previously reported by the NI Audit Office.⁶⁸⁵ However, the Independent Review reiterated the need for further improvements, including more effective use of the substantial expenditure, a focus on earlier intervention, improved access to educational psychologists, accessible information and advice for parents, and improved staff training and development, among others.⁶⁸⁶ A formal response from the Department of Education is awaited.⁶⁸⁷

In June 2023, the Department of Education announced proposed budget reductions to special educational needs services and the Education Authority NI’s block grant to live within the budget settlement 2023/2024.⁶⁸⁸ In August 2023, the Department of

680 Ibid.

681 Robbie Meredith, ‘Special educational needs: Teen with autism may have to quit school’, *BBC News*, 16 August 2023.

682 NI Audit Office, ‘Special Educational Needs’ (NIAO, 2017); NI Audit Office, ‘Impact Review of Special Educational Needs’ (NIAO, 2020); NI Commissioner for Children and Young People, ‘Too Little Too Late: A Rights Based Review of Special Educational Needs in NI’ (NICCY, 2020); NI Assembly Public Accounts Committee, ‘Report on Impact Review of Special Educational Needs’ (NIA, 2021); NI Commissioner for Children and Young People, ‘Too Little, Too Late: Monitoring Report’ (NICCY, 2022).

683 Department of Education, ‘Independent Review of Special Education Needs’. Available at: <https://www.education-ni.gov.uk/articles/independent-review-special-education-needs>.

684 Department of Education, ‘Independent Review of Special Educational Needs Services and Processes’ (DE, 2023).

685 Ibid, at 147.

686 Ibid.

687 Department of Education, ‘Independent Review of Special Education Needs’. Available at: <https://www.education-ni.gov.uk/articles/independent-review-special-education-needs>.

688 Department of Education, ‘Equality Impact Assessment Consultation Report on the 2023-2024 Resource Budget’ (DE, 2023).

Education consulted on its Equality Impact Assessment of the proposed cuts, but the effects were already being felt.⁶⁸⁹ In 2023, funding for school staff who support pupils with special educational needs was halved from £22 million to £11 million.⁶⁹⁰ In October 2023, the Education Authority NI stated that “significant additional investment” was needed to transform the special educational needs system in NI.⁶⁹¹



Use of restraint in educational settings

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive:

explicitly prohibit the use of restraint and seclusion in educational settings and adopt a child rights-based approach to addressing violence or other disturbances in schools, including by prohibiting the presence of police in schools and providing regular training for teachers on relevant guidance for addressing such disturbances in a child-sensitive manner.⁶⁹²

In 2022, the Department of Education published its review of the use of restraint and seclusion practices in educational settings.⁶⁹³ The former Minister of Education, Michelle McIllveen MLA, accepted all recommendations. This included the development of new statutory guidance to provide clear definitions on the use of restrictive practices in educational settings.

In September 2023, the Department of Education launched a public consultation on draft statutory guidance for the reduction and management of restrictive practices in educational settings in NI.⁶⁹⁴

689 Department of Education, ‘Consultation on Department of Education Budget 2023-2024 Equality Impact Assessment’ (DE, 2023).

690 Robbie Meredith, ‘Schools’ funding for special needs teachers cut in half’, *BBC News*, 5 June 2023.

691 Lauren Harte, ‘Education Authority statement as 42 nursery children with special educational needs educated outside school setting’, *Belfast Live*, 4 October 2023.

692 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 47(j).

693 Department of Education, ‘Review of the Use of Restraint and Seclusion in Educational Settings in NI’ (DoE, 2022).

694 Department of Education, ‘Consultation on the Reduction and Management of Restrictive Practices’ (DoE, 2023).

The draft guidance was informed by the Department of Education’s Review of Restraint and Seclusion Reference Group, which includes the Commission.⁶⁹⁵ The draft guidance proposes definitions and clarifies requirements regarding recording, training and monitoring.⁶⁹⁶ It is anticipated that the revised guidance will be published within the 2023/2024 academic year.⁶⁹⁷ The Department of Education has confirmed that, without direction from the NI Executive and potential legislative change by the NI Assembly, the revised guidance will be unable to follow the most recent UN CRC Committee’s concluding observations that recommend the use of restraint and seclusion in educational settings is explicitly prohibited.⁶⁹⁸

In March 2023, the Department of Health published a new regional policy on minimising the use of restrictive interventions, restraint and seclusion in health and social care settings.⁶⁹⁹ It advises that children and young people should never be subject to seclusion.⁷⁰⁰ However, the Department of Education’s draft statutory guidance proposes that seclusion “should never be used in educational settings, unless in a crisis situation where it is necessary for the prevention of serious physical harm to individuals”.⁷⁰¹ The Commission outlined its concerns with this proposal, including that the updated position does not reflect previous consultations, healthcare guidance, or the majority view among members of the Restraint and Seclusion Reference Group.⁷⁰²

695 Ibid.

696 Ibid.

697 Letter from Department of Education to NI Human Rights Commission, 29 June 2023.

698 Email correspondence from the Department of Education to NI Human Rights Commission, 3 August 2023; CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 47(j).

699 Department of Health, ‘Regional Policy on the Use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion’ (DoH, 2023).

700 Ibid, at para 5.1.

701 Department of Education, ‘Consultation on the Reduction and Management of Restrictive Practices’ (DoE, 2023), at 6.

702 NI Human Rights Commission, ‘Submission to the Department of Education on the Draft Statutory Guidance on the Reduction and Management of Restrictive Practices in Educational Settings in NI’ (NIHRC, 2023).

Right to Participate in the Cultural Life of the Community

Minority culture and languages

In 2023, the CoE Committee of Ministers, following a report from the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities,⁷⁰³ issued a revised recommendation that the UK Government and NI Executive immediately “intensify efforts to develop and increase the offer and support to Irish-medium education in NI, including for children with special educational needs”.⁷⁰⁴ The CoE Committee of Ministers also recommended that the UK Government and NI Executive:

ensure the implementation of the Identity and Language (NI) Act [2022], and work with representatives of the Irish-speaking community to further develop Irish language policy in NI. The authorities should also consider revising the [2022] Act in consultation with the Ulster Scots minority representatives to address the conflation of Ulster Scots and Ulster British identities.⁷⁰⁵

In 2017, the High Court of Justice in NI held that “the Executive Committee has failed in its statutory duty, under section 28D(1) of the NI Act 1998, to adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language”.⁷⁰⁶ In 2020, a commitment was made to publish an Irish Language Strategy and an Ulster Scots Strategy.⁷⁰⁷

703 ACFC/OP/V(2022)003, ‘CoE Advisory Committee on the Framework Convention for the Protection of National Minorities Fifth Opinion on the UK’, 25 May 2023.

704 CM/ResCMN(2023)7, ‘CoE Committee of Ministers Resolution on the Implementation of the CoE Framework Convention for the Protection of National Minorities by the UK’, 12 July 2023.

705 Ibid.

706 *In the Matter of an Application by Conradh na Gaeilge* [2017] NIQB 27.

707 NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 16.

In 2021, following several delays, a Co-Design Group for the Irish Language Strategy and a Co-Design Group for the Ulster Scots Strategy were established by the Department for Communities.

In 2023, the Co-Design Group for the Irish Language Strategy and the Co-Design Group for the Ulster Scots Strategy continued to consider the recommendations of their respective expert panel reports. However, the proposals from both co-design groups cannot progress without a functioning NI Executive.

Chapter 3 - Issues Requiring Immediate Action

Red issues are those that identify a subject that on human rights grounds requires immediate action by the UK Government, NI Executive or relevant public authorities, where the issue may be an ongoing violation or abuse of human rights within NI. In 2023, there were 18 red issues.

Since the traffic light system was introduced to the annual statement in 2014, when there were five red issues, the number of issues requiring immediate action has been increasing relatively steadily year on year.⁷⁰⁸

This chapter sets out the updates from 2023 in relation to the red issues and the Commission's respective recommendations in detail. It covers significant developments between 1 December 2022 and 10 November 2023.

Equality and Non-discrimination



Conversion therapy

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

708 NI Human Rights Commission, 'Annual Statement 2014' (NIHRC, 2014); NI Human Rights Commission, 'Annual Statement 2015' (NIHRC, 2015); NI Human Rights Commission, 'Annual Statement 2016' (NIHRC, 2016); NI Human Rights Commission, 'Annual Statement 2017' (NIHRC, 2017); NI Human Rights Commission, 'Annual Statement 2018' (NIHRC, 2018); NI Human Rights Commission, 'Annual Statement 2019' (NIHRC, 2019); NI Human Rights Commission, 'Annual Statement 2020' (NIHRC 2020); NI Human Rights Commission, 'Annual Statement 2021' (NIHRC, 2021); NI Human Rights Commission, 'Annual Statement 2022' (NIHRC, 2022).

prohibit the promotion, facilitation and delivery of so-called ‘conversion therapies’ aimed at changing the sexual orientation and gender identity of children, in line with its commitment made in 2018, with particular attention paid to the vulnerabilities of children who may be subject to such harm.⁷⁰⁹

In February 2023, the CoE Commissioner for Human Rights, Dunja Mijatović, stated that conversion therapies “conflict with an overwhelming consensus of international human rights and scientific bodies”.⁷¹⁰ The CoE Commissioner for Human Rights clarified that “it is important to underscore that properly drafted conversion practice bans should not interfere with the right to hold a belief or express an opinion on lesbian, gay, bisexual, transgender and intersex issues”.⁷¹¹ The CoE Commissioner for Human Rights called for “a comprehensive, human rights based approach to eliminating” conversion therapies, which includes mapping the problem, ensuring accountability, delegitimising conversion therapies in society, and ensuring participation, support and rehabilitation of victims.⁷¹²

In 2020, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, called for a global ban on conversion therapy, with particular protections required for children.⁷¹³ The Independent Expert defines conversion therapy as:

an umbrella term to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person’s sexual orientation and gender identity, including gender expression, can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm, in particular when the person is lesbian, gay, bisexual, trans or gender diverse. Such practices are therefore consistently aimed at effecting

709 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023.

710 CoE Commission for Human Rights, ‘Press Release: Nothing to cure – putting an end to so-called “conversion therapies” for Lesbian, Gay, Bisexual, Transgender and Intersex people’, 16 February 2023.

711 Ibid.

712 Ibid.

713 A/HRC/44/53, ‘Report of the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity: Practices of So-called “Conversion Therapy”’, 1 May 2020, at paras 17 and 55.

a change from non-heterosexual to heterosexual and from trans or gender diverse to cisgender. Depending on the context, the term is used for a multitude of practices and methods, some of which are clandestine and therefore poorly documented.⁷¹⁴

In 2021, the Expert Advisory Panel on a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI defined conversion therapy as:

any practice designed to change a person’s sexual orientation or gender identity. It can be distinguished from other practices designed to provide guidance and support to [lesbian, gay, bisexual, transgender, queer (or questioning), intersex +]... people provided by psychotherapists, counsellors or faith leaders because it operates under the premise that a specific sexual orientation, gender identity, or gender expression is pathological and/or evidence of a mental illness that can be cured. Unlike therapies that facilitate a person’s open and autonomous exploration of their sexual and gender futures, these therapies are discriminatory from the outset because [conversion therapy]... designates identities into normal and abnormal categories. As such, it is proscriptive because it attempts to modify identity into traditional heterosexual and cis-gendered models. It includes both pseudo-psychological treatments and physical interventions. In its ‘therapeutic’ forms it is a scientifically discredited, unprofessional and dangerous practice.⁷¹⁵

The Expert Advisory Panel concluded that any such practices should be made illegal.⁷¹⁶ It also recommended that steps are taken to ensure such practices are not commissioned or funded and that appropriate medical services are created to provide free access to support for victims.⁷¹⁷

714 Ibid, at para 17.

715 Department for Communities, ‘Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations’ (DfC, 2021), at Section 6.2.

716 Ibid, at para 33.

717 Ibid.

In 2021, the NI Assembly also passed a motion calling on the then Minister for Communities, Deirdre Hargey MLA, to commit to bringing forward legislation to ban conversion therapy in all its forms before the end of the current NI Assembly mandate.⁷¹⁸ The Commission wrote to the then Minister for Communities in support of the motion.⁷¹⁹

In 2023, the Department for Communities was developing a policy for the purposes of introducing legislation to end conversion therapy to the NI Assembly.⁷²⁰ The resulting policy will be subject to consideration by a future NI Executive and to public consultation, before legislation will be introduced. The policy cannot progress beyond the drafting stages in the absence of a functioning NI Executive and NI Assembly.

Recommendations

The Commission recommends that the Department for Communities, with the support of the NI Executive, promptly introduces legislation in NI to ban all practices of conversion therapy aimed at changing or suppressing a person's sexual orientation or gender identity, by any person or group of persons. The Department for Communities should be guided by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Expert Advisory Panel on a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI's definitions of conversion therapy in developing this legislation and its broader work related to this issue.

718 Department for Communities, 'Press Release: Conversion Therapy must end - Hargey', 20 April 2021.

719 Letter from NI Human Rights Commission to the Minister for Communities, Deirdre Hargey MLA, 5 May 2021.

720 Email correspondence from Department of Communities to NI Human Rights Commission, 16 June 2023.

Right to Life

Conflict related investigations: transitional justice and individual cases

Between 2021 and 2023, several UN and CoE institutions expressed “grave concern” at the UK Government’s plans for Troubles-related offences, including the NI Troubles (Legacy and Reconciliation) Act 2023.⁷²¹

In September 2023, commenting on the 2023 Act, the CoE Committee of Ministers noted that “a number of issues relating to independence disclosure and the initiation of reviews remain uncertain”.⁷²² The Committee of Ministers:

urged the authorities therefore to provide additional information on the planned practical and other measures to ensure that these issues are fully addressed, including: to ensure the independence of the Independent Commission on Reconciliation and Information Recovery appointment process; to further strengthen in practice the procedural safeguards for victims and their families; to develop clear disclosure protocols form all relevant authorities to the Independent Commission on Reconciliation and Information Recovery; and to ensure referral to the Independent Commission on Reconciliation and Information Recovery of all cases that might engage Articles 2 and 3 of the ECHR.⁷²³

721 Office of the UN High Commissioner for Human Rights, ‘Press Release: UN experts voice concern at proposed blanket immunity to address the legacy of “the Troubles” in NI’, 10 August 2021; Letter from CoE Commissioner for Human Rights, Dunja Mijatovic, to Secretary of State for NI, Brandon Lewis MP, 13 September 2021; CoE, ‘Submission by the CoE Commissioner for Human Rights Under Rule 9.4 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements in the Cases of McKerr v UK, Finucane v UK, Kelly and Others v UK, Shanaghan v UK, McCaughey and Others v UK’ (CoE, 2022), at para 28; CM/Notes/1443H46-32, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95) Supervision of the Execution of the ECtHR’s Judgments’, 22 September 2022, at para 8; CoE Parliamentary Assembly, ‘Resolution 2464(2002) – The Impact of Brexit on Human Rights on the Island of Ireland’, 31 October 2022, at paras 8 and 9; CommDH(2022)27, ‘CoE Commissioner for Human Rights, Dunja Mijatovic: Report Following Visit to UK From 27 June to 1 July 2022’, 18 November 2022, at 37-40; A/HRC/52/10, ‘Report of the UN Working Group on the Universal Periodic Review: UK of Great Britain and NI’, 9 January 2023, at paras 43.27, 43.106 and 43.112; CM/Del/Dec(2023)1459/H46-35, ‘McKerr Group v UK (Application No 28883/95 Supervision of the Execution of the European Court’s Judgments)’, 9 March 2023, at para 5; CM/ResDH(2023)148, ‘CoE Committee of Ministers Interim Resolution: McKerr and Four Cases Against the UK’, 7 June 2023.

722 CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023, at para 9.

723 Ibid.

The Committee of Ministers underlined “again the importance for the success of any new investigative body, particularly if aimed at achieving truth and reconciliation, of gaining the confidence of victims, families of victims and potential witnesses”.⁷²⁴ The Committee of Ministers acknowledged “the steps taken by the authorities in an attempt to engage with victims and stakeholders” since the 2023 Act was introduced to Parliament, but “noted with deep regret nevertheless that despite those efforts, support for the Independent Reconciliation and Information Recovery remains minimal”.⁷²⁵ Consequently, the Committee of Ministers “strongly encouraged the authorities to take all necessary additional measures to garner public trust and the confidence of victims, their families and all stakeholders”.⁷²⁶

The Committee of Ministers also reiterated its:

serious concern about the proposed conditional immunity scheme which risks breaching obligations under Article 2 of the ECHR to prosecute and punish serious grave breaches of human rights, and seriously undermining the Independent Commission on Reconciliation and Information Recovery’s capacity to carry out effective investigations within the meaning of Article 2 of the ECHR.⁷²⁷

The Committee of Ministers continued that it “deeply regretted therefore the authorities’ decision not to support the House of Lords’ amendment to remove the scheme from the [then NI Troubles (Legacy and Reconciliation)] Bill and its subsequent rejection”.⁷²⁸ The Committee of Ministers “strongly urged the authorities to consider repealing the immunity provisions”.⁷²⁹ The Committee of Ministers has sent a letter to the UK authorities raising its concerns and will re-examine the issue by June 2024 at the latest.⁷³⁰

724 CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023, at para 11.

725 Ibid.

726 Ibid.

727 CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023, at para 12.

728 Ibid.

729 Ibid.

730 CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023, at paras 13 and 14.

In 2022 and 2023, the CoE Commissioner for Human Rights, Dunja Mijatović, echoed the CoE Ministers' concerns. In June 2023, the Commissioner for Human Rights emphasised that the now NI Troubles (Legacy and Reconciliation) Act 2023 “ignores the many warnings that this legislation would violate the UK’s international obligations and put victims’ rights at risk”.⁷³¹ In 2022, the Commissioner for Human Rights, emphasising that “any further steps on legacy must place the rights and needs of victims at its heart”, urged:

the UK Government to return to previously agreed principles in the Stormont House Agreement, and to use these principles as a basis to set out an approach to legacy cases that can carry the support of a considerable portion of society in NI, that provides for ECHR-compliant investigations into killings and other serious human rights violations during the Troubles, and that prevents impunity for such violations. This approach must be brought forward promptly to ensure that truth-finding and justice are no longer delayed.⁷³²

In 2019, the UN CAT Committee recommended that the UK Government “take urgent measures to advance and implement the Stormont House Agreement and the mechanisms it contemplates for investigating conflict-related violations, particularly the Historical Investigations Unit”.⁷³³ The UN CAT Committee also recommended that the UK Government “refrain from enacting amnesties or statutes of limitations for torture or ill-treatment”, which are inconsistent with UN CAT.⁷³⁴

731 CoE Commissioner for Human Rights, ‘Press Release: UK – Adopting NI Legacy Bill will undermine justice for victims, truth seeking and reconciliation’, 20 June 2023.

732 CommDH(2022)27, ‘CoE Commissioner for Human Rights, Dunja Mijatovic: Report Following Visit to UK From 27 June to 1 July 2022’, 18 November 2022, at 37-40.

733 CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019.

734 Ibid.

The UN CAT Committee’s recommendations are supported by the UN Human Rights Committee,⁷³⁵ the former UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and guarantees of non-repetition, Pablo de Greiff,⁷³⁶ and several recommendations by the UN Working Group on the Universal Periodic Review.⁷³⁷

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU, including the right of victims “to remember as well as contribute to a changed society”.⁷³⁸ EU obligations underpinning the rights of victims include the EU Victims’ Directive⁷³⁹ as well as other relevant EU laws which support victims.⁷⁴⁰ The EU Victims’ Directive has been acknowledged by the UK Government as falling within the scope of Windsor Framework Article 2.⁷⁴¹

In 2021, the UK Government set out specific plans for legislation to address the legacy of the Troubles.⁷⁴² Contrary to the majority of views expressed during a public consultation in 2018,⁷⁴³ the plans indicated a shift away from conducting human rights compliant Troubles-related investigations, towards seeking and receiving information about Troubles-related deaths and injuries.⁷⁴⁴ The plan also included the intention to introduce a statute of limitations to apply equally to all Troubles-related incidents.⁷⁴⁵

735 CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015.

736 A/HRC/34/62/Add.1, 'Report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff, on his Mission to the UK of Great Britain and NI', 17 November 2016, at para 39.

737 A/HRC/52/10, 'Report of the UN Working Group on the Universal Periodic Review: UK of Great Britain and NI', 9 January 2023, at paras 43.27, 43.106 and 43.112.

738 Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights.

739 Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

740 Directive 2011/36/EU 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2004/80/EC, 'Council of the EU Directive Relating to the Compensation to Crime Victims', 29 April 2004.

741 UK Government, 'UK Government Commitment to No-diminution of Rights, Safeguards and Equality of Opportunity in NI: What Does It Mean and How Will It Be Implemented?' (NIO, 2020).

742 NI Office, 'Addressing the Legacy of NI's Past' (NIO, 2021).

743 NI Office, 'Addressing the Legacy of NI's Past: Analysis of the Consultation Responses' (NIO, 2019).

744 NI Office, 'Addressing the Legacy of NI's Past' (NIO, 2021), at para 34.

745 Ibid.

In 2022, the then NI Troubles (Legacy and Reconciliation) Bill was introduced to the UK Parliament. Throughout the passage of the Bill, the Commission provided advice on its compatibility with the ECHR and international human rights framework.⁷⁴⁶

In May 2023, Sir Declan Morgan was announced as the Independent Commission for Reconciliation and Information Recovery's Chief Commissioner.⁷⁴⁷ In July 2023, a public survey was launched requesting views on how the Independent Commission for Reconciliation and Information Recovery should carry out its work.⁷⁴⁸ In September 2023, Peter Sheridan was announced as Commissioner for Investigations.⁷⁴⁹ Recruitment is underway for other roles.⁷⁵⁰

In September 2023, the NI Troubles (Legacy and Reconciliation) Act 2023 received Royal Assent. The 2023 Act establishes an Independent Commission for Reconciliation and Information Recovery which will conduct reviews, on request, into deaths and serious injuries resulting from or connected with conduct during the Troubles. The Independent Commission for Reconciliation and Information Recovery is also tasked with producing a historical record of all remaining deaths that occurred during the Troubles (i.e. Troubles-related deaths that are not subject to a review by the Independent Commission). The Independent Commission for Reconciliation and Information Recovery will operate a conditional immunity scheme for certain Troubles-related offences and most Troubles-related proceedings will cease by 1 May 2024. The 2023 Act also establishes several statutory-based initiatives aimed at memorialising the Troubles such as oral history records, a memorialisation strategy and Troubles-related academic research.

746 House of Commons NI Affairs Committee, 'Oral Evidence: Addressing the Legacy of NI's Past - The UK Government's New Proposals', 7 June 2022; NI Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from the NI Human Rights Commission to Lord Jay, Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, 30 January 2023; NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

747 NI Office, 'Press Release: Secretary of State announces Independent Commission for Reconciliation and Information Recovery Chief Commissioner', 11 May 2023.

748 Independent Commission for Reconciliation and Information Recovery, 'Have Your Say About How We Should Operate'. Available at: <https://icrir.independent-inquiry.uk/news/have-your-say-about-how-we-should-operate/>

749 NI Office, 'Press Release: Appointment of Commissioner for Investigations of Independent Commission for Reconciliation and Information Recovery', 14 September 2023.

750 Independent Commission for Reconciliation and Information Recovery 'Career Opportunities'. Available at: <https://icrir.independent-inquiry.uk/career-opportunities>

Considering the 2023 Act, the Commission remains gravely concerned that the Independent Commission for Reconciliation and Information is not independent in practice and its mandate does not satisfy procedural human rights obligations. The conditional immunity scheme applies to offences where immunity should not be an option. The cessation of criminal investigations (other than those referred by the Independent Commission for Reconciliation and Information Recovery to the prosecutor), police complaints, civil proceedings and inquests/inquiries linked to Troubles-related offences is likely contrary to the right to an effective remedy.

The Commission is also concerned that the 2023 Act may not be compliant with Windsor Framework Article 2. For example, Article 11 of the EU Victims' Directive requires States to ensure that victims have the right to a review of a decision not to prosecute.⁷⁵¹ A decision to grant immunity is tantamount to a decision not to prosecute as it precludes any criminal enforcement action in respect of the offence(s) which are subject to that decision. Article 6 of the EU Directive provides a right to a victim of a criminal offence to receive information regarding any decision not to proceed with or to end an investigation or not to prosecute the offender.⁷⁵² The Act does not include an express requirement for victims or family members to be informed when an individual has applied for immunity, nor does it expressly require that information relating to the review process or the outcome of the immunity request is provided to victims or family members.⁷⁵³ Moreover, obligations under the EU Victims' Directive must be interpreted in line with the EU Charter of Fundamental Rights provisions, including Article 47 (right to an effective remedy and to a fair trial) and general principles of EU law.⁷⁵⁴

751 Articles 6 and 11, Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

752 Article 6(1)(a), Directive 2012/29/EU, 'Directive of European Parliament and the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

753 NI Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from the NI Human Rights Commission to Lord Jay, Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, 30 January 2023; NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023)

754 Article 4, Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020; *Sabou v Finan ní Reditelství Pro Hlavní M sto Prahu*, Case C-678/2013, 22 October 2013, at para 38; *Sopropé Organizações de Calçado Lda v Fazenda Pública*, Case C-349/07, 18 December 2008, at para 37.

The Independent Commission for Reconciliation and Information Recovery is intended to be fully operational by summer 2024.⁷⁵⁵ However, in August 2023, the Independent Commission for Reconciliation and Information Recovery's Chief Commissioner stated:

the decision on whether something is compatible or not is not for Parliament to make, it is not for... [the Independent Commission for Reconciliation and Information Recovery] to make - it is for the courts to decide... [By May 2024] I am hoping that at least the first instances of decisions on whether it is compatible are determined. If it is compatible, I will implement the immunity provisions in a way that the court rules is compatible, and if it is not, we won't.⁷⁵⁶

In September 2023, the Secretary of State for NI stated that:

I believe that the [then NI Troubles (Legacy and Reconciliation)] Bill is now compliant, but that will undoubtedly be tested. Only when it is tested and the results come forward can anybody actually say that the [then] Bill [now Act] is Article 2 [of the ECHR] compliant, as Government lawyers truly believe it is.⁷⁵⁷

In September 2023, 20 judicial reviews were lodged arguing that the NI Troubles (Legacy and Reconciliation) Act 2023 violates the ECHR.⁷⁵⁸ Several legal challenges regarding the 2023 Act also raised concerns about compliance with Windsor Framework Article 2.⁷⁵⁹ In November 2023, the High Court of Justice in NI was due to hear three of the 20 cases that were identified as best suited to determine the issues raised. The Commission was granted leave to intervene on grounds relating to the correct interpretation and application of the ECHR and Windsor Framework Article 2.

755 Email correspondence from Chief Commissioner of the Independent Commission for Reconciliation and Information Recovery, Sir Declan Morgan, to NI Human Rights Commission, 14 September 2023.

756 Allison Morris, "I want victims to go to court over the Legacy Bill... that will decide its fate": Ex-Lord Chief Justice', *Belfast Telegraph*, 30 August 2023.

757 House of Commons Hansard, 'NI Troubles (Legacy and Reconciliation) Bill - Chris Heaton-Harris MP', 6 September 2023.

758 'Troubles legacy: Controversial bill facing more legal challenges', *BBC News*, 18 September 2023; Jayne McCormack, 'Tony Harrison: Family of murdered paratrooper launches legal challenge over legacy act', *BBC News*, 27 September 2023.

759 Ibid.

In 2023, the Government of Ireland was also considering whether to take an inter-State case to the ECtHR challenging the 2023 Act.⁷⁶⁰

Recommendations

The Commission recommends that the UK Government repeals the NI Troubles (Legacy and Reconciliation) Act 2023 and introduces revised legislation that is human rights compliant, victim-centred, does not restrict the investigation and prosecution of alleged unlawful killings and serious injuries, is compatible with Articles 2 (right to life) and 3 (freedom from torture) of the ECHR and compliant with the EU Victims' Directive and Windsor Framework Article 2. In the interim, the Independent Commission for Reconciliation and Information Recovery should ensure that the fundamental concerns with the NI Troubles (Legacy and Reconciliation) Act 2023 are addressed to the greatest extent possible within its mandate, including adopting a victim-centred approach and undertaking meaningful engagement.

Legacy inquests and inquiries

In September 2023, the CoE Committee of Ministers “deeply regretted furthermore that, while the cut-off date has been extended to May 2024, the proposal to terminate pending inquests remains [in the now NI Troubles (Legacy and Reconciliation) Act]”.⁷⁶¹ The Committee of Ministers expressed “profound concern that, if effective handover measures are not put in place, this may lead to further delay and distress for individuals”.⁷⁶² The Committee of Ministers:

urged the authorities to consider taking additional practical measures to ensure that as many inquests as possible can conclude before 1 May 2024 and that all of the preparatory work done on these pending cases is not lost in any transfer to the Independent Commission on Reconciliation and Information Recovery.⁷⁶³

⁷⁶⁰ Jonathan McCambridge, ‘Varadkar to decide on legal challenge to Troubles legacy bill within weeks’, *The Independent*, 6 September 2023; Houses of the Oireachtas, ‘Dáil Debate – British-Irish Cooperation – Leo Varadkar’, 27 June 2023.

⁷⁶¹ CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023, at para 10.

⁷⁶² *Ibid.*

⁷⁶³ *Ibid.*

Additionally, the Committee of Ministers reiterated its:

profound concern that over four years have passed since the [UK] Supreme Court judgment finding that there has still not been an Article 2-compliant inquiry into... [Patrick] Finucane's death in 1989 and that there is still no clear indication of how the Secretary of State [for NI] proposes to proceed.⁷⁶⁴

The Committee of Ministers “exhorted the authorities again to provide their full and clear response to the [UK] Supreme Court judgment, including a decision on the measures they intend to take as soon as possible”.⁷⁶⁵

Between 2015 and 2021, echoing the CoE Committee of Ministers' concerns, the UN Human Rights Committee⁷⁶⁶ and the then UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff,⁷⁶⁷ continued to call for prompt, adequate and effective resourcing of legacy inquests and inquiries in NI.⁷⁶⁸ The UN CAT Committee⁷⁶⁹ and UN Human Rights Committee also specifically called for an inquiry into the killing of Patrick Finucane.⁷⁷⁰

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU, including the right of victims “to remember as well as contribute to a changed society”.⁷⁷¹ EU obligations underpinning the rights of victims

764 Ibid, at para 3.

765 Ibid.

766 CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, at para 11(b).

767 A/HRC/34/62/Add.1, 'Report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI', 17 November 2016, at para 39.

768 CM/Del/Dec(2021)1398/H46-38, 'CoE Committee of Ministers Decision: McKerr Group v UK (Application No 28883/95)', 11 March 2021.

769 CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 41(d).

770 CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, at para 8.

771 Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights.

include the EU Victims' Directive⁷⁷² as well as other relevant EU laws which support victims.⁷⁷³

Legacy inquests

In 2019, the Legacy Inquest Unit was established within the Coroner's Service, under the remit of the Lord Chief Justice. The Legacy Inquest Unit was due to complete its work within five years, but this was delayed due to COVID-19 restrictions delaying court business in general.⁷⁷⁴

By June 2023, the Legacy Inquest Unit had completed eight inquests.⁷⁷⁵ In six of these completed inquests, it was found that the deaths had occurred due to "unjustified" or "disproportionate" use of force.⁷⁷⁶ In three of these completed inquests, it was found that investigation obligations had not been adequately fulfilled.⁷⁷⁷ In one of these completed inquests, it was found that that "the [military] operation was not planned and controlled in such a way that it minimised to the greatest extent possible the need for recourse to lethal force".⁷⁷⁸

772 Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

773 Directive 2011/36/EU 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2004/80/EC, 'Council of the EU Directive Relating to the Compensation to Crime Victims', 29 April 2004.

774 Coroners Service for NI, 'Case Management Direction - CMD Legacy No 1' (CSNI, 2021).

775 *In the Matter of an Inquest into the Death of Leo Norney* [2023] NICoroner 11; *In the Matter of an Inquest into the Death of Patrick McElhone* [2021] NICoroner 1; *In the Matter of a Series of Deaths that Occurred in August 1971 at Ballymurphy, West Belfast* [2021] NICoroner 6; Coroners Court for NI, 'In Matter of An Inquest into the Death of Neil John McConville', 11 April 2022; Judicial Communications Office, 'Coroner Finds Soldier Was Not Justified in Shooting Thomas Mills - Summary of Judgment', 13 May 2022; *In the Matter of An Inquest Into the Death of Kathleen Thompson* [2022] NICoroner1; *In the Matter of An Inquest into the Death of Master Stephen Geddis* [2022] NICorner 2; Judicial Communications Office, 'Press Release: Findings into the death of Thomas Friel', 1 December 2021.

776 *In the Matter of an Inquest into the Death of Patrick McElhone* [2021] NICoroner 1; *In the Matter of a Series of Deaths that Occurred in August 1971 at Ballymurphy, West Belfast* [2021] NICoroner 6; Judicial Communications Office, 'Coroner Finds Soldier Was Not Justified in Shooting Thomas Mills - Summary of Judgment', 13 May 2022; *In the Matter of An Inquest Into the Death of Kathleen Thompson* [2022] NICoroner1, at paras 412(i) and 412(j); *In the Matter of An Inquest into the Death of Master Stephen Geddis* [2022] NICorner 2, at para 463(v); *In the Matter of an Inquest into the Death of Leo Norney* [2023] NICoroner 11, at para 315.

777 *In the Matter of a Series of Deaths that Occurred in August 1971 at Ballymurphy, West Belfast* [2021] NICoroner 6; Coroners Court for NI, 'In Matter of An Inquest into the Death of Neil John McConville', 11 April 2022; *In the Matter of An Inquest Into the Death of Kathleen Thompson* [2022] NICoroner1, at paras 412(i) and 412(j).

778 Coroners Court for NI, 'In Matter of An Inquest into the Death of Neil John McConville', 11 April 2022.

In January 2023, the Legacy Inquest Unit commenced the inquest into the deaths of Kevin McKearney, John (Jack) McKearney, Charles Fox and Teresa Fox.⁷⁷⁹

In February 2023, the Legacy Inquest Unit commenced the Springhill Inquest, which is considering the deaths of John Dougal, Patrick Butler, Father Noel Fitzpatrick, David McCafferty and Margaret Gargan.⁷⁸⁰ This is the second inquest into these deaths, which was directed by the Attorney General for NI following an application by the families.⁷⁸¹

In June 2023, the Legacy Inquest Unit concluded its hearings regarding the Coagh Inquest, which consider the deaths of Michael Ryan, Anthony Doris and Lawrence McNally.⁷⁸²

The NI Troubles (Legacy and Reconciliation) Act 2023 imposes a cessation of criminal investigations (other than those referred by the Independent Commission for Reconciliation and Information Recovery to the prosecutor), police complaints, civil proceedings and inquests/inquiries linked to Troubles-related offences by 1 May 2024. The Commission remains gravely concerned that these changes will close off any pursuit of justice outside of the proposed Independent Commission for Reconciliation and Information Recovery.⁷⁸³

779 Judicial Communications Office, 'Press Release: Inquests touching upon the deaths of Keven McKearney, John (Jack) McKearney and Charles and Teresa Fox', 19 January 2023.

780 Judicial Communications Office, 'Press Release: Inquest touching upon the deaths of John Dougal, Patrick Butler, Fr Noel Fitzpatrick, David McCafferty and Margaret Gargan (Collectively Known as The Springhill Inquest)', 17 February 2023.

781 Judicial Communications Office, 'Press Release: Inquest touching upon the deaths of John Dougal, Patrick Butler, Fr Noel Fitzpatrick, David McCafferty and Margaret Gargan (Collectively Known as The Springhill Inquest)', 17 February 2023.

782 Jonathan McCambridge, 'Evidence in Coagh inquest set to end in June', *Irish News*, 5 May 2023.

783 House of Commons NI Affairs Committee, 'Oral Evidence: Addressing the Legacy of NI's Past - The UK Government's New Proposals', 7 June 2022; NI Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from NI Human Rights Commission to Lord Jay, Chair of the European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland, 30 January 2023; NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

Patrick Finucane inquiry

In 2019, the UK Supreme Court unanimously made a declaration that there had not been an inquiry into the death of Patrick Finucane that was compliant with Article 2 of the ECHR.⁷⁸⁴ The UK Supreme Court identified the lack of ability of Sir Desmond de Silva to compel the attendance of witnesses or cross-examine witnesses on the veracity of their evidence as limitations of the De Silva review.⁷⁸⁵ The UK Supreme Court did not order a public inquiry, noting that:

it is for the State to decide, in light of the incapacity of Sir Desmond de Silva’s review and the inquiries which preceded it to meet the procedural requirement of Article 2 [of the ECHR], what form of investigation, if indeed any is now feasible, is required in order to meet that requirement.⁷⁸⁶

In 2020, the UK Government confirmed that it does not intend to hold a public inquiry into Patrick Finucane’s death, but that the possibility of a public inquiry was not “off the table”.⁷⁸⁷ The Police Service of NI has “no new lines of inquiry” and is of the view that it is highly likely that any review of Pat Finucane’s death will need to be conducted independently of the Police Service of NI due to the “accepted position of State involvement in this matter”.⁷⁸⁸ The Police Ombudsman for NI has also stated that Pat Finucane’s death is “not central to any” of its “ongoing investigations”.⁷⁸⁹

In 2022, the High Court of Justice in NI found that the UK Government “remains in breach of Article 2 [of the ECHR] on the basis of the ongoing delay in completing an investigation which satisfies the requirements of that provision”.⁷⁹⁰ The High Court clarified that:

784 *In the Matter of an Application by Geraldine Finucane for Judicial Review (NI)* [2019] UKSC 7, at 4.

785 *Ibid.*

786 *Ibid.*, at para 153.

787 ‘Pat Finucane: No public inquiry into Belfast lawyer’s murder’, *BBC News*, 30 November 2020.

788 Police Service of NI, ‘Press Release: Statement from Chief Constable Simon Byrne following the announcement from the Secretary of State on the murder of Pat Finucane’, 30 November 2020.

789 ‘UK Government to set out timetable for Pat Finucane inquiry decision’, *Irish Legal News*, 9 January 2023.

790 *In the Matter of an Application by Geraldine Finucane for Judicial Review and In the Matter of a Decision of the Secretary of State for NI* [2022] NIKB37, at para 79.

even assuming that the Police Service of NI or Police Ombudsman for NI processes which the Secretary of State [for NI] determined should proceed first which went before, these could not be considered to do so within a timeframe which did anything other than give rise to delay which was a further breach of Article 2 [of the ECHR] requirements of reasonable expedition.⁷⁹¹

In March 2023, the High Court awarded the Finucane family further damages due to the ongoing breach.⁷⁹² However, the Secretary of State for NI, Chris Heaton-Harris MP, has appealed the High Court’s judgment.⁷⁹³ In September 2023, the Court of Appeal in NI heard the case, with the judgment awaited.⁷⁹⁴ The position of the UK Government continued to be “that a final decision on the Finucane case has not yet been taken. All necessary steps will be taken to ensure compliance with both the domestic courts’ and the [ECtHR’s]... decisions in this case”.⁷⁹⁵

Omagh bomb inquiry

In 1998, a bomb in the centre of Omagh injured at least 220 people and killed 29 people, including a woman who was pregnant with twins.⁷⁹⁶

In 2021, after several legal cases,⁷⁹⁷ the High Court of Justice in NI ruled that there are “plausible arguments that there was a real prospect of preventing the Omagh bombing”.⁷⁹⁸ The High Court did not “order a public inquiry to look at arguable grounds of preventability”.⁷⁹⁹ However, the High Court stated that “there is a real advantage in an Article 2 [of the ECHR] compliant investigation

791 Ibid.

792 ‘Pat Finucane: Widow of murdered solicitor to receive £5,000 in additional damages from Secretary of State’, *Newsletter*, 30 March 2023.

793 Email correspondence from NI Office to NI Human Rights Commission, 10 August 2023.

794 Ibid.

795 Ibid.

796 ‘Omagh bombing: Timeline of families’ search for justice’, *BBC News*, 11 August 2023.

797 Ibid.

798 *In the Matter of an Application by Michael Gallagher for Leave to Apply for Judicial Review and in the Matter of a Decision by the Secretary of State for NI Made On 12 September 2013* [2021] NIQB 85, at para 310.

799 Ibid, at para 311.

proceeding in... Ireland simultaneously with one in NI”.⁸⁰⁰ Thus, the High Court ruled that “it is for the government(s) to hold an investigation that is Article 2 [of the ECHR] compliant and which can receive both open and closed materials”.⁸⁰¹

In February 2023, the Secretary of State for NI, Chris Heaton-Harris MP, announced the UK Government’s intention to establish an independent statutory inquiry into the preventability of the Omagh bombing.⁸⁰²

In June 2023, Lord Turnbull was announced as Chair of the Omagh Bombing Inquiry.⁸⁰³

Recommendations

The Commission calls on the Department of Justice and NI Office to fully support the work of the Legacy Inquests Unit, to ensure that all its investigations are compliant with the right to life (Article 2 of the ECHR).

The Commission recommends that the UK Government repeals the NI Troubles (Legacy and Reconciliation) Act 2023 and introduces revised legislation that enables the pursuit of justice in compliance with Article 2 of the ECHR.

The Commission recommends that the UK Government expeditiously initiates a right to life (Article 2 of the ECHR) compliant inquiry into the death of Patrick Finucane, in line with the judgment of the UK Supreme Court.

The Commission recommends that the UK Government ensures that the Omagh Bombing Inquiry is compliant with Articles 2 (right to life) and 3 (freedom from torture) of the ECHR.

800 Ibid, at para 310.

801 Ibid, at para 311.

802 NI Office, ‘Press Release: Omagh Bombing Inquiry – Statement to Parliament by Secretary of State Chris Heaton-Harris’, 2 February 2023.

803 NI Office, ‘Press Release: Secretary of State announces ‘Chair of the Omagh Bombing Inquiry’, 12 June 2023.

The Commission recommends that the UK Government ensures that legislation to replace the NI Troubles (Legacy and Reconciliation) Act 2023 is compliant with the EU Victims' Directive and does not diminish the rights of victims, in breach of Windsor Framework Article 2.

Freedom from Torture, Inhuman and Degrading Treatment



Child, early and forced marriage

In June 2023, the UN CRC Committee specifically stated that it was “concerned that children who are 16 and 17 years of age do not always receive protection as children, and that marriage under 18 years of age remains permissible in... NI”.⁸⁰⁴ The UN CRC Committee recommended that the UK Government and the NI Executive “prohibit all marriages under 18 years of age, without exception, in... NI”.⁸⁰⁵ The UN CRC Committee also recommended that the UK Government and NI Executive:

develop national strategies aimed at eliminating and preventing harmful practices affecting children, including child marriage... and ensure that it includes effective measures for raising public awareness, training relevant professional groups, identifying victims and addressing data gaps and low rates of reporting and prosecution.⁸⁰⁶

In 2019, the UN CEDAW Committee⁸⁰⁷ and UN CAT Committee emphasised the need for the UK Government and the NI Executive to strengthen efforts and effectiveness in combating forced marriage, including preventative and protection measures.⁸⁰⁸

804 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 18.

805 Ibid, at para 18(b).

806 Ibid, at para 35(a).

807 CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 59(b).

808 CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 57(f).

The Marriage (NI) Order 2003 permits the marriage of a child aged 16 or 17 years old with the consent of their parents or legal guardians or the courts.

The Marriage and Civil Partnership (Minimum Age) Act 2022 raised the legal age of marriage and civil partnerships in England and Wales to 18 years old.⁸⁰⁹ Under the 2022 Act, children will not face penalties, but adults who facilitate underage marriages could face imprisonment for up to seven years and a fine. The 2022 Act applies to children taken abroad from England and Wales to marry.⁸¹⁰

In 2022, 36 girls and 9 boys were married in NI.⁸¹¹ This is a decrease compared to 2021, when 39 girls and 15 boys married in NI.⁸¹²

In 2022, the Commission advised the Department of Finance that international human rights standards consider child marriage to be a form of forced marriage.⁸¹³ The EU Victims' Directive recognises forced marriage as a form of gender-based violence and therefore, Windsor Framework Article 2 was engaged.⁸¹⁴ The Department of Finance published its consultation analysis report, revealing near unanimous support among respondents for increasing the minimum age for marriage and civil partnerships to 18 years.⁸¹⁵ The then Minister for Finance, Conor Murphy MLA, signalled his intention to prepare legislation to raise the minimum age for marriage to 18 years old.⁸¹⁶

In 2023, the necessary legislation could not progress without a functioning NI Executive and NI Assembly.⁸¹⁷

809 Marriage and Civil Partnership (Minimum Age) Act 2022.

810 Section 2, Marriage and Civil Partnership (Minimum Age) Act 2022.

811 Email correspondence from NI Statistics and Research Agency to NI Human Rights Commission, 21 June 2023.

812 Ibid.

813 Recital 17, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012; NI Human Rights Commission, 'Submission to Department of Finance Consultation on Marriage Law' (NIHRC, 2022).

814 Ibid.

815 Department of Finance, 'Marriage Law Consultation: Results and Analysis' (DoF, 2022).

816 Department of Finance, 'Marriage Law: Written Ministerial Statement - Conor Murphy MLA - Minister of Finance' (DoF, 2022).

817 Email correspondence from Department of Finance to the NI Human Rights Commission, 3 July 2023.

Recommendations

The Commission recommends that the Department of Finance expeditiously introduces legislation to repeal all legal provisions permitting the marriage of children in NI and increase the minimum age for marriage to 18 years for all children.

The Commission recommends that the NI Executive ensures that cross-Departmental efforts to combat forced marriages are strengthened, including by sensitising parents on the need for full and free consent of their child to marry.

The Commission recommends that the Department of Finance ensure Windsor Framework Article 2, including the EU Victims' Directive, is considered and complied with in the development of legislation to repeal all legal provisions permitting the marriage of children in NI.



Children missing from care

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive “ensure the systematic collection and analysis of data on child protection issues and violence against children to inform the implementation of national strategies on violence and child sexual abuse, including by...creating a national database for missing children”.⁸¹⁸

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU. EU obligations underpinning the rights of child victims include the EU Child Sexual Exploitation Directive;⁸¹⁹ the EU Victims' Directive⁸²⁰

818 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 33(k).

819 Directive 2011/92/EU, 'Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011.

820 Articles 1 and 24, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

and EU Trafficking Directive.⁸²¹ The Commission considers these directives within scope of Windsor Framework Article 2 for several reasons. Firstly, on the basis that these directives underpin ECHR rights; secondly, these are sub-categories of victims and victims' rights are recognised in the relevant chapter of the Belfast (Good Friday) Agreement; and thirdly, on the basis of the equality commitments in the relevant chapter of the Belfast (Good Friday) Agreement. These EU directives require that the best interests of the child are a primary consideration.

Children and young people who are missing from care are particularly vulnerable to exploitation.⁸²² It has also been noted that there is a "particular link" between children going missing from care and child sexual exploitation.⁸²³

In 2022/2023, the Police Service of NI received 5,240 reports of children going missing from care in NI, which involved 1,171 individual children.⁸²⁴ Of these occurrences, 2,923 reports were from residential children's homes, relating to 166 individual children.⁸²⁵

In 2022, the Police Service of NI and the Health and Social Care Board conducted a targeted consultation on a revised protocol on children missing from home and care.⁸²⁶ In its response,⁸²⁷ the Commission recommended that the Protocol should make specific reference to the victims' rights and protections which fall within scope of Article 2 of the Windsor Framework, including the EU Child Sexual Exploitation Directive,⁸²⁸ which places a positive obligation on States to prevent children from becoming victims of child sexual abuse and

821 Articles 2, 9, 13-16, and 18, Directive 2011/36/EU, 'Directive of the European Parliament and of the Council of the EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

822 NI Human Rights Commission, 'Submission to the UN Committee on the Rights of the Child 88th Session on the Sixth Periodic Report of the UK of Great Britain and NI on Compliance with the UN CRC (List of Issues)' (NIHRC, 2020).

823 Safeguarding Board for NI, 'Getting Focused and Staying Focused, Looked After Children, Going Missing, and Child Sexual Exploitation - A Thematic Review' (QUB, 2015), at 25.

824 Email correspondence from Police Service of NI to NI Human Rights Commission, 5 July 2023.

825 Ibid.

826 Email correspondence from Police Service of NI to NI Human Rights Commission, 27 May 2022.

827 Letter from NI Human Rights Commission to Police Service of NI, 29 July 2022.

828 Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012; Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2011/36/EU 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2004/80/EC, 'Council of the EU Directive relating to the Compensation to Crime Victims', 29 April 2004.

to investigate such crimes.⁸²⁹ The Commission expressed concern that the revised Protocol had removed a section on safeguarding child victims of modern slavery and human trafficking which had been included in the Missing Children Protocol 2015⁸³⁰ and advised on relevant provisions of the EU Trafficking Directive.⁸³¹ In terms of risk assessment, the Commission welcomed specific consideration being given to children who are flagged as at risk of child sexual exploitation and also recommended the inclusion of measures for child victims of modern slavery and human trafficking.⁸³²

In July 2023, the Police Service of NI and the Health and Social Care Trusts launched its new interface protocol on children missing from care.⁸³³ As part of its implementation a more consistent approach to multi-agency work is being developed, particularly with regard to repeat missing occurrences.⁸³⁴ Monitoring data that is already shared in local districts each month will additionally be examined at joint operational meetings between the Police Service of NI and the Health and Social Care Trusts in NI.⁸³⁵ These meetings will also provide the opportunity to consider joint arrangements for responding to child sexual exploitation and joint diversionary activities to disrupt repeat missing patterns.⁸³⁶

The new Interface Protocol includes measures for human trafficking, slavery, servitude, and forced or compulsory labour in the case of unaccompanied children seeking asylum.⁸³⁷ The new Interface Protocol also refers to the current NI guidance on working arrangements for the welfare and safeguarding of child victims and potential child victims of human trafficking and modern slavery,

829 Article 23, Directive 2011/93/EU, 'EU Directive of the European Parliament and of the Council of the EU on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011.

830 Health and Social Care Board and Police Service of NI, 'Runaway and Missing from Home and Care: Missing Children Protocol' (HSCB and PSNI, 2015).

831 Letter from NI Human Rights Commission to Police Service of NI, 29 July 2022.

832 Ibid.

833 Police Service of NI and Department of Health, 'Interface Protocol between Health and Social Care Trusts and Police Service of NI: Where a Child is Reported Missing and Other Police Interactions with Residential Children's Homes' (PSNI and DoH, 2023).

834 Email correspondence from Police Service of NI to NI Human Rights Commission, 5 July 2023.

835 Ibid.

836 Ibid.

837 Police Service of NI and Department of Health, 'Interface Protocol between Health and Social Care Trusts and Police Service of NI: Where a Child is Reported Missing and Other Police Interactions with Residential Children's Homes' (PSNI and DoH, 2023).

that is currently under review.⁸³⁸ The Interface Protocol also includes measures related to children at risk of being sexually exploited.⁸³⁹

Recommendations

The Commission recommends that the Department of Health and the Police Service of NI reviews, after 12 months of implementation, the effectiveness of the new Interface Protocol for when a child is reported missing and other police interactions. This analysis should consider steps taken to identify patterns and risks, reduce harm, improve support, and prevent missing occurrences.

Physical punishment of children

In June 2023, the UN CRC Committee, in recalling its previous recommendation, recommended that the UK Government and NI Executive:

- a) explicitly prohibit, as a matter of priority, corporal punishment in all settings, including in the home, throughout the [UK]... and repeal legal defences of ‘reasonable punishment’ in ...NI;
- b) monitor the implementation and impact of legislation prohibiting corporal punishment... with a view to informing measures aimed at promoting attitudinal change concerning corporal punishment in all settings;
- c) strengthen awareness-raising campaigns for parents, teachers and other professionals working with and for children, to promote positive, non-violent and participatory forms of child-rearing.⁸⁴⁰

838 The Health and Social Care Board and The Police Service of NI, ‘NI Guidance on Working Arrangements for the Welfare and Safeguarding of Child Victims and Potential Child Victims of Human Trafficking and Modern Slavery’ (HSC and PSNI, 2018).

839 Police Service of NI and Department of Health, ‘Interface Protocol between Health and Social Care Trusts and Police Service of NI: Where a Child is Reported Missing and Other Police Interactions with Residential Children’s Homes’ (PSNI and DoH, 2023).

840 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 31(a)-31(c).

In 2023, the UN Working Group on the Universal Periodic Review recommended that the UK Government and NI Executive “take further measures to protect children from physical punishment... in accordance with the UN CRC”⁸⁴¹ and “ban corporal punishment of children in all settings, including in the family, to ensure the full protection and freedom from violence for all children, as required by the UN CRC”.⁸⁴²

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU.⁸⁴³ EU obligations underpinning the rights of victims include the EU Victims’ Directive⁸⁴⁴ as well as other relevant EU laws which support victims.⁸⁴⁵ The Commission considers these directives within scope of Windsor Framework Article 2 for several reasons. Firstly, on the basis that these directives underpin ECHR rights; secondly, these are sub-categories of victims and victims’ rights are recognised in the relevant chapter of the Belfast (Good Friday) Agreement; and thirdly, on the basis of the equality commitments in the relevant chapter of the Belfast (Good Friday) Agreement.

As an EU Member State, the UK had primary responsibility for protecting children against violence and the role of EU law was limited to those areas within its competence. While the physical punishment of children did not fall within EU competence prior to 31 December 2020, protections for victims did fall within its scope. The EU Victims’ Directive recognises that the best interests of the child is a primary consideration for child victims, in line with the EU Charter of Fundamental Rights and the UN CRC.⁸⁴⁶

841 A/HRC/52/10, ‘Report of the UN Working Group on the Universal Periodic Review UK of Great Britain and NI’, 9 January 2023, at para 43.222.

842 Ibid, at para 43.239.

843 Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights

844 Directive 2012/29/EU, ‘EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

845 Directive 2011/36/EU ‘Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011; Directive 2011/92/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011; Directive 2004/80/EC, ‘Council of the EU Directive Relating to the Compensation to Crime Victims’, 29 April 2004.

846 Recital 14 and Article 1, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

In addition, the EU Directive recognises that violence within close relationships can result in physical, mental or emotional harm and can cause systematic psychological and physical trauma and therefore may need special protection measures.⁸⁴⁷ A person is considered a victim whether an offender is identified, apprehended, prosecuted or convicted and regardless of familial relationship between them.⁸⁴⁸

The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable punishment of a child. This reflects the situation in England.⁸⁴⁹ However, Scotland, Wales and Ireland have prohibited the physical punishment of children by parents and others caring for them.⁸⁵⁰

In 2021, the then Minister of Justice, Naomi Long MLA, announced her intention to take legislative steps to remove the defence of reasonable chastisement in NI.⁸⁵¹ However, the proposed legislative provision failed to secure majority cross-party support and could not be brought forward.⁸⁵² In 2022, the then Minister of Justice was considering options for the primary legislative programme for the new mandate and intended to revisit the handling of this issue following the reinstatement of the NI Executive and NI Assembly.⁸⁵³ In 2023, the necessary legislative change could not progress without a functioning NI Executive and NI Assembly.

847 Recital 18 and Articles 9 and 23, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

848 Recitals 14, 17-18, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

849 Section 58, Children's Act 2004.

850 Children (Equal Protection from Assault) (Scotland) Act 2019; Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020; Children Act 2011 and Children First Act 2015.

851 NI Assembly Hansard, 'Committee for Justice: Report on the Justice (Sexual Offences and Trafficking Victims) Bill - NIA 165/17-22' (NIA, 2022).

852 Ibid.

853 Email correspondence from the Department of Justice to the NI Human Rights Commission, 22 June 2022.

Recommendations

The Commission recommends that the Department of Justice, working with the NI Executive and NI Assembly, expeditiously repeals the defence of reasonable chastisement of a child and devise and implement a strategy to effectively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the use of physical punishment in child-rearing.

The Commission recommends that, when developing or implementing any laws or policies on the physical punishment of children, the Department of Justice considers the extent to which Article 2 of the Windsor Framework, including the EU Victims' Directive, is engaged and ensures that there is no diminution to the rights and safeguards which fall within its scope.



Rwanda asylum proposals

In 2022, the UN Refugee Agency urged the UK to refrain from transferring people seeking asylum and refugees to Rwanda for asylum processing. It found that “the UK is adopting arrangements that abdicate responsibility to others and thus threaten the international refugee protection regime, which has stood the test of time, and saved millions of lives over the decades”.⁸⁵⁴ In 2022, the UN Refugee Agency published a legal opinion on the proposals that found:

the UK-Rwanda arrangement fails to meet the required standards relating to the legality and appropriateness of bilateral or multilateral transfers of asylum-seekers. This arrangement, which amongst other concerns seeks to shift responsibility and lacks necessary safeguards, is incompatible with the letter and spirit of the... [UN Refugee Convention 1951].⁸⁵⁵

854 UN Refugee Agency, 'Press Release: UN Refugee Agency opposes plan to export asylum', 14 April 2022.

855 UN Refugee Agency, 'Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers Under the UK-Rwanda Arrangement' (UNCHR, 2022).

In 2022, the then Home Secretary, Priti Patel MP, announced a migration and economic development partnership between the UK and Rwanda, proposing to relocate some migrants who have arrived in the UK illegally to Rwanda “to resettle and rebuild their lives”.⁸⁵⁶ A Memorandum of Understanding was signed, with immediate effect, between the UK and Rwanda setting out the terms for the Asylum Partnership Arrangement,⁸⁵⁷ within which Rwanda committed to:

receive asylum seekers from the UK, to consider their claims for asylum, giving effect to their rights under international law through the Rwanda domestic asylum system and arranging for the settlement in Rwanda of those recognised as refugees or otherwise requiring protection.⁸⁵⁸

The Memorandum of Understanding also contained a commitment by the UK and Rwanda to uphold “fundamental human rights and freedoms without discrimination”.⁸⁵⁹ Yet, the Memorandum of Understanding is not binding in international law⁸⁶⁰ and compliance with this arrangement is not “justiciable in any court of law by third-parties or individuals”.⁸⁶¹

Under the Memorandum of Understanding and the Nationality and Borders Act 2022, if an asylum claim in the UK is deemed ‘inadmissible’ it will not be considered in the UK, however it could be considered in Rwanda.

In 2022, the Home Office updated its guidance on inadmissible claims stating that:

856 Home Office, ‘Press Release: UK and Rwanda migration and economic development partnership’, 14 April 2022.

857 Memorandum of Understanding Between the Government of the UK of Great Britain and NI and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement, 13 April 2022.

858 Ibid.

859 Ibid.

860 Ibid, at Article 1.6.

861 Ibid, at Article 2.2.

asylum claims may be declared inadmissible and not substantively considered in the UK, if the claimant was previously present in or had another connection to a safe third country, where they claimed protection, or could reasonably be expected to have done so, provided there is a reasonable prospect of removing them in a reasonable time to a safe third country.⁸⁶²

Where children are involved, applications should be considered in accordance with the duty to safeguard the welfare of the child under the Borders, Citizenship and Immigration Act 2009.⁸⁶³ Unaccompanied children are not suitable for this inadmissibility process, though they may be invited to withdraw their application where certain grounds are fulfilled. However, families with children under 18 years of age may still be removed on inadmissibility grounds.⁸⁶⁴

On 1 June 2022, formal directions were issued to the first group of people to be relocated to Rwanda on 14 June 2022.⁸⁶⁵ However, the initial flight was stopped by an ECtHR interim measure to prevent irreversible harm to an applicant challenging the legality of their deportation.⁸⁶⁶

Legal actions against the policy were also commenced by civil society organisations. In 2022, hearings for the first judicial review application began on behalf of people seeking asylum, supported by the Public and Commercial Services Union, Care4Calais and Detention Action. This action challenged that removing people seeking asylum to Rwanda would put the individuals affected at risk from torture and inhuman treatment.⁸⁶⁷ A second challenge based on the procedural fairness of the proposals was also heard on behalf of Asylum Aid.⁸⁶⁸

862 Home Office, 'Guidance, Inadmissibility: Safe Third Country Cases, Version 7' (HO, 2022).

863 Section 55, Border, Citizenship and Immigration Act 2009.

864 Ibid.

865 Home Office, 'Press Release: First migrants set for Rwanda to be given final notice', 1 June 2022.

866 European Court of Human Rights, 'Press Release: The European Court grants urgent interim measure in case concerning asylum-seeker's imminent removal from the UK to Rwanda', 14 June 2022.

867 Dominic Casciani, 'Rwanda migrant flights plan legally viable, government lawyer say', *BBC News*, 8 September 2022; Rajeev Syal and Diane Taylor, 'UK Ministers ignored evidence Rwanda violated human rights, court told', *The Guardian*, 5 September 2022.

868 Asylum Aid, 'Press Release: Rwanda Policy - Our legal fight to prevent injustice', 9 June 2022.

The High Court of England and Wales, in finding that the policy was consistent with the UN Refugee Convention and the Human Rights Act 1998, held that the arrangements for relocating asylum seekers to Rwanda and to have their asylum claims determined in Rwanda rather than the UK was lawful.⁸⁶⁹ Nonetheless, the decisions for removal were quashed and referred back to the Home Secretary for reconsideration on the basis that the Home Secretary had enforced a blanket policy without considering the individual circumstances of the claimants.⁸⁷⁰ In June 2023, on appeal, the Court of Appeal of England and Wales reversed the High Court of England and Wales' decision that Rwanda was a safe third country. By a majority decision, it concluded that, if people seeking asylum were sent to Rwanda pursuant to the Asylum Partnership Agreement, they "faced real risks of Article 3 [of the ECHR] mistreatment".⁸⁷¹ In reaching this conclusion, the Court of Appeal attached particular importance to the evidence of the UN Human Rights Committee, who were intervenors in this set of proceedings.⁸⁷² In October 2023, the UK Supreme Court heard the UK Government's appeal, with a decision awaited.⁸⁷³

Additionally in 2022, the House of Lords International Agreement Committee found that:

the arrangement will have far-reaching consequences for individuals and their rights, and the Memorandum of Understanding contains specific assurances and protections for those being relocated that both Parties commit to uphold. However, because it is a political agreement only – as opposed to a legally binding treaty – the safeguards included in it are not enforceable. This is unacceptable. Agreements that fundamentally affect individuals' rights should be entered into through a formal treaty, so that the rights of those affected can be fully protected.⁸⁷⁴

869 *AAA and others v Secretary of State for the Home Department* [2022] EWHC 3230.

870 *Ibid.*

871 *AAA v Secretary of State for the Home Department* [2023] EWCA Civ 745, at para 92.

872 *Ibid.*, at para 87.

873 *AAA and Others Secretary of State for the Home Department*, Case 2023/0093.

874 House of Lords International Agreements Committee, 'Memorandum of Understanding Between the UK and Rwanda for the Provision of an Asylum Partnership Arrangement - Seventh Report of Session 2022–2023' (HoL, 2022), at 2.

In January 2023, the UK Government responded to the International Agreement Committee stating that the Memorandum of Understanding was:

negotiated with close care and attention through a series of discussions between the UK and the Government of Rwanda. The commitments within it and the form it took were issues agreed between the two Participants. Whilst not legally binding in international law, the terms of the Memorandum of Understanding – including the monitoring arrangements – provide the assurances we, and Rwanda, need to confirm that the arrangement will be operated in line with international obligations and in a manner which ensures the welfare and safety of those people relocated under it.⁸⁷⁵

The UK Government recognises that Windsor Framework Article 2 applies to “everyone who is subject to [NI]... law”.⁸⁷⁶ The Commission takes the view that the commitment in the Belfast (Good Friday) Agreement 1998 to the civil rights and religious liberties of “everyone in the community” includes asylum seekers and refugees. The Commission considers that all EU law in force in NI on or before 31 December 2020 which underpins ECHR rights falls within scope of the non-diminution commitment in Windsor Framework Article 2. The Commission has identified the EU Procedures Directive,⁸⁷⁷ EU Reception Directive,⁸⁷⁸ EU Qualification Directive⁸⁷⁹ and the Dublin III Regulation as relevant to refugees and asylum seekers.⁸⁸⁰

875 UK Government, ‘Response to the House of Lords International Agreements Committee Report on Its Inquiry: Memorandum of Understanding Between the UK and Rwanda for the Provision of an Asylum Partnership Arrangement’ (UK Gov, 2023), at para 3.

876 NI Office, ‘UK Government Commitment To “No Diminution of Rights, Safeguards and Equality of Opportunity” In NI: What Does It Mean and How Will It Be Implemented?’ (NIO, 2020), at para 8.

877 Directive 2005/85/EC, ‘Council of the EU Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005.

878 Directive 2003/9/EC, ‘Council of the EU Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’ 27 January 2003.

879 Directive 2004/83/EC ‘Council of the EU Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004.

880 Regulation 2013/604/EU, ‘Regulation of the European Parliament and of the Council of the EU Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person’, 26 June 2013.

The EU Charter on Fundamental Rights also continues to have relevance in relation to Windsor Framework Article 2 and Article 18 of the EU Charter protects the right to asylum. In October 2023, the High Court of Justice in NI confirmed that the Belfast (Good Friday) Agreement 1998 was drafted with EU fundamental rights in mind and therefore protects the rights of everyone in the community, including asylum seekers.⁸⁸¹

Recommendations

The Commission recommends that the UK Government repeals the Memorandum of Understanding with Rwanda and ensures all people seeking asylum in the UK are processed in a way that is compliant with international human rights standards and Windsor Framework Article 2. This should take into account the difficult journey and trauma experienced by many prior to arriving in the UK.

Freedom from Slavery

Child sexual exploitation

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

promptly and effectively investigate and intervene in all cases of violence against children, including... sexual exploitation and abuse of children...

strengthen efforts to train professionals working with and for children, including social workers, law enforcement authorities and the judiciary, to identify and effectively respond to cases of violence, including sexual exploitation...

881 *In the Matter of an Application by AA for Judicial Review [2023] NIKB.*

ensure the systematic collection and analysis of data on child protection issues and violence against children to inform the implementation of national strategies on violence and child sexual abuse, including by:

- i) creating a national database for missing children;
- ii) collecting data on cases that have been reported, investigated and prosecuted; and
- iii) ensuring that data on the sexual exploitation and abuse of 16-and-17 year old children is disaggregated as children.⁸⁸²

The UN CRC Committee also recommended that the UK Government and NI Executive ensure that:

all children under 18 years of age, including 16-and-17-year olds, who are victims of offences... including sexual exploitation, sexual abuse material and sexual exploitation in prostitution, are treated as victims, receive adequate protection under the law and have access to remedies.⁸⁸³

In 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive “revise its legislation to shift the burden of proof from the prosecution to the purchaser of sexual services for cases involving minors”.⁸⁸⁴

In Article 2 of the Windsor Framework, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU.⁸⁸⁵ EU obligations underpinning the rights of child victims of sexual exploitation and abuse include the EU Child Sexual

882 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 33(c), 33(i) and 33(k).

883 Ibid, at para 55(a).

884 CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 35(g).

885 Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights.

Exploitation Directive,⁸⁸⁶ as well as other relevant EU laws which support victims.⁸⁸⁷ The Commission considers these directives within scope of Windsor Framework Article 2 for several reasons. Firstly, on the basis that these directives underpin ECHR rights; secondly, these are sub-categories of victims and victims' rights are recognised in the relevant chapter of the Belfast (Good Friday) Agreement; and thirdly, on the basis of the equality commitments in the relevant chapter of the Belfast (Good Friday) Agreement.

The EU Child Sexual Exploitation Directive recognises that the best interests of the child is a primary consideration for child victims, in line with the EU Charter of Fundamental Rights and UN CRC.⁸⁸⁸ It also recognises the need for enhanced protections for victims, including, in recognition of the harm caused by these offences, that assistance should be provided for as long as necessary for the child's physical and psychological recovery, including into adulthood.⁸⁸⁹

In 2020, the Criminal Justice Inspection NI noted concern "that little was known about the perpetrators of child sexual exploitation and the criminal justice system was urged to develop its response in this respect".⁸⁹⁰ The Criminal Justice Inspection NI found that "Public Prosecution Service NI staff instructions specific to child sexual abuse and exploitation were needed".⁸⁹¹ It also found that "where cases did progress to court, support for children was required".⁸⁹² It noted positive steps such as the National Society for the Prevention of Cruelty to Children Young Witness Service and Victim Support NI's pilot Children's Independent Sexual Violence Advocate service. However, the Criminal Justice Inspection NI highlighted that

886 Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011.

887 Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012; Directive 2011/36/EU 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2004/80/EC, 'Council of the EU Directive Relating to the Compensation to Crime Victims', 29 April 2004.

888 Recital 6, Directive 2011/93/EU, 'EU Directive of the European Parliament and of the Council of the EU on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011.

889 Recital 31, Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011.

890 Criminal Justice Inspection NI, 'Child Sexual Exploitation in NI: An Inspection of the Criminal Justice System's Response' (CJINI, 2020), at 80.

891 Ibid, at 8.

892 Ibid.

consideration should be given to the Gillen Review recommendations regarding law and procedures in serious sexual offences in NI.⁸⁹³ The Barnahus (children’s house) model was proposed as the preferred approach.⁸⁹⁴

The Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022 aims to implement certain Gillen Review Recommendations,⁸⁹⁵ and to improve services for victims of trafficking and exploitation. It removes potentially harmful terms such as ‘child prostitution’ and ‘child pornography’ from the Sexual Offences (NI) Order 2008 and extends the scope of offences to include the abuse of positions of trust where the perpetrator “coaches, teaches, trains, supervises or instructs” the victim in a sport or religion.⁸⁹⁶ In 2021, the Commission advised that provisions of the then Bill engaged Windsor Framework Article 2, noting the need to monitor relevant EU Directives and related CJEU jurisprudence to ensure there is no diminution of rights.⁸⁹⁷

While the 2022 Act makes welcome improvements to the law, the Department of Justice’s proposal to reverse the burden of proof for the defence of ‘reasonable belief’ in sexual offences against children has been delayed.⁸⁹⁸ In 2022, the NI Assembly Committee for Justice noted concerns raised by the Commission and others that the Department of Justice had not proceeded with reversing the burden of proof.⁸⁹⁹ The Department of Justice advised that it could not ignore the potential implications of such a change that were raised by the Bar of NI, the Public Prosecution Service NI, and the Law Society of NI.⁹⁰⁰ The Department of Justice reiterated its commitment to exploring the matter through engagement with key stakeholders to ensure any future legislative changes are “workable and appropriate within the current legal system”.⁹⁰¹ In 2023, progress was hindered by the suspension of the NI Executive and NI Assembly.

893 Ibid.

894 Ibid.

895 Sir John Gillen, ‘Report into the Law and Procedures in Serious Sexual Offences in NI: Recommendations’ (DoJ, 2019).

896 Part 1, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.

897 NI Human Rights Commission, ‘Response to Committee for Justice Call for Evidence on the Justice (Sexual Offences and Trafficking Victims) Bill’ (NIHRC, 2021).

898 NI Assembly Hansard, ‘Written Answers: Child Sexual Exploitation - Minister of Justice, Naomi Long MLA - AQW 27342/17-22’, 22 December 2021.

899 NI Assembly Committee for Justice, ‘Report on the Justice (Sexual Offences and Trafficking Victims) Bill’ (NIA, 2022), at paras 112-113.

900 NI Assembly Committee for Justice, ‘Report on the Justice (Sexual Offences and Trafficking Victims) Bill’ (NIA, 2022), at para 114.

901 Ibid, at para 115.

In 2023, the Department of Justice consulted on its three-year strategy on modern slavery and human trafficking.⁹⁰² In its response, the Commission highlighted the links between modern slavery, human trafficking and child sexual exploitation.⁹⁰³ The Commission welcomed the inclusion of more child-specific measures within the new strategy and reiterated the importance of ensuring practitioners are aware of and able to identify where the modern slavery and human trafficking of children might be happening in all its forms in NI.⁹⁰⁴ This includes highlighting the links with child sexual exploitation, missing children, child criminal exploitation, online exploitation, forced marriage, forced labour and domestic servitude.⁹⁰⁵ In order to ensure compliance with Windsor Framework Article 2, consideration should be given to the EU Child Sexual Exploitation Directive⁹⁰⁶ and the EU Trafficking Directive.⁹⁰⁷

In July 2023, the Police Service of NI and the Health and Social Care Trusts launched a new Interface Protocol on children missing from care that includes specific measures targeted at children at risk of sexual exploitation.⁹⁰⁸

Online child sexual exploitation

In 2022/2023, there were 328 online sexual offences in NI, of which 150 involved sexual communication with a child.⁹⁰⁹

In 2022, the Online Safety Bill was introduced to the UK Parliament. This Bill includes provisions aimed at tackling sexual exploitation of children online and extends to NI.⁹¹⁰ In October 2023, the Online Safety Act 2023 received Royal Assent.

902 Department of Justice, 'NI Draft Modern Slavery and Human Trafficking Strategy' (DoJ, 2022).

903 NI Human Rights Commission, 'Submission to Department of Justice Consultation on the Draft Modern Slavery and Human Trafficking Strategy' (NIHRC, 2023).

904 Ibid.

905 Ibid.

906 Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011.

907 Directive 2011/36/EU 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

908 Police Service of NI and Department of Health, 'Interface Protocol Between Health and Social Care Trusts and Police Service of NI: Where a Child is Reported Missing and Other Police Interactions with Residential Children's Homes' (PSNI and DoH, 2023), at para 14.

909 Police Service of NI, 'Police Recorded Crime in NI: Update to 31 March 2023' (PSNI and NISRA, 2023), at Table 8.

910 Department for Digital, Culture, Media and Sport and Home Office, 'Consultation Outcome: Online Harms White Paper' (DDCM and HO, 2020).

Recommendations

The Commission recommends that the Department of Justice urgently introduces legislation to reverse the burden of proof in cases concerning children as victims of sexual offences.

The Commission recommends that, in line with best international practice and the requirements of the EU Trafficking Directive, the Department of Justice ensures specialised training is provided for relevant professionals and measures reflective of the Barnahus Model are adopted throughout the criminal justice system.

The Commission advises that the requirements of the EU Child Sexual Exploitation Directive should be considered as falling within scope of Protocol Article 2 of the Windsor Framework.

The Commission recommends that the Department of Justice, the Home Office and other relevant departments and bodies, ensure that policy and legislation on child sexual exploitation and on modern slavery and human trafficking is developed in compliance with Windsor Framework Article 2 including the requirements of the EU Child Sexual Exploitation Directive, EU Victims' Directive, and the EU Trafficking Directive which provide that the child's best interests be a primary consideration in their implementation.

Right to Liberty and Security of the Person



Remand of children

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

repeal the practice of remanding children into police custody, ensure that no child is held in police custody overnight, and avoid the use, and reduce the maximum duration, of pretrial detention; and

address the overrepresentation of children belonging to minority groups in detention and develop measures, in consultation with affected children and their families, to prevent racial profiling by law enforcement authorities.⁹¹¹

In 2015, the UN Human Rights Committee recommended that the UK Government and NI Executive ensures “that the detention on remand of child defendants is used only as a measure of last resort and for the shortest possible period of time and that suitable bail packages are available to child defendants in NI”.⁹¹²

Statistics

In 2022/2023, there were 224 admissions to the Juvenile Justice Centre, an increase from 207 admissions in 2021/2022.⁹¹³ Of these, 176 (78.6 per cent) were related to the Police and Criminal Evidence Order 1989 and 45 (20.1 per cent) related to remand.⁹¹⁴ Of the 176 Police and Criminal Evidence Order admissions, 76 children were subsequently remanded by court or sentenced to custody.⁹¹⁵ In 2022/2023, the total average daily population in the Juvenile Justice Centre was 11 children.⁹¹⁶ Of these, nine were children on remand.⁹¹⁷ Of the 224 admissions to the Juvenile Justice Centre, 113 were children with experience of care (50.5 per cent).⁹¹⁸

Legislative proposals

In 2017, the Department of Justice committed to bringing forward legislation relating to the use of remand and of bail, including the possible introduction of a ‘real prospects’ test and the potential removal of the Woodlands Juvenile Justice Centre as a ‘place of safety’.⁹¹⁹

911 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 54(e) and 54(g).

912 CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 23(c).

913 NI Statistics and Research Agency, ‘NI Youth Justice Agency Annual Workload Statistics 2022/2023’ (NISRA, 2023), at Table 10.

914 Ibid, at Table 11.

915 Ibid, at Table 30.

916 Ibid, at Table 28.

917 Ibid, at Table 28.

918 Ibid, at Table 23.

919 Declan McGeown, ‘Scoping Study Stakeholder Update’ (DoJ, 2017).

These proposals were not committed to within the New Decade, New Approach Agreement 2020.⁹²⁰ However, the former Minister of Justice, Naomi Long MLA, later reaffirmed the Department of Justice’s intentions to “strengthen the right to bail for children, and introduce specific conditions which must be met before a child can be remanded into custody, with a view to ensuring that custody is used as a last resort, in line with our international obligations”.⁹²¹ In 2023, the necessary legislative change could not progress without a functioning NI Executive and NI Assembly.

In January 2023, the Criminal Justice Inspection NI reported that bail laws and processes in NI were often inadequate, and that limited progress has been made in developing viable alternatives to remand. Inspectors highlighted the proposed legislative provisions for children and recommended the introduction of a broader Bail Act that would provide necessary reforms to bail for all defendants.⁹²²

Regional Care and Justice Programme

In 2018, the Regional Care and Justice Programme was established to oversee the implementation of recommendations from the review of regional facilities for children and young people in NI.⁹²³ It commits the Department of Health and Department of Justice to work collaboratively in supporting children who require time within a secure environment and following their reintegration back into the community.

In 2023, the Regional Care and Justice Programme was restructured into two main workstreams.⁹²⁴ First, the prevention workstream considers community-based supports aimed at preventing admission, or re-admission, to a secure facility.⁹²⁵ Second, the harmonisation workstream considers how to align standards of practice and share services and facilities across Woodlands Juvenile Justice Centre and Lakewood Secure Care Centre.⁹²⁶ The Programme Board has

920 NI Office, ‘New Decade, New Approach’ (NIO, 2020).

921 NI Assembly Hansard, ‘Written Question – Custody of Children – Naomi Long MLA – AQO 992/17-22’, 2 November 2020.

922 Criminal Justice Inspection NI, ‘The Operation of Bail and Remand in NI’ (CJINI, 2023), at 18.

923 Department of Health, ‘Review of Regional Facilities for Children and Young People’ (DoH, 2018).

924 Department of Justice and Department of Health, ‘The Link: The Regional Care and Justice Campus Programme Newsletter – Summer 2023, Issue 7’ (DoJ and DoH, 2023).

925 Ibid.

926 Ibid.

agreed an action plan for reducing unnecessary admissions to the Woodlands Juvenile Justice Centre. It identifies actions across three areas – evidence collection and analysis, preventing arrests, and accommodation.⁹²⁷

Recommendations

The Commission recommends that the Department of Justice promptly introduces, implements and monitors legislation for the purposes of ensuring that a child should only be held in pre-trial detention as a measure of last resort and that suitable accommodation will be provided within a reasonable time if released on bail.

The Commission recommends that the Department of Justice and Department of Health ensure that a range of non-custodial accommodation arrangements is available for children awaiting trial who cannot return to their homes.

Right to Fair Trial

Age of criminal responsibility

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

- a) raise the minimum age of criminal responsibility to at least 14 years of age;
- b) take legislative and other measures to ensure that:
 - i) children are not prosecuted as adult offenders, without exception;

⁹²⁷ Ibid.

- ii) the child justice system is applied to all children who were below the age of 18 years when the offence was committed;
 - iii) rehabilitation periods are determined based on the date the offence was committed, and not the date of conviction;
 - iv) detention is used as a measure of last resort and for the shortest possible period of time and is reviewed on a regular basis with a view to its withdrawal; and
 - v) life imprisonment is abolished for children and young people who committed offences when they were below the age of 18;
- c) develop early intervention for children and actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences, and, wherever possible, the use of non-custodial measures for children, such as probation or community service.⁹²⁸

The age of criminal responsibility remains at ten years old in NI, as in England and Wales. However, the Age of Criminal Responsibility (Scotland) Act 2019 raised the age of criminal responsibility in Scotland to 12 years of age.

In 2011, a Department of Justice review concluded that “the minimum age should be increased to 12 [years old] forthwith and, following a period of review and preparation, perhaps to 14 [years old], which has some historical and current significance for criminal law in NI”.⁹²⁹

928 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at paras 54(a)-54(c).

929 Department of Justice, 'A Review of the Youth Justice System in NI' (DoJ, 2011), at 107.

In 2022, the Department of Justice published a new strategic framework for youth justice, which indicates that increasing the minimum age of criminal responsibility is a key priority.⁹³⁰ Consequently, the Department of Justice launched a public consultation to seek views on raising the age of criminal responsibility to 14 years old.⁹³¹ In June 2023, the Department of Justice published its analysis of consultation responses.⁹³² A total of 455 responses were received, 109 of these were from children and young people aged 18 years old and under. Overall, 83.7 per cent of respondents supported increasing the minimum age of criminal responsibility beyond ten years.⁹³³ In 2023, the necessary legislative change could not progress without a functioning NI Executive and NI Assembly.

Recommendations

The Commission recommends the Department of Justice promptly introduces legislation to the NI Assembly, which raises the minimum age of criminal responsibility to at least 14 years old.



Compensation for a miscarriage of justice

In 2015, the UN Human Rights Committee recommended that the UK Government should “review the new test for miscarriage of justice with a view to ensuring its compatibility with Article 14(6) of the UN ICCPR”.⁹³⁴

Following a UK Supreme Court judgment,⁹³⁵ the Anti-social Behaviour, Crime and Policing Act 2014 introduced a new test for compensation for a miscarriage of justice. This new test is satisfied when a new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence.⁹³⁶

930 Department of Justice, 'Strategic Framework for Youth Justice 2022-2027' (DoJ, 2022), at 47.

931 Department of Justice, 'Public Consultation on Increasing the Minimum Age of Criminal Responsibility in NI from 10 Years to 14 Years' (DoJ, 2022).

932 Department of Justice, 'Increasing the Minimum Age of Criminal Responsibility in NI from 10 Years to 14 Years: Summary of Consultation Responses' (DoJ, 2023).

933 Ibid, at 25.

934 CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, at para 22(b).

935 *R (On the Application of Adams) (FC) v Secretary of State for Justice* [2011] UKSC 18; *Ryan's (Veronica) Application* [2021] NICA 42, at para 31.

936 The Anti-social Behaviour, Crime and Policing Act 2014 inserted a new section 133(1ZA) into the Criminal Justice Act 1988.

Where this has been established, an applicant who has been wrongfully convicted and punished as a result of this miscarriage of justice can obtain compensation from the Secretary of State of NI where that conviction has been pardoned or reversed.⁹³⁷ In England and Wales, this test applies to all offences. In NI, it applies only to applications for compensation involving protected information on the grounds of national security.⁹³⁸ In this case, the Secretary of State of NI will make the determination of a right to compensation rather than the Department of Justice. Therefore, the amendment creates different tests in respect of those whose convictions involved protected information depending on whether the protected information could be disclosed, or an adequate summary provided.⁹³⁹

In 2019, by a majority of five-to-two, the UK Supreme Court dismissed the application that section 133 of the Criminal Justice Act 1988 violates the ECHR and declined to make a declaration of incompatibility.⁹⁴⁰ An application was subsequently lodged with the ECtHR arguing that this provision violates Article 6(2) of the ECHR.⁹⁴¹ In February 2023, the case was allocated to the Grand Chamber of the ECtHR. The question before the ECtHR is whether the application of section 133(1ZA) of the Criminal Justice Act 1988 violates Article 6(2) of the ECHR.⁹⁴² In July 2023, the ECtHR heard the case, which included a third-party intervention by the Commission. The judgment is awaited.

Recommendations

The Commission calls on the Ministry of Justice and Home Office to review the test for a miscarriage of justice to ensure it is compatible with Article 14(6) of the UN ICCPR and Article 6(2) of the ECHR.

937 Section 133(1ZA), Criminal Justice Act 1998.

938 Section 133(6H), Criminal Justice Act 1998.

939 *Ryan's (Veronica) Application* [2021] NICA 42, at para 33.

940 *R (On the Application of Hallam) v Secretary of State for Justice* [2019] UKSC 2.

941 *Nealon v UK and Hallam v UK*, Application Nos 32483/19 and 35049/19, pending.

942 European Court of Human Rights, 'Press Release: Grand Chamber to examine case concerning refusal of compensation following unsafe convictions', 3 March 2023.

Right to Private and Family Life

Access to financial support for unmarried couples

In 2018, the UK Supreme Court ruled that the requirement that couples are married in order to access Widowed Parent's Allowance violated the right to private and family life (Article 8 of the ECHR) and freedom from discrimination (Article 14 of the ECHR).⁹⁴³

In February 2023, after several delays,⁹⁴⁴ the Bereavement Benefits (Remedial) Order 2023 came into force. This provides for remedial payments for unmarried couples to be made back to 30 August 2018. Where a claimant's late partner died before this date, the Remedial Order provides for a part payment of the higher rate of Bereavement Support Payment, if the death was after 5 April 2017, provided that the claim is made by 8 February 2024. Under the Remedial Order, claimants are also eligible for Widowed Parent's Allowance, where their late partner died before 6 April 2017, and they continue to meet the entitlement conditions on 30 August 2018.⁹⁴⁵ In its advice during the legislative passage of the Remedial Order, the Commission recommended that remedial payments should be extended to those who do not have children and to make ex gratia payments to fully recompense those bereaved back to February 2016, when the High Court of Justice in NI first considered this issue.⁹⁴⁶ This was also supported by the House of Commons and House of Lords Joint Committee on Human Rights.⁹⁴⁷ This recommendation is not reflected within the Remedial Order. Consequently, the Remedial Order does not provide bereavement support on equal terms to non-married couples without dependent children.

943 *In the Matter of an Application by Siobhan McLaughlin for Judicial Review (NI)* [2018] UKSC 48.

944 House of Commons Work and Pensions Committee, 'Bereavement Support Payment - First Report of Session 2019-20' (WPC, 2019); Draft Bereavement Benefits (Remedial) Order 2021.

945 Department for Work and Pensions, 'Explanatory Memorandum to The Bereavement Benefits (Remedial) Order 2022' (DWP, 2022), at para 7.13.

946 NI Human Rights Commission, 'Submission to Joint Committee for Human Rights on the Proposal for a draft Bereavement Benefits (Remedial) Order 2021' (NIHRC, 2021).

947 House of Commons and House of Lords Joint Committee for Human Rights, 'Proposal for a Draft Bereavement Benefits Remedial Order 2021: Discrimination against Cohabiting Partners' (JCHR, 2021).

Commission's case

In 2018, the Commission issued proceedings on behalf of an individual who was denied access to her late partner's pension by the Ministry of Defence, on the grounds that they were not married. The Commission argued that there was no objective and justifiable reason for treating the individual differently to a married woman in her circumstances and that the failure to make provision for her, and others like her, violates the right to private and family life (Article 8 of the ECHR), the right to peaceful enjoyment of possessions (Article 1 of Protocol No 1 to the ECHR) and freedom from discrimination (Article 14 of the ECHR). In 2021, the High Court of Justice in NI dismissed the respondent's application to have the claim struck out.⁹⁴⁸ An appeal was then lodged by the Ministry of Defence in the High Court.

In 2022, the High Court allowed the respondent's appeal and held that taking the case via a private action instead of a public law judicial review was an abuse of process.⁹⁴⁹ In February 2023, a further appeal by the Commission was dismissed by the Court of Appeal in NI. In October 2023, the Commission continued to pursue the case via judicial review. The case is ongoing.

Recommendations

The Commission recommends that the Department for Work and Pensions ensures that Bereavement Benefits (Remedial) Order is fully retrospective to February 2016 for the families who made claims based on the High Court of Justice in NI's judgment.

The Commission recommends that the Department for Work and Pensions widens the criteria for social security benefits and pensions to allow couples in long term, cohabiting relationships access to these benefits.

⁹⁴⁸ *Norma Mitchell v Defence Council and Secretary of State for Defence* [2021] NIMaster 4.

⁹⁴⁹ *Norma Mitchell v Defence Council and Secretary of State for Defence* [2022] NIQB 34.

Biometric data

In 2020, the ECtHR found that the policy of indefinite retention was a disproportionate interference with the applicant's rights, in breach of Article 8 of the ECHR.⁹⁵⁰ The ECtHR stated that:

the indiscriminate nature of the powers of retention of the DNA profile, fingerprints and photograph of the applicant as person convicted of an offence, even if spent, without reference to the seriousness of the offence or the need for indefinite retention and in the absence of any real possibility of review, failed to strike a fair balance between the competing public and private interests... Accordingly, the... [UK] has overstepped the acceptable margin of appreciation.⁹⁵¹

In 2022, the CoE Committee of Ministers met to discuss the UK Government's compliance with *Gaughran v UK* (2020) with a particular focus on biometric data retention in NI.⁹⁵² The Committee of Ministers "noted with profound concern" that an ECHR-compliant "framework for retention of biometric data with applicable safeguards... for those arrested but not convicted" is not yet implemented in NI.⁹⁵³ A broader reform of the legislative framework governing the retention of biometric data and photographs for convicted and non-convicted persons is being prepared, along with safeguards, in NI. However, the Committee of Ministers urged "swift progress and rapid adoption" in line with *Gaughran* and *S and Marper v UK* (2008),⁹⁵⁴ including in relation to retention of biometric data related to legacy investigations.⁹⁵⁵ In October 2023, the UK Government was due to provide a detailed action plan to the Committee of Ministers.⁹⁵⁶

950 *Gaughran v UK* (2020) ECHR 144, at 96.

951 Ibid.

952 CoE, 'Committee of Ministers, '1451st (Human Rights) Meeting of the Ministers' Deputies', 6-8 December 2022.

953 CoE, 'Committee of Ministers Supervision of the Execution of the European Court's Judgments H46-44 *Gaughran Group v UK* (Application No 45245/15) 1451st Meeting', 6-8 December 2022.

954 *S and Marper v United Kingdom* (2008) ECHR 1581

955 CoE, 'Committee of Ministers Supervision of the Execution of the European Court's Judgments H46-44 *Gaughran Group v UK* (Application No 45245/15) 1451st Meeting', 6-8 December 2022.

956 Ibid.

As of 5 November 2021, approximately 207,189 individuals' fingerprints and 199,537 DNA profiles were held by the Police Service of NI.⁹⁵⁷

The current law on DNA and fingerprint retention in NI is the Police and Criminal Evidence (NI) Order 1989. In 2008, the ECtHR found that the provisions relating to DNA retention in the Police and Criminal Evidence (NI) Order were in violation of the Article 8 of the ECHR.⁹⁵⁸ The Criminal Justice Act (NI) 2013 was enacted to rectify this violation. However, the sections in relation to DNA retention were not commenced, pending political agreement on how these sections would affect legacy investigations.

In 2019, the Commission settled a legal challenge against the Police Service of NI on the basis that it would produce a formal policy on biometric data retention, which would expressly consider Article 8 of the ECHR and provide clear guidance to the public as to how they can apply for their biometric data to be destroyed.⁹⁵⁹

In 2020, with a view to addressing the ECtHR's ruling in *Gaughran*, the Department of Justice consulted on proposals to amend the legislation governing the retention of DNA and fingerprints in NI.⁹⁶⁰ Revised proposals from the Department of Justice following the consultation were considered by the NI Assembly Committee for Justice.⁹⁶¹

In 2021, the then Minister of Justice, Naomi Long MLA, had planned to address the issue of retention of biometric data through legislation as part of a proposed Justice (Miscellaneous) Provisions Bill. However, the intended legislation progressed in a pared-back form as the then Justice (Sexual Offences and Trafficking Victims) Bill, following approval of the NI Executive. In 2022, the Justice (Sexual Offences and Trafficking Victims) Act 2022 received Royal Assent. The 2022 Act does not include provisions on biometric data retention.

957 Letter from the Chief Constable of the Police Service of NI, Simon Byrne QPM, to the NI Human Rights Commission, 5 November 2021.

958 *S and Marper v UK* (2008) ECHR 1581.

959 NI Human Rights Commission, 'Press Release: Human Rights Commission secures settlement in DNA fingerprint retention case', 9 January 2019.

960 Department of Justice, 'Consultation on Proposals to Amend the Legislation Governing the Retention of DNA and Fingerprints in NI' (DoJ, 2020), at 96.

961 NI Assembly Hansard, 'Committee for Justice: Proposals to Amend Legislation Governing the Retention of DNA and Fingerprints - Department of Justice', 15 October 2020.

Given the absence of agreement and a legislative framework in NI, legislation was introduced which extends the permitted retention of conflict related material from October 2020 until October 2022.⁹⁶² The Police Service of NI also confirmed that, in light of biometric provision not being included in the Justice (Sexual Offences and Trafficking Victims) Act 2022, that interim measures would be implemented. This includes the reinstatement of the Biometric Ratification Committee to determine all applications for deletion in line with the Police and Criminal Evidence (NI) Order 1989.⁹⁶³ However, the Commission remains concerned that biometric data retention measures in place do not sufficiently meet the obligations safeguards set out in the *Gaughran* judgment.

Recommendations

The Commission recommends that the Department of Justice commences the DNA retention sections of the Criminal Justice Act (NI) 2013 without further delay, ensuring that its implementation complies with *Gaughran v UK* (2020).

The Commission recommends that the Police Service of NI ensures its policy on biometric data retention is fully human rights compliant, effectively implemented and expeditiously published in accessible formats.

Rehabilitation of offenders

In 2003, the UN Sub-Commission on the Promotion and Protection of Human Rights, in a resolution concerning discrimination against convicted persons who have served their sentence urged States “to examine their treatment of convicted persons after they have served their punishment and to cease any official or unofficial practices of discrimination”.⁹⁶⁴

962 Protection of Freedoms Act 2012 (Destruction, Retention and Use of Biometric Data) (Transitional, Transitory and Saving Provisions) (Amendment) Order 2020.

963 Police Service of NI, ‘Service Instruction SI9999 on Biometric Retention’ (PSNI, 2022).

964 E/CN.4/RES/2004/2, ‘Sub-Commission on Human Rights Resolution on Discrimination Against Convicted Persons Who Have Serviced Their Sentence’, 13 August 2003.

In 2021, the NI Department of Justice consulted on reforming rehabilitation periods in NI, seeking views on reducing the length of time that it will take for some convictions to become spent and allowing more sentences to be included in the rehabilitation of offenders scheme in NI.⁹⁶⁵ In its consultation response, the Commission supported the proposals to reform legislation governing the rehabilitation of offenders in NI.⁹⁶⁶ The Commission further recommended that the Department of Justice's approach to a two-part rehabilitation is examined further, taking account of rehabilitation experiences in Scotland and Wales. The Commission also recommended that the Department of Justice considers a review mechanism to comply with Article 8 of the ECHR and that consideration is given to conflict-related convictions that pre-date the Belfast (Good Friday) Agreement 1998. In 2023, legislative progress was delayed by the suspension of the NI Executive and NI Assembly.

Commission's case

In 2020, the Commission initiated legal action against the Department of Justice to challenge the legality of Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978. In 2022, the High Court of Justice in NI declared Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978 was incompatible with the applicant's Article 8 of the ECHR rights by reason of a failure to provide a mechanism by which the applicant could apply to have their criminal convictions considered spent irrespective of the passage of time and their personal circumstances.⁹⁶⁷ However, the High Court declined to make an award of damages concluding that damages were not necessary to afford just satisfaction to the applicant.⁹⁶⁸ In May 2023, after an appeal from the Department of Justice, the Court of Appeal in NI reversed the decision of the High Court and held that Article 6(1) of the 1978 Order is compatible with Article 8 of the ECHR. Consequently, the Court of Appeal agreed with the High Court in not awarding damages to the applicant.⁹⁶⁹

965 Department of Justice, 'Consultation On Proposals To Reform Rehabilitation Periods in NI' (DoJ, 2021).

966 NI Human Rights Commission, 'Submission to Rehabilitation of Offenders Reform Consultation' (NIHRC, 2021).

967 *In the Matter of an Application by JR123 for Judicial Review* [2022] NIQB 42.

968 *Ibid.*

969 *Department of Justice and JR123* [2023] NICA 30.

In July 2023, the Commission applied to the UK Supreme Court for leave to appeal, with a decision awaited.

Recommendations

The Commission recommends that the Department of Justice amends the Rehabilitation of Offenders (NI) Order 1978 to enable an offender to be rehabilitated if their circumstances satisfy the criteria for compliance with Article 8 of the ECHR. This includes ensuring an effective review mechanism is operational.

Freedom of Religion and Belief, Expression, Association and Right to Participate in Public and Political Life

Blasphemy

In 2008, the UN Human Rights Committee welcomed the abolition of the common law offence of blasphemy in England and Wales⁹⁷⁰ as a positive measure to ensure compliance with Article 19 of the UN ICCPR on the right to freedom of expression and opinion.⁹⁷¹ A similar approach has been followed in Ireland and Scotland.⁹⁷²

The common law offences of blasphemy and blasphemous libel remain on the statute books in NI and, whilst a prosecution has not occurred since 1855, an individual may be subject in law to prosecution for committing either of these offences.⁹⁷³ In 2021, the then Minister of Justice, Naomi Long MLA, stated that regarding these offences she was “committed to freedom of and from religion and am fully supportive of removing such archaic and unused offences from the law”.⁹⁷⁴ In 2022, the then Minister of Justice reiterated her

970 Criminal Justice and Immigration Act 2008.

971 CCPR/C/GBR/CO/6, 'UN Human Rights Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 30 July 2008, at para 4.

972 Thirty-seventh Amendment of the Constitution of Ireland (Repeal of Offence of Publication or Utterance of Blasphemous Matter) Act 2018; Hate Crime and Public Order (Scotland) Act 2021.

973 BJAC Valentine, 'Booklet of Criminal Offences in NI' (LSNI, 2016).

974 NI Assembly Hansard, 'Written Answer - Blasphemy - Naomi Long MLA - AQW 14245/17-22', 17 February 2021.

support for introducing legislation to that effect. In 2023, the removal of blasphemy offences could not progress without a functioning NI Executive and a NI Assembly.

Recommendations

The Commission recommends that the NI Executive introduces legislation to the NI Assembly to abolish the common law offence of blasphemy and blasphemous libel to ensure compatibility with the ECHR and Article 19 of the UN ICCPR.

Right to An Adequate Standard of Living and To Social Security

Cost of living

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

develop or strengthen existing policies, with clear targets, measurable indicators and robust monitoring and accountability mechanisms, to end child poverty and ensure that all children have an adequate standard of living, including by increasing social benefits to reflect the rising cost of living.⁹⁷⁵

In 2019, the former UN Special Rapporteur on Extreme Poverty, Professor Philip Alston, warned that “in NI, the suspension of the devolved coalition government forecloses the possibility of any major efforts to tackle poverty and results in an accountability vacuum”.⁹⁷⁶

In 2016, the UN ICESCR Committee, recommended that an anti-poverty strategy was adopted in NI.⁹⁷⁷

975 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 22 June 2023, at para 46(a).

976 A/HRC/41/39/Add.1, ‘Report of the UN Special Rapporteur on Extreme Poverty and Human Rights: Visit to the UK of Great Britain and NI’, 23 April 2019, at para 87.

977 E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016.

Anti-poverty Strategy

In 2015, the High Court of Justice in NI ruled that the NI Executive had failed to adopt an identifiable strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need in furtherance of its obligation to do so under section 28E of the NI Act 1998.⁹⁷⁸

In 2020, the New Decade, New Approach Agreement renewed the commitment to developing an anti-poverty strategy for NI.⁹⁷⁹ In 2021, an Expert Advisory Panel for the Anti-poverty Strategy published a report setting out key recommendations about the themes and key actions the strategy should include.⁹⁸⁰ In 2021/2022, work was undertaken by a Co-Design Group for the Anti-poverty Strategy to guide the drafting of the strategy. In 2022, an updated report by the Co-Design Group was published for the Department for Communities to consider.⁹⁸¹ In 2023, a draft anti-poverty strategy was ready for ministerial consideration, with a public consultation to follow.⁹⁸² However, this could not progress in the absence of a functioning NI Executive.⁹⁸³

In June 2023, members of the Co-Design Group expressed concerns at the Department of Education's confirmation that it is not intending to provide the Co-Design Group with an opportunity to consider the draft anti-poverty strategy, in advance of a public consultation.⁹⁸⁴

Rising cost of living

In 2021/2022, 300,000 of people (16 per cent) were in relative poverty and 249,000 people (13 per cent) were in absolute poverty in NI.⁹⁸⁵

978 *Brian Gormally's Application* [2015] NIQB 59.

979 NI Office, 'New Decade, New Approach' (NIO, 2020), at 9

980 Anti-Poverty Strategy Expert Advisory Panel, 'Recommendations for an Anti-poverty Strategy' (DfC, 2021).

981 Anti-Poverty Strategy Co-Design Group, 'A Position Paper on the Development of an Anti-poverty Strategy for NI From Members of the Anti-poverty Strategy Co-Design Group' (NICVA, 2022).

982 Equality Coalition, 'Seminar on Progressing an Anti-Poverty Strategy in NI', 28 June 2023.

983 Email Correspondence from the Department for Communities and NI Human Rights Commission, 16 July 2023.

984 Equality Coalition, 'Seminar on Progressing an Anti-Poverty Strategy in NI', 28 June 2023.

985 Department for Communities, 'NI Poverty and Income Inequality Report 2021/2022', (DfC, 2023).

Increasing energy prices are expected to affect individuals living in NI to a greater extent than other parts of the UK.⁹⁸⁶ This has been attributed to there being a greater number of households reliant on home heating oil in NI.⁹⁸⁷

In 2011, the Fuel Poverty Strategy in NI was published.⁹⁸⁸ Fuel poverty often affects the most marginalised groups, particularly children and people with disabilities.⁹⁸⁹ In 2022, in addition to a payment of £100 for all home oil users, an energy price cap was instated and backdated to October 2022, in line with the rest of the UK.⁹⁹⁰

In 2023, cost of living support payments for individuals on means tested benefits continued.⁹⁹¹ There were three payments across the year amounting to £900 paid to most people in receipt of social security benefits.⁹⁹² An additional disability payment of £150 and winter fuel payment of £300 was available for eligible individuals.⁹⁹³

Despite these efforts, the need for warm banks was emerging across NI and the use of foodbanks increased.⁹⁹⁴

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- 986 Pippa Cerar, 'Two-thirds of UK families could be in fuel poverty by January, research finds', *The Guardian*, 18 August 2022; Crushed by the Cost of Living Crisis, 'Press Release: Cost of living briefing', 24 September 2022; Crushed by the Cost of Living Crisis, 'Emergency Response Measures to the Cost of Living Crisis' (CCLC, 2022); 'Energy Bills Support Scheme: Stormont impasse "hindering" £400 payment', *BBC News*, 10 November 2022; Department for Communities, 'A New Fuel Poverty Strategy for NI' (DfC, 2011).
- 987 'Lack of Stormont meant NI only part of UK without proper response to cost of living crisis', UTV, 19 July 2023; Pippa Cerar, 'Two-thirds of UK families could be in fuel poverty by January, research finds', *The Guardian*, 18 August 2022; Crushed by the Cost of Living Crisis, 'Press Release: Cost of living briefing', 24 September 2022; Crushed by the Cost of Living Crisis, 'Emergency Response Measures to the Cost of Living Crisis' (CCLC, 2022); 'Energy Bills Support Scheme: Stormont impasse "hindering" £400 payment', *BBC News*, 10 November 2022; Department for Communities, 'A New Fuel Poverty Strategy for NI' (DfC, 2011).
- 988 Department for Communities, 'A New Fuel Poverty Strategy for NI' (DfC, 2011).
- 989 E/C.12/GBR/CO/5, 'UN ICESCR Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 June 2009, at para 29.
- 990 John Campbell, 'Cost of living: Home heating oil customers to get £100 payment', *BBC News*, 21 September 2022.
- 991 NI Direct, 'Cost of Living Payments'. Available at: <https://www.nidirect.gov.uk/articles/cost-living-payments>
- 992 Ibid.
- 993 Ibid.
- 994 'Urgent 'warm banks' demand', *The Irish News*, 18 October 2022; Richard Vernalls, 'More councils looking at 'warm banks' for residents amid rising energy bills', *Belfast Telegraph*, 30 August 2022; Sherie Ryder and Rozina Sini, 'Cost of living: 'We started up a warm bank'', *BBC News*, 20 October 2022; Trussell Trust, 'Emergency food parcel distribution in Northern Ireland: April 2022 - March 2023' (TT, 2023); Trussell Trust and Ipsos, 'Hunger in NI' (TT and Ipsos, 2023), at 26.

Additionally, food costs rose, particularly for individuals with specific dietary requirements.⁹⁹⁵ Education costs were another contributor to the rising cost of living.⁹⁹⁶ For example, available uniform grants in NI were insufficient for need.⁹⁹⁷ Legislation has been introduced in England and Wales to create guidance for schools on acceptable uniform costs, but no similar legislation is in place in NI, leaving uniform costs unregulated.⁹⁹⁸

In 2023, it was reported that the lack of a functioning NI Executive and Assembly means that NI is the only part of the UK without a policy response to the rising cost of living.⁹⁹⁹

Debt vulnerability

Personal debt is higher in NI than other parts of the UK,¹⁰⁰⁰ which raises concerns regarding debt vulnerability for individuals in receipt of social security, particularly women, who avail of social security more than men.¹⁰⁰¹ In NI, this has an added dimension with paramilitary groups often operating as illegal lenders.¹⁰⁰² The rising cost of living will likely increase exploitation.¹⁰⁰³

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- 995 Food Standards Agency, 'NI Food Advisory Committee (NIFAC) Update from Director of Regulatory Compliance, People and NI to NI Food Advisory Committee 18th January 2023'. Available at: <https://www.food.gov.uk/our-work/northern-ireland-food-advisory-committee-nifac-update-from-director-of-regulatory-compliance-people-and-northern-ireland-to-1>; Trussell Trust, 'Emergency food parcel distribution in NI: April 2022 – March 2023' (Trussell Trust, 2023); Trussell Trust and Ipsos, 'Hunger in NI' (TT and Ipsos, 2023), at 26; NI Commissioner for Children and Young People, 'A Place to Call Home – Report Launch', 23 February 2023; Sara Neill, 'Cost of Living: NI woman with coeliac disease says food bill has doubled', *BBC News*, 24 July 2023; NI Assembly Hansard, 'Written Answers: Free School Meals – Minister of Education, Michelle McIlveen MLA – AQW 974/22-27', 21 June 2022.
- 996 Rebecca McGirr, 'Cost of living: Minister urged to 'step up' over uniform costs', *BBC News*, 6 August 2022; UK Government, 'Press Release: New law to make school uniform costs affordable for all', 29 April 2021; NI Human Rights Commission Engagement with Civil Society Organisations on the UN ICESCR, 11 October 2022.
- 997 Rebecca McGirr, 'Cost of living: Minister urged to 'step up' over uniform costs', *BBC News*, 6 August 2022; UK Government, 'Press Release: New law to make school uniform costs affordable for all', 29 April 2021; NI Human Rights Commission Engagement with Civil Society Organisations on the UN ICESCR, 11 October 2022; Mark Bain, 'Almost one third of NI parents need loans to help pay for school uniforms', *Belfast Telegraph*, 29 August 2023.
- 998 Education (Guidance about Costs of School Uniforms) Act 2021.
- 999 'Lack of Stormont meant NI only part of UK without proper response to cost of living crisis', *UTV News*, 19 July 2023.
- 1000 Financial Conduct Authority, 'Financial Lives Survey 2017 (Updated 2020)' (FCA, 2020).
- 1001 Women and Equalities Committee, 'Unequal Impact: Coronavirus and the Gendered Economic Impact' (WEC), at para 36.
- 1002 Consortium for the Regional Support for Women in Disadvantaged and Rural Areas 'Women Living with Debt' (CRSWDRA, 2022); 'Spotlight: Paramilitary loan sharks targeting food bank users', *BBC News*, 13 December 2022.
- 1003 Consortium for the Regional Support for Women in Disadvantaged and Rural Areas 'Women Living with Debt' (CRSWDRA, 2022).

In June 2023, research by the Women’s Support Network and Ulster University identified that the rising cost of living was having a disproportionate effect on women.¹⁰⁰⁴ The research attributed this to rising costs affecting low-income households more, with women more likely to live in poverty across their lifetime.¹⁰⁰⁵ The research also identified that women can act as “shock absorbers” of poverty in the home, meaning they are more likely to go without essentials to protect other family members from the effects of poverty.¹⁰⁰⁶

Recommendations

The Commission recommends that the Department for Communities promptly develops, implements, monitors and adequately resources an anti-poverty strategy for NI, with a measurable action plan, that is guided by meaningful engagement with affected individuals and their representative organisations at every stage of the process.

The Commission recommends that the Department for Communities incorporates measures to comprehensively combat fuel poverty, including introducing, implementing and monitoring an up-to-date effective and adequately resourced long-term strategy that includes a comprehensive action plan.

The Commission recommends that the Department of Education ensures that uniform costs are regulated and that education support grants in NI, including the uniform grant, are sufficient and proportional to costs.

The Commission recommends that the Department of Communities, working with the NI Executive, takes concrete steps to provide the necessary financial support, debt relief and education to ensure individuals in NI are not reliant on illegal lenders. This includes supporting individuals in NI to safely extract themselves from illegal lending and to prosecute the illegal lenders.

1004 Women’s Support Network and Ulster University, ‘Women’s Experiences of the Cost of Living Crisis in NI’ (WSN and UU, 2023).

1005 Ibid.

1006 Ibid.

Right to Health



Access to reproductive healthcare

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

ensure access for adolescent girls to age-appropriate family planning services, affordable contraceptives and safe abortion and post-abortion care services, particular in NI... with a view to ensuring that no adolescent girl has to travel to other jurisdictions of the State Party to access reproductive healthcare.¹⁰⁰⁷

In 2019, the UN CAT Committee recommended that the UK Government and NI Executive:

ensure that all women and girls in the State party, including in NI, have effective access to termination of pregnancy in situations in which its continuation is likely to result in severe pain and suffering, such as when the pregnancy is the result of rape or incest or in cases of fatal foetal impairment, in addition to cases in which the life or health of the pregnant person is at risk. The [UK]... should also ensure that women and girls in NI have effective access to post-abortion health care and that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.¹⁰⁰⁸

In 2018, in addition to recommending the adoption of legislation to decriminalise termination of pregnancy in NI and to legalise access to termination services in certain circumstances,¹⁰⁰⁹ the UN CEDAW Committee recommended that the UK Government and NI Executive:

1007 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 44(a).

1008 CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 47.

1009 CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at paras 85(a), 85(b) and 85(c).

adopt evidence-based protocols for healthcare professionals on providing legal abortions particularly on the grounds of physical and mental health and ensure continuous training on the protocols...

provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion services;

ensure the accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral and emergency, long term or permanent and adopt a protocol to facilitate access at pharmacies, clinics and hospitals; [and]

provide women with access to high-quality abortion and post-abortion care in all public health facilities and adopt guidance on doctor-patient confidentiality in that area.¹⁰¹⁰

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive “amend the legislation on termination of pregnancy in NI to make it compatible with other fundamental rights, such as women’s rights to health, life and dignity”.¹⁰¹¹

In 2020, abortion was legalised in NI on request up to 12 weeks and where there is a risk of injury to the physical or mental health of the pregnant woman up to 24 weeks.¹⁰¹² Abortion is also permitted on the grounds of immediate necessity, a risk to life or grave permanent injury to physical or mental health of the pregnant woman, a diagnosis of a severe foetal impairment or fatal foetal abnormality.¹⁰¹³ In 2022, after a prolonged process,¹⁰¹⁴ the Secretary of State for NI, Chris Heaton-Harris MP, announced that the UK Government

1010 Ibid, at paras 85(d), 86(a), 86(b) and 86(c).

1011 E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 62.

1012 Regulations 3 and 4, Abortion (NI) (No 2) Regulations 2020.

1013 Regulations 5, 6 and 7, Abortion (NI) (No 2) Regulations 2020.

1014 *Re NI Human Rights Commission for Judicial Review* [2021] NIQB 91; NI Human Rights Commission, ‘Monitoring Report on Reproductive Healthcare Provision in NI’ (NIHRC, 2021); NI Office, ‘Press Release: Secretary of State issues updated direction to NI’s Department of Health to make abortion services available’, 21 July 2021; NI Office, ‘Press Release: Secretary of State issues updated direction to NI’s Department of Health to make abortion services available’, 26 May 2022; NI Human Rights Commission, ‘Press Release: NI Human Rights Commission’s Chief Commissioner Responds to UK Government Abortion Regulations’, 19 May 2022.

would commission abortion services in NI.¹⁰¹⁵ However, it remains the responsibility of the Department of Health to administer the funding provided by the UK Government.¹⁰¹⁶ It was confirmed that no additional funding would be provided by the UK Government to the NI Executive for this purpose, but that such funding would be ring-fenced within the block grant.¹⁰¹⁷

In 2021, the Society for the Protection of Unborn Children Pro-Life Limited brought legal proceedings claiming that the Abortion (NI) Regulations 2021 and the Abortion Services Directions 2021 were unlawful.¹⁰¹⁸ It argued that the 2021 Regulations provided the Secretary of State for NI with a greater power than he has under section 26 of the NI Act 1998.¹⁰¹⁹ Also, that the Secretary of State for NI's powers are not exercisable when legislative and executive powers are being exercised by the NI Assembly.¹⁰²⁰ The Commission intervened in the case. In February 2022, the High Court of Justice in NI ruled that the Secretary of State for NI had acted lawfully.¹⁰²¹ The Society for the Protection of Unborn Children Pro-Life Limited appealed. In May 2023, the Court of Appeal in NI dismissed the appeal.¹⁰²²

Provision

In 2023, the Commission's monitoring indicated that provision of abortion services in NI was subject to change and could result in an inconsistent implementation of the Abortion (NI) Regulations.¹⁰²³

1015 Amy Cochrane, 'Secretary of State to commission abortion services in NI – three years after legalisation', *Belfast Telegraph*, 24 October 2022.

1016 Ibid.

1017 Department of Health, 'Press Statement: Department of Health Statement', 2 December 2022.

1018 *Society for the Protection of Unborn Children Pro-Life Ltd's Application* [2022] NIQB 9.

1019 Ibid.

1020 Ibid.

1021 Ibid.

1022 *Society for the Protection of Unborn Children Ltd's Application for Judicial Review* [2023] NICA 35.

1023 Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021); Email correspondence from Department of Health to NI Human Rights Commission, 9 November 2023.

In 2023, the provision of abortion services in NI was fragile, often dependent on a single practitioner.¹⁰²⁴ There were also difficulties in accessing adequate and appropriate facilities to enable consistent abortion services within each Trust in NI.¹⁰²⁵ The Department of Health was taking steps to address these issues and to bring abortion services closer to the provision required by the Abortion (NI) Regulations.¹⁰²⁶ The Department of Health confirmed that “Health and Social Care Trusts [in NI were]... progressing with recruitment and training, premises... [had] been identified and equipment... [was] being acquired”.¹⁰²⁷ The Department of Health was also “closely monitoring demand for services across the Health and Social Care Trusts [in NI]”.¹⁰²⁸

In November 2023, abortion services were available up to 11 weeks and six days in four of five Health and Social Care Trusts in NI.¹⁰²⁹ There was a delay in delivering these services in the Belfast Health and Social Care Trust due to challenges in “securing appropriate premise to enable the co-location of both the early surgical and early medical abortions up to 12 weeks”.¹⁰³⁰ This was expected to be remedied in December 2023.¹⁰³¹ Similarly, four of five Trusts in NI offered surgical abortions up to 11 weeks and six days.¹⁰³² The South Eastern Health and Social Care Trust offered surgical abortions up to ten weeks, with it expected to extend its services in line with other Trusts in NI by mid-November 2023.¹⁰³³ Abortions in cases of immediate necessity were available in all Health and Social Care Trusts in NI.¹⁰³⁴ Additionally, abortions were available in all Health and Social Care Trusts in NI on the grounds of risk to life or grave permanent injury to the physical or mental health of the individual

1024 Email correspondence from the Royal College of Nursing in NI to the NI Human Rights Commission, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

1025 Ibid.

1026 Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

1027 Email correspondence from the Department of Health to the NI Human Rights Commission, 9 November 2023.

1028 Ibid.

1029 Ibid.

1030 Ibid.

1031 Ibid.

1032 Ibid.

1033 Ibid.

1034 Ibid.

or severe fetal impairment and fatal fetal abnormality.¹⁰³⁵ This was an improvement from provision in September 2023.¹⁰³⁶ However, several civil society organisations stressed that until abortion services were provided on a consistent, long-term basis in line with Abortion (NI) Regulations in NI, many individuals would continue to see no other option but to travel to England for abortions, including early medical abortions.¹⁰³⁷

In November 2023, the Belfast Health and Social Care Trust offered a regional feticide service for all patients in NI requiring access to this service.¹⁰³⁸ However, complex surgical cases continued to be referred for treatment in England, with the diagnosis and aftercare carried out in NI.¹⁰³⁹ Concerns were raised about individuals experiencing complexities having to travel to England, as this takes individuals away from their support network and trusted healthcare providers.¹⁰⁴⁰ There were also concerns for individuals with caring, work-related, education or other commitments in such scenarios.¹⁰⁴¹

In 2023, the Department of Health instructed all Health and Social Care Trusts in NI to have referral pathways for the regional services in place, as well as contingency measures in the event of any period of non-availability of any element of the regional service.¹⁰⁴² Initially there were no pathways between Health and Social Care Trusts in NI for non-regional services.¹⁰⁴³

1035 Ibid.

1036 Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021).

1037 Between January and June 2023, 96 individuals travelled from NI to England for an abortion, which included individuals under 9 weeks and six days gestation and minors. See Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; Office for Health Improvement and Disparities, 'Abortion Statistics for England and Wales: January to June 2022'. Available at: <https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-january-to-june-2022/abortion-statistics-for-england-and-wales-january-to-june-2022>

1038 Email correspondence from the Department of Health to the NI Human Rights Commission, 9 November 2023.

1039 Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

1040 Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

1041 Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

1042 Letter from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

1043 Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

For example, early medical abortions were only available in the Trust area where an individual lived.¹⁰⁴⁴ Trusts in NI typically only had one location for abortion services, which could leave individuals travelling further within their own Trust area, than if they were able to access the service in another Trust area.¹⁰⁴⁵ This was a particular concern of individuals in rural areas where the location in another Trust area may have been more accessible.¹⁰⁴⁶ Additionally, having to access abortion services in a Trust area where you may know staff risked creating extra anxiety, which could have been resolved by enabling access to the service in another Trust area.¹⁰⁴⁷ In November 2023, the Department of Health confirmed that “the expectation... [was] that during periods of leave, a Trust... [would] support other Trusts as required to ensure that women and girls... [had] timely access to services in NI”.¹⁰⁴⁸

In 2023, the British Pregnancy Advisory Service remained the central booking system for abortion services in NI.¹⁰⁴⁹ A replacement service was under discussion.¹⁰⁵⁰ The proposals are for the new referral system to provide open access across all Trusts in NI, regardless of postcode.¹⁰⁵¹

Data collection

The Department of Health publishes annual statistics on hospital-based abortions in NI and the number of individuals travelling to other parts of the UK for abortion services.¹⁰⁵² However, in 2023, there was “no framework in place to report on all terminations of pregnancy carried out in NI”.¹⁰⁵³ Disaggregation of the data was limited to recording medical abortions and termination of pregnancies,¹⁰⁵⁴

1044 Ibid.

1045 Ibid.

1046 Ibid.

1047 Ibid.

1048 Email correspondence from the Department of Health to the NI Human Rights Commission, 9 November 2023.

1049 Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

1050 Ibid.

1051 Ibid; Email correspondence from Department of Health to NI Human Rights Commission, 9 November 2023.

1052 Information Analysis Directorate, ‘NI Hospital Based Termination of Pregnancy Statistics: 2021/2022’ (DoH and NISRA), at 6.

1053 Ibid.

1054 The data makes an arbitrary and unclear distinction between medical abortions and terminations of pregnancy. See Information Analysis Directorate, ‘NI Hospital Based Termination of Pregnancy Statistics: 2021/2022’ (DoH and NISRA), at 6.

age of the individual that had an abortion and the trust area in which the abortion was performed.¹⁰⁵⁵ Many civil society organisations viewed the available statistics as uninformative and lacking in context.¹⁰⁵⁶ The Department of Health is working on improving its data collection process regarding abortion services in NI, which it intends to start utilising in 2024.¹⁰⁵⁷

Telemedicine

For the first two weeks of April 2020, the only abortion services available in NI were where it was necessary to preserve the life of the woman, or there is a risk of real and serious adverse effect on her physical or mental health, which is either long term or permanent.¹⁰⁵⁸ In response to the lacuna, the British Pregnancy Advisory Service extended its ‘telemedicine option’ to NI.¹⁰⁵⁹ This option was quickly withdrawn following correspondence from the Department of Health.¹⁰⁶⁰ Telemedicine has been rolled out in the rest of the UK, but remains unavailable in NI.¹⁰⁶¹ In 2023, the Department of Health intended to consider the introduction of telemedicine during phase two of its process for implementing abortion services in NI.¹⁰⁶² Phase two is expected to commence in 2025, at the earliest.¹⁰⁶³ However, whether consideration of telemedicine is included will be subject to Ministerial approval.¹⁰⁶⁴

In 2023, individuals in NI continued to obtain telemedicine through unregistered websites.¹⁰⁶⁵ Support for individuals that faced complications in such scenarios was lacking, with reports of individuals being informed by their General Practitioners Surgery to contact the drug provider for assistance.¹⁰⁶⁶ The reason(s) for this happening require further investigation, however some civil society

1055 Ibid.

1056 Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between the NI Human Rights Commission and civil society organisations, 25 July 2023.

1057 Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

1058 Meeting between NI Human Rights Commission and Informing Choices, 7 August 2020.

1059 British Pregnancy Advisory Service, ‘Pills by Post - Remote Abortion Pill Treatment’. Available at <https://www.bpas.org/abortion-care/abortion-treatments/the-abortion-pill/remote-treatment/>; Meeting between NI Human Rights Commission and Informing Choices, 7 August 2020.

1060 Ibid.

1061 Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

1062 Ibid.

1063 Ibid.

1064 Ibid.

1065 Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

1066 Ibid.

organisations reported cases where significant trauma resulted and the affected individual's life was put at risk due to the lack of a clear care pathway in cases of unregulated telemedicine.¹⁰⁶⁷

Guidance and training

In 2023, there was no plan to introduce statutory, department-led guidance on abortion services specific to NI.¹⁰⁶⁸ Health and Social Care Trusts in NI, Royal College of Obstetricians and Gynaecologists, the Royal College of Midwives and Royal College of Nursing were instructed to develop, review and appropriately revise their own guidance for abortion services in NI, which was to be disseminated to all staff.¹⁰⁶⁹ The Department of Health also directed that “appropriate training and support... [were] provided to all relevant staff”.¹⁰⁷⁰

In 2023, the Department of Health was content that sufficient guidance already existed and did not plan to introduce specific guidance on conscientious objection regarding abortion services in NI.¹⁰⁷¹ However, several stakeholders were aware of frequent misuse or misunderstanding of conscientious objection in the context of abortion services.¹⁰⁷² Thus, it has been proposed that regional guidance that is clear on what does and does not constitute conscientious objection in this specific context is required.¹⁰⁷³

1067 Ibid.

1068 Letter from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

1069 Ibid.

1070 Ibid.

1071 Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

1072 Operationally, staff that apply for posts within abortion services all have a conscientious commitment to the provision of those services. Other staff that work in sexual and reproductive health are required to follow-up on complications from abortions and to direct patients to abortion services, even if they claim a conscientious objection to providing treatment. It is reliant on staff to express their conscientious objection to their line manager so that this can be accommodated. However, there have been reports of some pharmacists refusing to dispense early medical abortion medication to an abortion service in NI. It has also been reported that abortion services previously collapsed in a Trust area because the doctor providing the service was not provided with necessary administrative support due to other staff conscientiously objecting. See Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; Email correspondence from Royal College of Nursing NI to NI Human Rights Commission, 19 July 2023.

1073 Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

In 2023, each Trust in NI provided ‘values clarification’ training.¹⁰⁷⁴ This training operated on an opt-in basis and was only offered as one cycle.¹⁰⁷⁵ Several civil society organisations have recommended that values clarification training should be given to all staff, not only staff directly involved with abortion services.¹⁰⁷⁶ The Department of Health has acknowledged that the training and recruitment necessary to enable comprehensive provision of abortion services in NI remained a challenge.¹⁰⁷⁷ In November 2023, the Department of Health confirmed that steps were being taken to progress required recruitment and training.¹⁰⁷⁸

Monitoring

In 2023, the Abortion Services Implementation Board continued to meet monthly.¹⁰⁷⁹ The Oversight Board is tasked with managing any challenges to implementing abortion services in NI. Issues can also be escalated to Abortion Services Oversight Board, the Permanent Secretaries of the Department of Health or NI Office.¹⁰⁸⁰ The Implementation Board has no set term, but is expected to be operational until at least 2025.¹⁰⁸¹

In the long-term, it is intended that the Regional Quality Improvement Authority¹⁰⁸² will monitor and review commissioned abortion services

1074 Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

1075 Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

1076 Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

1077 Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights | Commission and Department of Health, 19 July 2023.

1078 Email correspondence from Department of Health to NI Human Rights Commission, 9 November 2023.

1079 Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

1080 Ibid.

1081 Ibid.

1082 The Regulation and Quality Improvement Authority is the independent body responsible for monitoring and inspecting the availability and quality of health and social care services in NI. It also ensures that health and social care services in NI are accessible, well managed and meet the required standards. Trust hospital services in NI are not required to be registered with Regulation Quality Improvement Authority, unlike its counterparts in the UK where hospitals are inspected at defined intervals. The Regulation and Quality Improvement Authority does not therefore have an annual programme of inspections of NI’s hospital services more broadly. The Regulation and Quality Improvement Authority also undertakes specific reviews and intelligence-led inspections under the direction of the Department of Health or in response to specific intelligence or concerns. This means that abortion services provided by Trust hospitals in NI are not automatically subject to annual inspection with the key means of monitoring and assurance being internal assurance arrangements within Trusts.

in NI.¹⁰⁸³ In 2023, the Regional Quality Improvement Authority was willing, but unable to do so without specific funding.¹⁰⁸⁴ The Regional Quality Improvement Authority's mandate may also need to be revisited to ensure it can monitor all doctors involved in delivering abortion services in NI.¹⁰⁸⁵

Accessibility and affordability of services and products

In 2023, contraception was provided as part of regional sexual and reproductive health services, which other Health and Social Care Trusts in NI can make referrals to.¹⁰⁸⁶ The Department of Health also commissioned an online contraceptive service for administering contraception pills.¹⁰⁸⁷ The Department of Health intends that the commissioned online contraceptive services will enable family planning services to concentrate limited resources on the provision of long acting reversible contraception and the insertion of coils, rather than administering contraceptive pills.¹⁰⁸⁸

In November 2023, there were two sexual and reproductive health consultants in NI.¹⁰⁸⁹ Recruitment was also underway to appoint a sexual and reproductive health consultant in all Trusts in NI.¹⁰⁹⁰

Recommendations

The Commission recommends that the UK Government, working with the Department of Health, ensures that sufficient, long-term, ring-fenced funding is available and fully utilised to maintain consistent abortion services in line with the Abortion (NI) Regulations in every Health and Social Care Trust area in NI. Also, that the necessary funding for abortion services is an addition to

1083 Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

1084 Meeting between NI Human Rights Commission and the Regulation and Quality Improvement Authority, 5 June 2023.

1085 Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

1086 Email correspondence from the Royal College of Nursing in NI to the NI Human Rights Commission, 19 July 2023; Email correspondence from the Department of Health to the NI Human Rights Commission, 27 July 2023.

1087 Email correspondence from Department of Health to NI Human Rights Commission, 27 July 2023.

1088 Ibid.

1089 Ibid; Email correspondence from Department of Health to NI Human Rights Commission, 9 November 2023.

1090 Email correspondence from Department of Health to NI Human Rights Commission, 27 July 2023.

the Department of Health's broader budget, to ensure existing healthcare services can be delivered in full.

The Commission recommends that the Department of Health ensures that comprehensive disaggregated data is gathered, reported and monitored regarding abortion services in NI, including that representative organisations are effectively consulted on how to achieve this.

The Commission recommends that the Department of Health ensures telemedicine is introduced as an option for early medical abortions in NI under certain circumstances, as in other parts of the UK, and that a clear pathway to care and after care is in place for telemedicine abortions, including for individuals using unregistered sources.

The Commission recommends that the Department of Education ensures that there is regional, abortion-specific, non-stereotyping guidance in NI and that all associated healthcare staff undertake related training that is informed by service users and periodically refreshed, particularly regarding conscientious objection.

The Commission recommends that the Department of Health ensures that there is effective staff planning and sufficient specialised pathways to ensure that sexual health and abortion services are consistently available across NI.

The Commission recommends that the Department of Health ensures that sufficient long-term, ring-fenced funding is provided to the Regional Quality Improvement Authority, or an appropriate alternative, for the purposes of ensuring that abortion services in NI are consistently monitored and reviewed at regular intervals.

The Commission recommends that the Department of Health ensures that consistent, accessible and effective contraception services and information are available across all Health and Social Care Trust areas in NI, with particular consideration of rurality and utilising online pathways.



National Health Service waiting lists

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

strengthen measures aimed at ensuring the availability of quality, child-sensitive and age-appropriate paediatric primary and specialist health care services to all children, and ensure that children's perspectives are included in the development and implementation of all health services, health and social care commissioning, and policy and practice reviews; [and]

develop a strategy to address health inequalities, including the underlying causes, and in particular in respect of children in disadvantaged situations including children with disabilities, children belonging to ethnic minorities, socioeconomically disadvantaged children, children living in rural areas and transgender children.¹⁰⁹¹

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive:

develop a targeted, measurable and financed plan of action aiming at eliminating barriers in access to healthcare and services, and monitor and measure its progress, especially in relation to persons with intellectual and/or psychosocial disabilities and those with neurological and cognitive conditions.¹⁰⁹²

In 2023, the national health care system, particularly in NI, was in unprecedented crisis.¹⁰⁹³ For example, hospital departments are closing or subject to intermittent suspensions, patients are being treated and accommodated within ambulances or corridors for excessive periods, rural maternity services are being centralised,

1091 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at paras 41(a) and 41(b).

1092 CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 3 October 2017, at para 55(a).

1093 British Medical Association, 'From Bad to Worse: NI's Care Crisis'. Available at: <https://www.bma.org.uk/news-and-opinion/from-bad-to-worse-northern-irelands-care-crisis>

patients are spending years awaiting diagnosis or life-changing surgery, and General Practitioners have become increasingly difficult to access.¹⁰⁹⁴ It was also reported that challenging work conditions, poor terms of employment and reduced funding were affecting the National Health Service in NI's existing workforce, recruitment and training.¹⁰⁹⁵ This all contributed to the broader issue of excessive National Health Service waiting lists.

In recent years, there was an “alarming growth in both the number of patients on elective care waiting lists, and the length of time they wait for assessment and treatment [in NI]”.¹⁰⁹⁶ In March 2023, 696,000 patients were on waiting lists in NI, with 197,345 (49 per cent) waiting over a year for an initial outpatient appointment, 64,513 (54 per cent) waiting over a year for inpatient treatment and 46,511 (27 per cent) waiting over 26 weeks for a diagnostic test.¹⁰⁹⁷ Furthermore, available information suggested waiting list performance levels were “significantly worse in NI compared with the other UK regions”.¹⁰⁹⁸

In 2023, the rise in waiting lists was attributed to “a growing gap between rising population demand for care and available funding has significantly contributed to lengthy waiting times”.¹⁰⁹⁹ While “the COVID-19 pandemic exacerbated the challenges”, it was noted “that the deterioration in waiting times has been longstanding”.¹¹⁰⁰

1094 Ibid; ‘Ambulance wait times: Inquiry into deaths after delays’, *BBC News*, 4 January 2023; Allan Preston, ‘Councillor speaks of urgent need for health reform after “horrendous” hospital stay’, 9 January 2023; ‘South West Acute Hospital: Hundreds protest at cuts rally’, *BBC News*, 22 February 2023; ‘Northern Trust maternity services “fragile, vulnerable and unsustainable”’, *BBC News*, 21 November 2022; Aileen Moynagh and Marie-Louise Connolly, ‘Specialist GP clinics in NI to have services cut in half’, *BBC News*, 28 July 2023; Regulation and Quality Improvement Authority, ‘Inspection Report 8 November 2022-3 February 2023: Emergency Department, Royal Victoria Hospital’ (RQIA, 2023); Marie-Louise Connolly, ‘Royal Victoria Hospital: Emergency Department staff “disappointed” by patient safety report’, *BBC News*, 22 August 2023; Lyndsey Telford, ‘Mum fears her son could die waiting for life changing surgery’, *BBC News*, 3 October 2023; Dean McLaughlin, ‘Altnagelvin hospital: Midwife-led unit unable to reopen’, *BBC News*, 4 October 2023.

1095 House of Commons NI Affairs Committee, ‘The Funding and Delivery of Public Services in NI – Oral Evidence: Dr Tom Black (NI Council Chair at British Medical Association), Dolores McCormick (Associate Director, Employment Relations and Member Services at Royal College of Nursing), and Professor Mark Taylor (NI Director at Royal College of Surgeons)’, 24 May 2023; Eimear Flanagan, ‘Doctors: Almost one fifth of new GP trainee places in NI not filled’, *BBC News*, 31 July 2023.

1096 NI Audit Office, ‘Press Release: Tackling waiting lists’, 10 October 2023.

1097 Ibid; NI Audit Office, ‘Tackling Waiting Lists’ (NIAO, 2023), at para 1.4.

1098 NI Audit Office, ‘Press Release: Tackling waiting lists’, 10 October 2023; NI Audit Office, ‘Tackling Waiting Lists’ (NIAO, 2023), at para 1.6.

1099 NI Audit Office, ‘Press Release: Tackling waiting lists’, 10 October 2023; NI Audit Office, ‘Tackling Waiting Lists’ (NIAO, 2023), at paras 1.7; 1.8; 5.31; 5.23.

1100 NI Audit Office, ‘Press Release: Tackling waiting lists’, 10 October 2023; NI Audit Office, ‘Tackling Waiting Lists’ (NIAO, 2023), at para 3.19.

In June 2023, the NI Public Services Ombudsman, Margaret Kelly, also found that there was “systemic maladministration” regarding waiting list communications in NI.¹¹⁰¹ The NI Public Services Ombudsman concluded that:

with rising waiting lists and longer waits, good communication has become key to patient’s ‘waiting well’. I am also in no doubt that the current lack of communication has not only had an impact on patients, it has also impacted on the resources of the Trust and General Practitioners due to the resulting level of enquiries and complaints.¹¹⁰²

In 2023, the House of Commons NI Affairs Committee undertook an inquiry on the funding and delivery of public services in NI. The NI Director of the Royal College of Surgeons, Mark Taylor, stated that:

orthopaedic surgeons [in NI] are seeing people whom they know they will never be able to give the treatment that they are designed to give them. An 80 year old person waiting five to seven years for a hip will not get that hip replacement. A child on a waiting list waits so long that they are transferred to the adult waiting list, due to the length of time that they have waited.¹¹⁰³

The NI Director of the Royal College of Surgeons highlighted that this is creating “moral distress” for healthcare workers in NI. He also stressed that for the patient, “it is not just the condition, but the life that person will lead, [that is] affected by delays and delays”.¹¹⁰⁴ The NI Council Chair at the British Medical Association, Dr Tom Black, also warned that “we simply do not have the capacity in the private sector or the public sector in NI [to address the waiting lists]”.¹¹⁰⁵

1101 NI Public Services Ombudsman, ‘Forgotten: An Investigation into Healthcare Waiting List Communications’ (NIPSO, 2023), at 5.

1102 Ibid.

1103 House of Commons NI Affairs Committee, ‘The Funding and Delivery of Public Services in NI – Oral Evidence: Dr Tom Black (NI Council Chair at British Medical Association), Dolores McCormick (Associate Director, Employment Relations and Member Services at Royal College of Nursing), and Professor Mark Taylor (NI Director at Royal College of Surgeons)’, 24 May 2023, at 2-3.

1104 Ibid, at 18.

1105 Ibid, at 13.

The NI Council Chair at the British Medical Association highlighted that waiting list initiatives had been trialled, but that these were being brought to an end due to budget cuts.¹¹⁰⁶ The Associate Director of Employment Relations and Member Services at the Royal College of Nursing, Dolores McCormick, noted that “there are so many examples of nurse-led initiatives that have cut down waiting lists and improved outcomes for patients across the spectrum, from mental health to children and right through”.¹¹⁰⁷ The NI Director of the Royal College of Surgeons stressed that “in terms of short-term cuts, any impact on the waiting list initiative work will increase waiting lists even further”.¹¹⁰⁸

The NI Director of the Royal College of Surgeons stated that “in order to transform and deal with the firefighting, we need much more resource and we need it to be recurrent over three to five years so that you can plan, rather than on a yearly basis with temporary contracts and temporary solutions”.¹¹⁰⁹ He suggested that surgical hubs would be beneficial, but warned that:

we are also going to need the independent sector and waiting list initiative work to deal with the backlog. We cannot use a new, transformed system to start off first with this massive backlog and then start to try to develop capacity.¹¹¹⁰

In June 2023, the Department of Health confirmed that commitments for March 2026 would not be met.¹¹¹¹ This included that no-one should wait more than 52 weeks for a first outpatient appointment and inpatient/day case treatment or 26 weeks for a diagnostics appointment.¹¹¹² Also that the gap between demand and capacity for elective care would have been eradicated.¹¹¹³ The Department of Health stated that:

1106 Ibid, at 7.

1107 Ibid, at 20.

1108 Ibid, at 22.

1109 Ibid, at 8.

1110 Ibid, at 15.

1111 Department of Health, ‘Press Release: Progress report on five-year Elective Care Framework’, 6 July 2023.

1112 Department of Health, ‘Elective Care Framework: Restart, Recovery and Redesign’ (DoH, 2021).

1113 Ibid.

the recurrent funding required to deliver these targets has not been made available. It is... [our] assessment, that even if new recurrent investment was provided now, it will not be possible to achieve either objective in the original five-year timescale. The deficit between demand and capacity has been going on for too long and the waiting list backlog has been exacerbated by the impact of COVID.¹¹¹⁴

The Department of Health continued that “notwithstanding the current financial context, dedicated work is ongoing to make positive improvements even in very difficult times. This includes maximising the available resources and identifying potential areas to deliver more efficient and better services”.¹¹¹⁵

In October 2023, the Comptroller and Auditor General for NI, Dorinnia Carville, stated that:

despite the remarkable efforts of health and social care staff [in NI] over recent years in trying to cope with rising patient demand, the deterioration in elective waiting time performance is stark... Lengthy waits place patients at risk of developing debilitation and complex conditions, potentially requiring more expensive treatment. Patients’ mental health and quality of life can also suffer to a point where many risk developing serious conditions. As a result, reduced waiting times are essential to improve both patient health and public finances. The health system has been operating within mainly tight and short-term financial environments... Unless and until a longer-term, sustainable funding framework to enable health service transformation is established, the Department [of Health] will likely have to address the most pressing clinical waits through available short-term funding. This approach is totally unsuitable and almost certainly stores up huge problems for the future.¹¹¹⁶

1114 Department of Health, ‘Press Release: Progress report on five-year Elective Care Framework’, 6 July 2023.

1115 Ibid.

1116 NI Audit Office, ‘Press Release: Tackling waiting lists’, 10 October 2023.

In 2021, a judicial review of National Health Service waiting times was initiated by two women. In January 2023, the High Court of Justice in NI dismissed the applications for judicial review stating that the allocation of healthcare resources is matter of policy generally not reviewable by the courts, save in exceptional circumstances.¹¹¹⁷ The High Court acknowledged that waiting lists in NI were a matter of manifest public concern, but concluded that this should be addressed by political leadership rather than the courts.¹¹¹⁸ The case was appealed to the Court of Appeal in NI, with the outcome awaited.

Recommendations

The Commission recommends that the Department of Health immediately develops and implements a targeted, measurable and appropriately financed plan of action aimed at eradicating unreasonable waiting lists and eliminating barriers in access to healthcare and services in NI. This includes ensuring that the resources and finances available are ring-fenced and sufficient to satisfy need on a long-term basis and to ensure effective communication with patients.

1117 *Wilson (Eileen) Application for Judicial Review and Kitchen (May) Application for Judicial Review and Eileen Wilson and (1) Department of Health for Northern Ireland (2) South Eastern Health and Social Care Trust (3) The Health and Social Care Board the Commissioner for Older People for NI [2023] NIKB 2*, at para 101.

1118 *Ibid*, at para 86.

Chapter 4 – Issues With No Significant Progress in 2023

For many issues there has been a lack of significant development on taking the necessary steps for resolution in 2023. It is important to highlight such inaction, as it can be just as detrimental as regressive development – the longer the issue remains unaddressed, the greater the effect on the individuals affected and the harder it is to remedy. It is difficult to establish if this lack of development would be substantially different if the devolved institutions were operating. Due consideration also needs to be given to the repercussions that continue to be experienced due to the lasting effect of the COVID-19 pandemic. However, there is no doubt that the stagnation created by the suspension of the NI Assembly and NI Executive is an exacerbating factor.

All the issues set out in this chapter are ‘amber’. This means that a subject has been identified that on human rights grounds requires action by the UK Government, NI Executive or relevant public authorities. Amber means initial steps have already been taken or been acknowledged as necessary by the relevant body, however, the necessary action has not yet been completed.

The Annual Statement 2022¹¹¹⁹ and the Annual Report on the Implementation of Article 2 of the Windsor Framework 2022-2023¹¹²⁰ provide context to the issues set out in this chapter.

1119 NI Human Rights Commission, ‘Annual Statement 2022’ (NIHRC, 2022).

1120 NI Human Rights Commission and Equality Commission for NI, ‘Annual Report on the Implementation of Article 2 of the Windsor Framework 2022-2023’ (NIHRC and ECNI, 2023).

Constitutional Protections

In 2023, there has been a lack of significant development in:

- the UK Government introducing a Bill of Rights for NI, as set out in the Belfast (Good Friday) Agreement 1998.
- the political parties in both NI and Ireland adopting a Charter of Rights for the island of Ireland, with the UK Government and Government of Ireland as co-guarantors.
- the Home Office amending nationality and immigration laws to provide for the birthright of all the people of NI to identify, and be accepted, as Irish or British or both, without any loss of rights or entitlements, in line with the Belfast (Good Friday) Agreement 1998.
- the codification of the Common Travel Area and associated rights in a bilateral agreement by the UK Government and Government of Ireland.
- the Home Office implementing effective gathering and monitoring of disaggregated data, including racial and ethnic monitoring, on people examined by enforcement officers at entry to NI at ports and airports, particularly in the context of cross-border travel to enforce the prohibition on racial profiling.

Equality and Non-discrimination

In 2023, there has been a lack of significant development in:

- the Executive Office introducing legislation that extends age discrimination protection in the provision of goods, facilities and services to all children under 18 years old.
- the Executive Office introducing a Single Equality Act for NI.
- the Department of Communities introducing a robust, gender-sensitive Gender Equality Strategy with a measurable plan of action and effective monitoring mechanisms, which takes

a human rights-based approach in line with international human rights standards and Windsor Framework Article 2.

- the Department of Communities introducing a robust and adequately resourced Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI with a measurable plan of action and effective monitoring mechanisms, that deals with gender recognition and takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2.
- the Department of Health introducing a gender recognition process in NI that reflects the self-declaration model, which is affordable, respectful and accessible, with effective training for staff and professionals across an individual's gender recognition journey.
- the Executive Office introducing measures to ensure intersectional multiple discrimination claims in NI are effectively addressed, including providing for intersectionality within equality legislation, as required.
- the Department for Communities introducing a robust and adequately resourced Disability Strategy with a measurable plan of action and effective monitoring mechanisms, which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2.
- the Department for Communities introducing a Central Regional Disability Forum, that is sufficiently resourced on a long-term basis and consists of persons with disabilities and their representative organisations.
- the Department of Health reopening the Independent Living Fund for new claimants in NI and that it is resourced to meet demand on a long-term basis.

- the Department for the Economy introducing long-term funding arrangements for new and existing disability employment projects.
- the Executive Office introducing a Refugee Integration Strategy, with a comprehensive action plan and adequate, long-term resources, that takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2 without further delay.

Right to Life

In 2023, there has been a lack of significant development in:

- the UK Government introducing necessary legislative amendments to guarantee the independence of inquiries established under the Inquiries Act 2005.

Freedom from Torture, Inhuman and Degrading Treatment

In 2023, there has been a lack of significant development in:

- the Department of Health, working with the NI Executive, to introduce a freestanding offence where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual, as is the case elsewhere in the UK.
- the UK Government introducing a full, independent, judge-led inquiry in relation to allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas and rendition.
- the UK Government introducing a requirement to ensure judicial scrutiny before exercising the power to deprive an individual of their UK citizenship.
- the UK Government withdrawing its reservation against Article 59 of the Istanbul Convention.

- the Department of Health improving the way in which disaggregated data on the prevalence of female genital mutilation in NI is gathered and monitored to ensure that every case of female genital mutilation in NI can be captured and addressed.
- the Department of Finance and the Home Office, facilitating the recognition of intersex individuals before the law through the expeditious provision of birth certificates, civil registration documents, identity papers, passports and other official personal documentation while respecting intersex persons' right to self-determination.
- the Department of Health legally prohibiting non-urgent and non-essential medical or surgical treatment of intersex children before they are of sufficient maturity to make their own decisions. This includes establishing an effective investigation and monitoring mechanisms and ensuring that victims are provided with redress and access to appropriate support services.
- the Home Office ensuring the independence of health care professionals dealing with detained asylum seekers in Larne House.
- the NI Office amending the NI Act 1998 to allow the Commission to enter places of detention without having to provide advance notice.

Right to Liberty and Security of the Person

In 2023, there has been a lack of significant development in:

- the Department of Justice introducing and implementing the necessary legislation for ensuring that there is a statutory basis for the use of restorative approaches in the adult justice system in NI.
- the Department of Justice ensuring long-term sustainable funding for the effective implementation of the adult restorative justice strategy for NI.
- the Home Office conducting and publishing a review of the broad definition of terrorism.
- the Home Office addressing the lack of a definition of ‘hostile activity’ and the moving of criminal law into private spaces within the Counter-Terrorism and Border Security Act 2019.
- the Department of Justice ending imprisonment for fine default and promptly developing, implementing, and monitoring alternative strategies, including community interventions and support services for actual or potential fine defaulters.
- the Department of Justice introducing legislation to remove the legal basis for the imprisonment of children alongside adults.
- the Home Office conducting and publishing a review of the exercise of arrest powers under section 41 of the Terrorism Act 2000 to ensure that the principles of necessity and proportionality are strictly observed when using arrest powers and that any detention of suspects arrested under the Terrorism Act 2000 is based on an individualised determination that it is reasonable and necessary taking into account all the circumstances.
- the Home Office making bail available for persons arrested under the Terrorism Act 2000 and ensuring that bail is granted for such persons when appropriate, following consideration of public safety.

Right to Fair Trial and the Administration of Justice

In 2023, there has been a lack of significant development in:

- the UK Government ensuring that the use of closed material procedures is limited in cases involving serious human rights violations.
- the UK Government ensuring that sufficient, long-term resources are available where closed material procedures are used in NI.
- the Department of Justice ensuring that a comprehensive library for closed judgments is available and accessible to legal teams and judges in NI.

Right to Privacy and Family Life

In 2023, there has been a lack of significant development in:

- the Department of Health developing and implementing the regulations and guidance required to give full effect to the Adoption and Children Act 2022.
- the Department of Health developing and implementing minimum standards of foster care and introducing a statutory requirement for foster care to be inspected.
- the Department of Justice amending the Youth Justice and Criminal Evidence Act 1999 to ensure that all children in NI allegedly involved in an offence are granted anonymity at every stage of the criminal justice process, including the pre-charge stages.
- the Department of Health introducing regulations for implementing the duties set out in the Health and Social Care (Control of Data Processing) Act 2016 Act.

- the Department of Health establishing a committee to authorise the processing of confidential information under the Health and Social Care (Control of Data Processing) Act 2016.
- the Police Service of NI developing and implementing a suitable methodology for recording disaggregated data on the community background of individuals, including children, stopped and searched under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007 throughout NI.

Freedom of Religion and Belief, Expression, Association and Right to Participate in Public and Political Life

In 2023, there has been a lack of significant development in:

- the UK Government devolving responsibility for parades and protests to the NI Assembly, in line with the Stormont House Agreement.
- the Executive Office drafting, and the NI Executive considering, a discussion paper setting out a range of options on how issues relating to parades and protests could be addressed in legislation, as required by the Stormont House Agreement.
- the NI Executive taking effective steps to ensure that the participation of women in public and political life is proportionate to NI's population.

Right to Work and to Just and Favourable Conditions of Work

In 2023, there has been a lack of significant development in:

- the Department of Education ensuring that childcare facilities and arrangements in NI are available, affordable and accessible. This includes ensuring access to affordable childcare options for socio-economically disadvantaged families, families in rural and remote areas, and families with irregular work schedules.
- the Department of Education developing, implementing and monitoring an Early Learning and Childcare Strategy for NI, that has a measurable action plan and is adequately resourced. This includes involving parents, carers, guardians and representative organisations at every stage of the process.
- the Department of Education introducing statutory arrangements to deliver extended, affordable, responsive, high-quality provision of early education and care initiatives for families with children, using the provision available in other parts of the UK as a starting point.
- the Ministry of Defence raising the minimum age of recruitment for the British Armed Forces to 18 years old or reconsidering recruitment policies that specifically target children and allow military recruiters' access to schools.
- the Department for the Economy ensuring that the gender pay gap and insecure, low paid employment of women in NI is effectively addressed and monitored. This includes ensuring that the provisions regarding mandatory pay gap reporting in the Employment Act (NI) 2016 are brought into effect in NI.
- the Department for the Economy requiring employers to publish a narrative with their gender pay gap data and that this is evaluated.

- the UK Government ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- the Department for the Economy ensuring that migrant workers are protected against exploitation and abuse. This includes ensuring that all migrant workers enjoy the same conditions as other workers in NI and have effective access to complaint mechanisms and legal assistance. Also, that conditions of work of migrant workers are effectively monitored.

Right to an Adequate Standard of Living and to Social Security

In 2023, there has been a lack of significant development in:

- the Department for Communities and the Department for Agriculture, Environment and Rural Affairs taking immediate and effective measures to tackle food insecurity in NI on an emergency and long-term basis, including publishing a rights-based strategy, that considers and reasonably accommodates food allergies and intolerances, for the protection of the right to adequate and good quality food in NI and the promotion of healthy diets.
- the Executive Office developing appropriate safeguards through statutory regulations and guidance, to ensure the enactment of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 do not undermine existing protections for refugees and people seeking asylum in NI regarding matters of devolved competence. This includes child protection arrangements, age assessments, accommodation and support for unaccompanied children seeking asylum and support to victims and potential victims of modern slavery and human trafficking.
- the Home Office amending the UK Immigration Rules to ensure that asylum applications are considered using a consistent, expeditious and child rights-based approach, including that the best interests of the child are a primary consideration, and that unaccompanied children have an unqualified right to apply for family reunification.

- the Home Office reviewing the restrictions placed on people seeking asylum, which prevent the taking up of work while claims are being processed.
- the Home Office ensuring that payments to people seeking asylum can be used online.
- the Department of Health developing, implementing and monitoring an up-to-date NI Carers Strategy and measurable action plan, which involves carers and their representative organisations at every stage of the process and includes concrete steps for providing accessible support to unpaid carers, taking into account specific needs, such as for young or older carers.
- the UK Government uplifting the Carer's Allowance to support carers that is proportional to the rising cost of living.
- the UK Government introducing an additional carers recognition payment, a young carer's recognition payment, a payment where more than one child is being cared for, or a relaxation of the earnings rules which when exceeded, end entitlement to benefit.
- the Department for Communities developing, implementing and adequately resourcing an anti-poverty strategy for NI that contains specific actions to eradicate child poverty in NI, including by establishing concrete and time-limited targets with measurable indicators, and regular monitoring and reporting on the reduction of child poverty in NI.
- in the interim, the Executive Office placing the Crisis Fund on a permanent footing, with guaranteed funding, and in the long-term the UK Government and NI Executive addressing the causes of destitution in the first instance, rather than relying on a discretionary fund to address destitution when it emerges.

- the Executive Office, Department for Communities and Department of Justice taking concrete steps, through a collaborative approach with housing providers, Police Service of NI and community representatives, to promptly and robustly eradicate paramilitary and sectarian intimidation that causes families to be forced out of their homes.
- the Department for Communities, in cooperation with the NI Housing Executive and through meaningful consultation with individuals affected and their representative organisations, revising the housing selection scheme to ensure that it considers properly an applicant's circumstances and reflects up-to-date common challenges faced by individuals and households in NI, particularly in relation to intimidation points.
- the Department for Communities, in cooperation with the NI Housing Executive, ensuring that an official mechanism to appeal housing selection decisions is in place, which is effectively implemented and monitored.
- the Department for Communities ensuring that comprehensive equality data on housing in NI, that is disaggregated in a way that reflects NI society, is regularly gathered, monitored, evaluated and published.
- the Department of Work and Pensions and Department for Communities ensuring that social security is guided by a cumulative impact assessment that is regularly monitored.
- the Department of Work and Pensions repealing the two-child tax credit limit/Universal Credit limit and ensuring that separate Universal Credit payments are made the primary option.
- the Executive Office, Department for Communities, the Department for Infrastructure, local councils, NI Housing Executive and housing associations ensuring the full and sustained implementation of the remaining recommendations in the Commission's investigation report on Travellers' accommodation in NI.

- the Department for Communities ensuring that the Unauthorised Encampments (NI) Order 2005 is repealed.

Right to Health

In 2023, there has been a lack of significant development in:

- the Department of Health taking effective steps to identify and minimise procedural barriers to all migrants, particularly migrant women, accessing healthcare. This includes introducing guidance for healthcare professionals on providing effective access.
- the Department of Health issuing an amendment or policy direction to ensure that the full set of General Practitioner services, including access to a General Practitioner list (subject to discretion), is genuinely available to any person.
- the Department of Health and the Home Office minimising any procedural or informational barriers to accessing healthcare services for people in temporary and contingency accommodation that are seeking asylum.
- the Department of Health providing clear, accessible and complete information on rights to healthcare post-EU withdrawal, including access to cross-border and island-of-Ireland services to ensure no diminution of the current provision and protect the rights to the highest attainable standard of healthcare.
- the Department of Health ensuring that the Mental Capacity (NI) Act 2016 is commenced in full.
- the Department of Health ensuring that the required legislative steps are taken to address issues with substitute decision making in the Mental Capacity (NI) Act 2016.
- the Department of Health ensuring that similar legislative protections concerning mental capacity, as in the Mental Capacity (NI) Act 2016, are introduced for under 16-year-olds in

NI, subject to recognition of evolving capacity.

- the Department of Justice considering the lacuna identified by the High Court of Justice in NI regarding the powers of a Review Tribunal when seeking to release with conditions an individual who had been detained under the Mental Health (NI) Order 1986, but now has capacity.
- the Department of Health developing, implementing and monitoring an up-to-date Oral Health Strategy for NI that involves affected individuals and their representative organisations at every stage of the process.
- the Department of Health, working with the Department of Finance, in ensuring that adequate funding for oral health-related programmes is ring-fenced through the Soft Drinks Industry Levy.

Right to Education

In 2023, there has been a lack of significant development in:

- the Department of Education developing, implementing and monitoring a revised policy and measurable action plan for children of migrant families that takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2, including reconsidering the use of the term ‘newcomer pupils’.
- the Department of Education reviewing, through meaningful consultation with parents, guardians, children and representative organisations, the curriculum, initial teacher education and in-service professional development to ensure sufficient representation of racial, cultural, gender and other diversities across education in NI.
- the Department of Education reviewing and adequately funding the Education Authority NI’s Intercultural Education Service to ensure the service has sufficient flexibility to ensure all children seeking asylum in NI at any given time have timely access to education and other necessary supports, such as language classes, uniform grants, school meals and transport.

Right to Participate in the Cultural Life of the Community

In 2023, there has been a lack of significant development in:

- the NI Office, working with the NI Executive and Treasury, in ensuring the necessary steps are taken and resources are provided to establish and guarantee the effective functioning of the new statutory bodies created by the Identity and Language (NI) Act 2022. This includes providing adequate resources to support existing public authorities to effectively fulfil their new duties created by the 2022 Act.

Annex - Traffic Light Summary of Issues for 2023

Constitutional Protections

- A Bill of Rights for NI
- A Charter of Rights for the island of Ireland
- Birthright
- Common Travel Area
- Human Rights Act and administrative law reform
- National human rights institutions
- Human Rights after UK exit from the EU
- EU Settlement Scheme and frontier workers
- Retained EU law

Equality and Non-discrimination

- Age discrimination
- Business and human rights
- Consolidating, strengthening and clarifying equality protections
- Conversion therapy
- Discrimination on grounds of sexual orientation
- Gender Equality Strategy
- Gender recognition
- Hate crime
- Intersectional multiple discrimination
- Persons with disabilities
- Racial equality
- Refugee Integration Strategy
- Sectarianism
- Sport and human rights

Right to life

- Conflict related deaths: transitional justice and individual cases
 - Inquiries Act 2005
 - Legacy inquests and inquiries
 - Rule of law: non-State actors
-

Freedom from Torture, Inhuman and Degrading Treatment

- Abuse in health and social care settings
 - Allegations of torture and cruel, inhuman or degrading treatment or punishment overseas
 - Children, early and forced marriage
 - Children missing from care
 - Deprivation of citizenship
 - Domestic and sexual violence and abuse
 - Female genital mutilation
 - Historical abuse of children and adults
 - Intersex genital mutilation
 - Mechanisms to identify victims of torture detained in immigration facilities
 - Physical punishment of children
 - Prison conditions
 - Rwanda asylum proposals
 - Spit and bite guards
 - Strip searches
 - Victims' payments
-

Freedom from Slavery

- Child sexual exploitation
- Modern slavery and human trafficking

Right to Liberty and Security of the Person

- Alternatives to imprisonment
 - Definition of terrorism
 - Imprisonment for fine default
 - Imprisonment of children with adults
 - Powers of arrest under Terrorism Act 2000
 - Remand of children
 - Women in detention
-

Right to Fair Trial and the Administration of Justice

- Access to justice
 - Age of criminal responsibility
 - Avoidable delay
 - Closed material proceedings
 - Compensation for a miscarriage of justice
 - Cross-border justice arrangements
 - Non-jury trials
-

Right to Private and Family Life

- Access to financial support for unmarried couples
- Alternative care arrangements for children
- Anonymity: Children and pre-charge proceedings
- Biometric data
- Climate change and environmental regulation
- Health and Social Care (Control of Data Processing) Act 2016
- Rehabilitation of offenders
- Stop and search
- Visitation in health and social care settings

Freedom of Religion and Belief, Expression, Association and Right to Participate in Public and Political Life

- Blasphemy
 - Freedom of expression of journalists
 - Parades and protests
 - Participation of women in public and private life
-

Right to Work and to Just and Favourable Conditions of Work

- Accessible childcare
 - Armed Forces Covenant
 - Children in the Armed Forces
 - Employment equality
 - Gender pay gap
 - Menopause
 - Working conditions of migrant workers
-

Right to an Adequate Standard of Living and to Social Security

- Access to food
- Asylum and refugee law and resettlement
- Asylum financial support
- Carers
- Child poverty
- Cost of living
- Crisis fund
- Homelessness
- Social housing
- Social security
- Travellers' accommodation
- Unauthorised Encampments (NI) Order 2005

Right to Health

- Access to healthcare for migrants
 - Access to reproductive healthcare
 - Emergency healthcare
 - Mental capacity
 - Mental health
 - National Health Service waiting lists
 - Oral health
 - Period poverty
 - Relationships and sexuality education
 - Safe access zones
-

Right to Education

- Academic selection
 - Bullying in schools
 - Educational needs of specific groups of children
 - Integrated education
 - Religious education
 - Shared education
 - Special educational needs
 - Use of restraint in educational settings
-

Right to Participate in the Cultural Life of the Community

- Minority culture and languages
-



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