



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the Committee for Education
Mini Inquiry into Relationship and Sexuality
Education (RSE)**

October 2024

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Summary of Recommendations

- 2.10** The NIHRC recommends that RSE legislation, policy and guidance reflects international human rights standards by expressly articulating the fundamental right of children and young people to an education and to exercise agency and autonomy in the exercise of that right.
- 3.23** The NIHRC recommends that the Department of Education considers the recommendations from the UN CRC Committee and rulings from the ECtHR concerning the provision of withdrawal from relationships and sexuality education in NI.
- 3.24** The NIHRC recommends that, in line with international human rights standards, the voice and evolving capacity of children and young people should be taken into consideration in developing RSE policy and children recognised as rights bearers. This should include opportunity and support for children and young people to make informed and independent decisions on withdrawal from RSE lessons, and to meaningfully contribute to that decision.
- 3.25** The NIHRC recommends that the Department of Education develops a strategy to raise awareness of the benefits of holistic RSE and to address any myths or misconceptions relating to the provision of RSE lessons that may increase the likelihood of parental withdrawal. Parents should be consulted to ensure their concerns and needs are understood.
- 3.26** The NIHRC recommends that the Department of Education develops measures to mitigate against the adverse impact of children and young people who are withdrawn from RSE lessons. For example, requiring schools to advise parents of the right of children and young people to education and participation; developing guidance on when children and young people may decide to opt back in to RSE lessons;

and providing alternative educational arrangements for children and young people who have been withdrawn from RSE.

- 4.8 The NIHRC recommends that the Committee seeks clarification on the extent of the Department of Education’s duties under the 2023 Regulations.**
- 4.9 The NIHRC recommends that the Department of Education clearly outlines the key elements that should be included within ‘comprehensive’ RSE. This should reflect international standards and achieve the aim of ensuring that all elements of comprehensive RSE are delivered within every post-primary school in NI.**
- 5.5 The NIHRC recommends that schools include students in co-developing and evaluating RSE policies to ensure they meet the needs of young people.**
- 6.3 The NIHRC recommends that RSE resources are regularly reviewed to ensure they meet the needs of young people and the requirements set out in international human rights standards.**
- 7.7 The NIHRC recommends that the Department of Education engage with teachers to invite their views on the supports they require to enable them to competently deliver RSE to post primary school children.**
- 7.8 The NIHRC recommends that the Department of Education engage with the teacher training colleges in Northern Ireland to ensure their programmes adequately educate newly qualified teachers in the provision of RSE. The Department of Education NI should also consider arrangements for the continuing professional development of members of the teaching profession, to ensure they are trained in the delivery of comprehensive, scientifically accurate RSE.**
- 7.9 The NIHRC recommends that the Department of Education NI develop additional guidance for schools on how to establish effective partnerships with external RSE**

providers. This should include guidance on ensuring that programmes and resources are compliant with international human rights standards.

8.8 The NIHRC recommends that in line with pre-existing arrangements, the ETI monitors the delivery of comprehensive RSE.

8.9 The NIHRC recommends that the RSE curriculum and statutory guidance are regularly evaluated and revised by the Department of Education NI to ensure that they are accurate, human rights compliant, and adapting to emerging needs.

8.10 The NIHRC recommends that the Department of Education collects data on the number of children and young people withdrawn from RSE lessons, including the reason for their withdrawal. Data should be disaggregated to determine whether any specific groups are disproportionately impacted by the provision for opt-outs. For example, by age, disability, ethnicity, religion and sex.

9.3 The NIHRC recommends that guidance and any further reforms are developed following engagement with relevant stakeholders and experts to ensure that RSE programmes are inclusive and meet the educational needs of all students including, but not limited to, disabled students, ethnic minority students, and those with diverse gender and sexual identities.

10.11 The NIHRC recommends that the RSE curriculum includes violence against women and girls as a mandatory component and that it reflects international standards.

1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC is also required, under section 78A(1) of the Northern Ireland Act 1998, to monitor the implementation of Article 2 of the Windsor Framework, to ensure there is no diminution of rights protected in the “Rights, Safeguards and Equality of Opportunity” chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK’s withdrawal from the EU.¹ In accordance with these functions, the following advice is submitted to the Committee for Education for its mini inquiry into Relationships and Sexuality Education.

1.2 The NIHRC bases its advice on the European Convention on Human Rights (ECHR), which is incorporated into UK law by the Human Rights Act 1998. It also takes into account other relevant treaty obligations of the Council of Europe (CoE) and United Nations (UN). The most relevant regional and international treaties in this context include:

- UN Convention on Elimination of Discrimination against Women 1981 (UN CEDAW);²
- UN Convention on the Rights of the Child 1989 (UN CRC);³
- UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD);⁴
- CoE Convention on Preventing and Combating Violence against Women 2011 (CoE Istanbul Convention);⁵ and
- Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (CoE Lanzarote Convention)⁶

¹ The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement and all references to the Protocol in this document have been updated to reflect this change. (see 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).

² Ratified by the UK 1986.

³ Ratified by the UK 1991.

⁴ Ratified by the UK 2009.

⁵ Ratified by the UK in 2022.

⁶ Ratified by the UK 2018.

1.3 In addition to these treaty standards, the following declarations and principles provide further guidance in respect of specific areas:

- UN ICESCR Committee General Comment No 22;⁷
- UN CRC Committee General Comment No 12;⁸
- UN CRC Committee General Comment No 4;⁹
- UN CRPD Committee General Comment No 3;¹⁰
- UN CEDAW Inquiry Report 2018;¹¹
- UN CEDAW Committee Concluding Observations 2019;¹²
- UN CRC Concluding Observations 2023;¹³ and
- UN CRC Committee Statement on Article 5.¹⁴

1.4 The NIHRC welcomes the Committee for Education’s mini inquiry into Relationships and Sexuality Education. The NIHRC provided oral evidence to the Committee in September 2024. This submission is intended to supplement that evidence.

1.5 In June 2023, the NIHRC published its report following its investigation into Relationships and Sexuality Education (RSE) in post-primary schools in Northern Ireland.¹⁵ The investigation concentrated on whether the UK Government and NI Executive had made “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”, in line with the CEDAW Committee inquiry recommendation.¹⁶ The Commission’s report provides a detailed analysis of the legal and policy framework relating to

⁷ E/C.12/GC/22, Committee on Economic, Social and Cultural Rights, General Comment No 22 on the Right to Sexual and Reproductive Health’, 2 May 2016.

⁸ CRC/C/GC/12, ‘UN CRC Committee General Comment No 12 on the Right of the Child to be Heard’, 20 July 2009.

⁹ CRC/GC/2003/4, ‘UN CRC Committee General Comment No. 4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child’, 1 July 2003.

¹⁰ CRPD/C/GC/3, ‘UN CRPD Committee General Comment No 3 on Women and Girls with Disabilities’, 25 November 2016.

¹¹ CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee’, 6 March 2018.

¹² CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report’, 8 March 2019.

¹³ 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.

¹⁴ UN CRC Committee, ‘Statement of the Committee on the Rights of the Child on Article 5 of the Convention on the Rights of the Child’, 11 October 2023.

¹⁵ NI Human Rights Commission, ‘Relationships and Sexuality Education in Post-Primary School in NI: A Compelling Case for Reform’ (NIHRC, 2023).

¹⁶ CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee’, 6 March 2018, at para 86(d).

the provision of RSE. Along with recommending an amendment to the Education (Curriculum Minimum Content) Order (NI) 2007 (the Minimum Content Order), the investigation report contains a number of recommendations to support implementation. The report has informed this submission to the Committee's inquiry; some sections of this response will direct the Committee to the relevant chapters of the report.

- 1.6 Following the publication of the Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023, the Commission responded to the Department of Education's consultation on the associated guidance in November 2023.¹⁷

2.0 Legislative and Rights Based Considerations

- 2.1 Chapter Two of our investigation report sets out the Human Rights Framework for RSE. Whilst particular elements are highlighted below, the NIHRC encourages the Committee to refer to the chapter in full.

- 2.2 In 2018, the UN Committee on the Elimination of all forms of Discrimination Against Women (the CEDAW Committee) published the report of its inquiry into sexual and reproductive health rights in Northern Ireland. It made a number of recommendations, one of which was for the UK Government and NI Executive to make:

age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of the curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation.¹⁸

- 2.3 This recommendation was later given domestic effect through the Northern Ireland (Executive Formation) Act 2019, which placed a duty on the Secretary of State to bring about its implementation. Whilst Regulations were brought forward in 2020 to address other components of the CEDAW Committee's recommendations, namely access to termination of

¹⁷ NI Human Rights Commission, 'Response to Department of Education public consultation on Relationships and Sexuality Education', November 2023.

¹⁸ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee', 6 March 2018, at para 86(d).

pregnancy, provision was not made for sexual and reproductive health education at that time.

- 2.4 In line with its statutory powers and duties outlined in the 1998 Northern Ireland Act, the NIHRC used its investigatory powers to explore RSE in post-primary schools in Northern Ireland, grounded in the CEDAW Committee's recommendation 86(d). Independent experts were contracted to assist with the assessment of information gathered in the course of the investigation; those experts reported on the provision of RSE in post-primary schools and advised on whether the materials provided were comprehensive, scientifically accurate and in line with best practice.
- 2.5 Following the conclusion of our investigation last year, the Secretary of State introduced Regulations which sought to ensure implementation of the CEDAW Committee's recommendation 86(d). The Regulations also place a duty on the Department of Education to publish a report on the implementation by September 2026. The Commission is to be consulted in the drafting of this report.

Human Rights Framework

- 2.6 The European Convention on Human Rights (ECHR) is incorporated into domestic law by the Human Rights Act 1998. Article 2 Protocol 1 of the ECHR provides the right to education. It states that:

no person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

- 2.7 The European Court of Human Rights (ECtHR) has, however, ruled that parents may not refuse a child's right to education on the basis of their religious or philosophical convictions, but clarified rather that the wording

of Article 2 Protocol 1 aims to safeguard pluralism in education.¹⁹ The right to an education, and the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions, must be read together, rather than in competition with each other.²⁰

- 2.8 The main UN human rights treaties that relate to sexual and reproductive health are the Convention on the Elimination of All Forms of Discrimination Against Women (UN CEDAW); the Convention on Civil and Political Rights (UN ICCPR); the International Covenant on Economic, Social and Cultural Rights (UN ICESCR); the Convention on the Rights of the Child (UN CRC); and the Convention on the Rights of Persons with Disabilities (UN CRPD). Numerous treaty bodies have made recommendations relating to the provision of RSE. These are outlined in detail in Chapter Two of our report.
- 2.9 International human rights bodies consider that RSE is essential to the fulfilment of a range of rights including the right to education, the right to health and even the right to life. While providing children and young people with the necessary information for their sexual and reproductive health is a parental responsibility, human rights bodies emphasise the important role that schools should play in the provision of education programmes. Human rights bodies consistently recommend that RSE should be part of the mandatory school curriculum and include scientifically based information relating to contraceptives and access to abortion services.²¹ Human rights bodies have further found that education programmes should be 'non-judgemental' and should take care not to reinforce harmful and demeaning stereotypes.²²

2.10 The NIHRC recommends that RSE legislation, policy and guidance reflects international human rights standards by expressly articulating the fundamental right of children and young people to an education and to exercise agency and autonomy in the exercise of that right.

¹⁹ Konrad and Others v Germany, Application No 35504/03, judgement of 11 September 2006; Folgerø and Others v Norway (2007) ECHR 2148, at para 84(b).

²⁰ Kjeldsen, Busk Madsen and Pedersen v Denmark (1976) ECHR 6, at para 50.

²¹ See Chapter Two, NI Human Rights Commission, 'Relationships and Sexuality Education in Post-Primary School in NI: A Compelling Case for Reform' (NIHRC, 2023) for further detail and references.

²² INTERIGHTS v. Croatia (2009) Complaint No. 45/2007 (European Committee of Social Rights), at para 61.

3.0 Impact of Withdrawal Policies

- 3.1 In relation to the ability of a parent to withdraw their child from RSE, there is a distinction in the approaches taken by the UN Committee on the Rights of the Child and the approach taken by the ECtHR.
- 3.2 Article 2 Protocol 1 ECHR requires the State to respect parents' religious and philosophical convictions, throughout the State education system.²³ However, the primary purpose of Article 2 Protocol 1 is to guarantee to an individual the right to education. The ECtHR has highlighted that "[i]n a democratic society, the right to education ... is indispensable to the furtherance of human rights [and] plays ... a fundamental role".²⁴
- 3.3 In its jurisprudence, the ECtHR has identified that RSE pursues a number of legitimate aims including the preservation of health, and the prevention of sexual violence and exploitation.²⁵
- 3.4 The ECtHR has held that Article 2 of Protocol 1 should be viewed collectively. In *Kjeldsen v Denmark* (1976), the ECtHR highlighted that:
- the second sentence of Article 2 (P1-2) must be read together with the first which enshrines the right of everyone to education. It is on to this fundamental right that is grafted the right of parents to respect for their religious and philosophical convictions.²⁶
- 3.5 Parents therefore may not refuse a child's right to education on the basis of their religious and philosophical convictions. Rather, the second sentence of Article 2 of Protocol No 1 aims to safeguard pluralism in education to protect the democratic society envisaged by the Convention.²⁷
- 3.6 In the case of *Isherwood and Others v The Welsh Ministers*, the Welsh RSE Code and Guidance were subject to judicial review. The grounds of challenge included that the failure to allow for parental exemptions was in breach of the requirements of the second sentence of Article 2 Protocol 1

²³ *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) ECHR 6, at para 51.

²⁴ *Leyla Şahin v Turkey*, (2004) ECHR 299, at para 137.

²⁵ *A.R. and L.R. v. Switzerland*, Application No 22338/15, judgement of 18 January 2018.

²⁶ *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) ECHR 6, at para 50.

²⁷ *Folgerø and Others v Norway* (2007) ECHR 2148, at para 84(b).

ECHR.²⁸ It was further claimed that the rights protected by Article 2 Protocol 1 ECHR were breached by a 'whole school' approach to RSE, without any right of excusal and without any guarantee as to the content of that education.

3.7 In her judgment, Mrs. Justice Steyn DBE stated:

The State is entitled to provide teaching that (i) addresses considerations of a moral nature, provided it does not constitute an attempt at indoctrination aimed at advocating a specific kind of sexual behaviour; (ii) aims to equip pupils to protect themselves and to show consideration for others; (iii) seeks to provide pupils with knowledge of biological, ethical, social and cultural aspects of sexuality in order to enable them to develop their own moral views and an independent approach to their own sexuality, and that encourages tolerance towards human beings irrespective of their sexual orientation and identity; and (iv) aims to enable pupils to be tolerant and open to dialogue and to people whose beliefs differ from their own.²⁹

3.8 In dismissing the claim, she found "a close resemblance between the Welsh Government's objectives and the purposes of teaching that the Strasbourg court considered compatible with [Article 2 of Protocol No 1] in *Kjeldsen*".³⁰

3.9 Whilst the ECtHR jurisprudence has not found parental opt outs to be incompatible with the ECHR, in the *Isherwood* case, the High Court in England and Wales considered that the ECtHR has generally found the setting of the curriculum to be within a State's margin of appreciation.

3.10 Effectively, the current jurisprudence indicates that whilst a State *may* make provision for a parent to withdraw their child from RSE, a parent does not have a *right* to withdraw their child.

²⁸Isherwood & Others, R. (On the Application Of) v The Welsh Ministers [2022] EWHC 3331.

²⁹ Isherwood & Others, R. (On the Application Of) v The Welsh Ministers [2022] EWHC 3331, at Para 146.

³⁰ Isherwood & Others, R. (On the Application Of) v The Welsh Ministers [2022] EWHC 3331, at Para 201.

3.11 Parental opt outs have been considered by the UN CRC Committee, which recommended 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.³¹

3.12 At the regional level, the Committee of the Parties to the Council of Europe (CoE) Lanzarote Convention (Lanzarote Committee) has stated that:

in the context of the implementation of the Lanzarote Convention, religious or philosophical convictions of the parents on the matter should be respected to the extent that these do not come into conflict first and foremost with the child's best interest but also with the public interest which is served through the provision of education to children to protect them from all forms of sexual violence.³²

Evolving Capacity and Voice of the Child

3.13 The UN CRC states that:

in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.³³

3.14 In October 2023, the UN CRC Committee published a statement

³¹ 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 44(b).

³² Committee of the Parties to the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Committee), '2nd Implementation Report: Protection of Children Against Sexual Abuse in the Circle of Trust', (CoE, 2018), at para 49.

³³ Article 3(1), Convention on the Rights of the Child 1989.

clarifying Article 5 UN CRC, which enshrines both the concepts of parental guidance and the evolving capacities of the child. The Committee explained that Article 5 seeks to strike a balance between the rights of the child and the responsibilities, rights and duties of parents as well as the State obligation to ensure the rights of the child.³⁴ The Committee clarified that “any interpretation that singles out elements of Article 5 (e.g., the rights of parents) without also mentioning the need for ‘appropriate direction and guidance’ ‘in the exercise of the rights recognised in the current Convention’ would be inaccurate”.³⁵

3.15 Article 5 affirms that all children have rights, irrespective of their age, and as they mature, they are entitled to an increasing level of agency in the exercise of those rights.³⁶

3.16 The UN CRC Committee notes that “parents’ responsibilities, rights and duties to guide their children is not absolute but, rather, delimited by children’s status as rights holders”.³⁷ Article 18 of the Convention, which underlines the primary responsibility of parents, or legal guardians, for the upbringing and development of the child, states that ‘the best interests of the child will be their basic concern’.³⁸

3.17 The Committee also states:

Parents should take into account the views of children while providing appropriate direction and guidance to children. As a child grows and matures, greater weight should be given to the views of the child, with parents adjusting their guidance and direction to reflect the child's evolving capacities in the exercise of their rights. Soliciting and hearing children’s views

³⁴ Statement of the Committee on the Rights of the Child on article 5 of the Convention on the Rights of the Child’, 11 October 2023.

³⁵ Statement of the Committee on the Rights of the Child on article 5 of the Convention on the Rights of the Child’, 11 October 2023.

³⁶ Statement of the Committee on the Rights of the Child on article 5 of the Convention on the Rights of the Child’, 11 October 2023.

³⁷ Statement of the Committee on the Rights of the Child on article 5 of the Convention on the Rights of the Child’, 11 October 2023.

³⁸ Statement of the Committee on the Rights of the Child on article 5 of the Convention on the Rights of the Child’, 11 October 2023.

are requirements both when providing direction and guidance, and when assessing and determining the child's best interests.³⁹

3.18 Article 12 of the UN CRC recognises respect for the views of the child as a fundamental right. The UN CRC Committee has highlighted the need to consider "the evolving capacities of children and young people", to ensure "their views being given due weight in accordance with their age and maturity".⁴⁰ This approach is recommended by both UN and CoE human rights treaty bodies that advise that children are entitled to an increasing level of responsibility for the regulation of matters affecting them. To understand how this intersects with the right of parents or carers to provide direction and guidance on matters affecting their child, the UN CRC Committee advises:

The more the child himself or herself knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for the child have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. This transformation will not take place at a fixed point in a child's development, but will steadily increase as the child is encouraged to contribute her or his views.⁴¹

3.19 The Committee further clarified:

The Committee reiterates that all individuals under 18 years of age are children and are entitled to all the rights enshrined in the Convention, without any exception. Further, the rights of women and girls to equality in the family has been recognized in international human rights law. Therefore, neither the 'protection of the family', nor references to culture or religion, can be used as a justification for laws, policies or practices – such as child marriage, female genital

³⁹ Statement of the Committee on the Rights of the Child on article 5 of the Convention on the Rights of the Child', 11 October 2023.

⁴⁰ CRC/C/GC/12, 'UN CRC Committee General Comment No.12 on the right of the child to be heard', 20 July 2009, at para 85; CM/Rec(2012)2, 'CoE Committee of Ministers Recommendation to Member States on the participation of children and young people under the age of 18', 28 March 2012.

⁴¹ CRC/C/GC/12, 'UN CRC Committee General Comment No.12 on the right of the child to be heard', 20 July 2009, at para 84.

mutilation, or discrimination in relation to nationality and custody – that would deny girls their full and equal human rights. Parental direction and guidance should aim at enabling children, including girls, to exercise their rights free of any form of discrimination. States are not required to respect the right of parents to provide direction and guidance when such direction and guidance would promote discrimination.⁴²

- 3.20 It is notable that other jurisdictions which offer a provision for parents to opt their child out of elements of RSE also provide for that child to opt in at a later date. For example, in England, children and young people who have been withdrawn from RSE may attend lessons in one of the three terms before their 16th birthday.⁴³
- 3.21 Whilst the current DE guidance states that, for children in Year 12, a parental request for a pupil to be excused must also confirm “that the pupil does not object to being excused”,⁴⁴ the NIHRC notes that this does not provide the child with sufficient agency or voice to opt in to classes, should they wish.
- 3.22 The NIHRC considers that it is important to identify the most appropriate measures to ensure that the right to education of children and young people is fulfilled. Care should also be taken to ensure that children and young people are not stigmatised for being withdrawn, or otherwise, from RSE lessons.

3.23 The NIHRC recommends that the Department of Education considers the recommendations from the UN CRC Committee and rulings from the ECtHR concerning the provision of withdrawal from relationships and sexuality education in NI.

3.24 The NIHRC recommends that, in line with international human rights standards, the voice and evolving capacity of children and young people should be taken into

⁴² Statement of the Committee on the Rights of the Child on article 5 of the Convention on the Rights of the Child’, 11 October 2023.

⁴³ Department of Education, ‘Equality and Human Rights Screening for Relationships and Sexuality Education (RSE)’ (DE, 2023), at 3.

⁴⁴ Department of Education, ‘Circular 2024/1: Guidance on Amendments to the Relationships and Sexuality Education Curriculum Content’ (DE, 2024).

consideration in developing RSE policy and children recognised as rights bearers. This should include opportunity and support for children and young people to make informed and independent decisions on withdrawal from RSE lessons, and to meaningfully contribute to that decision.

3.25 The NIHRC recommends that the Department of Education develops a strategy to raise awareness of the benefits of holistic RSE and to address any myths or misconceptions relating to the provision of RSE lessons that may increase the likelihood of parental withdrawal. Parents should be consulted to ensure their concerns and needs are understood.

3.26 The NIHRC recommends that the Department of Education develops measures to mitigate against the adverse impact of children and young people who are withdrawn from RSE lessons. For example, requiring schools to advise parents of the right of children and young people to education and participation; developing guidance on when children and young people may decide to opt back in to RSE lessons; and providing alternative educational arrangements for children and young people who have been withdrawn from RSE.

4.0 Curriculum Integration and Content

- 4.1 Chapter Three of our investigation report provides an analysis of the relevant legal and policy framework, including content of the curriculum and compulsory components. This analysis pre-dates the changes introduced by the 2023 Regulations. Chapter Two of our report also provides commentary from the treaty bodies in relation to what constitutes comprehensive relationships and sexuality education.
- 4.2 The 2023 Regulations use the language of the CEDAW Committee in referring to “comprehensive and scientifically accurate education on

sexual and reproductive health and rights".⁴⁵ Whilst in our investigation report we took the view that 'education on sexual and reproductive health and rights' was analogous to RSE, the Department of Education in its approach to implementing the Regulations appears to have taken the view that 'education on sexual and reproductive health and rights' is one element of RSE, principally encompassing prevention of pregnancy and access to termination of pregnancy.

4.3 It would be useful for the Committee to clarify the Department's view on the full extent of its duties under the Regulations. Whilst we welcome that the consultation last year on the updated guidance listed nine topics that are required to be included within a school's curriculum,⁴⁶ which broadly corresponds with the topics listed in the ETINI safeguarding pro forma, a further amendment to the Minimum Content Order would provide certainty.

4.4 In March 2023, UN Experts published a Compendium on Comprehensive Sexuality Education (CSE) with the purpose of recalling the main international standards and to make a specific call to States to ensure the right to comprehensive RSE without discrimination. It notes:

Comprehensive sexuality education should include information and support the development of skills that enable preventing sexually transmitted infections, early pregnancies and sexual and gender-based violence. It should also promote human rights, gender equality and the empowerment of women and girls, healthy and respectful relationships, well-being, empathy, respect, autonomy, consent and diversity.⁴⁷

4.5 It calls on States to:

⁴⁵ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee', 6 March 2018, at para 86(d).
CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee', 6 March 2018, at para 86(d).

⁴⁶ Department of Education, 'Consultation on Relationships and Sexuality Education (RSE)' (DE, 2023).

⁴⁷ Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, the Special Rapporteur on the right to education, and the Working Group on discrimination against women and girls, 'A Compendium on Comprehensive Sexuality Education', (UN, 2023).

Ensure that comprehensive sexuality education curricula are non-discriminatory, non-biased, and based on scientific evidence and human rights. They should be inclusive and accessible to all individuals, especially to the most marginalized, including adolescent girls, LGBTIQ+ youth, out-of-school adolescents and young people living with disabilities. States should ensure that comprehensive sexuality education starts early in childhood, in a manner consistent with the evolving capacities of the child, and that it progresses through adolescence and adulthood.

- 4.6 The UNESCO International Guidelines on Sexuality Education finds that education programmes will be less effective if they omit key issues. For example, it states that “failure to discuss menstruation can contribute to the persistence of negative social and cultural attitudes towards it”.⁴⁸
- 4.7 Human rights treaty bodies have further found that holistic RSE goes beyond education about risks and provides an opportunity to present relationships and sexuality in a way that also includes its positive aspects, such as friendship and relationships based on mutual respect and gender equality.⁴⁹ It should be inclusive of the needs of marginalised groups including, but not limited to, deaf and disabled persons,⁵⁰ LGBTQIA+ persons,⁵¹ and persons of national or ethnic minority background.⁵²
- 4.8 **The NIHRC recommends that the Committee seeks clarification on the extent of the Department of Education’s duties under the 2023 Regulations.**
- 4.9 **The NIHRC recommends that the Department of Education clearly outlines the key elements that should be included within ‘comprehensive’ RSE. This should reflect international standards and achieve the aim of ensuring that all elements of**

⁴⁸ United Nations Educational, Scientific and Cultural Organization, ‘International Guidelines on Sexuality Education: An Evidence Informed Approach to Effective Sex, Relationships and HIV/STI Education’, (UNESCO, 2009) at 18.

⁴⁹ Council of Europe, ‘Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence’, (CoE, 2011) at para 94.

⁵⁰ CRPD/C/GC/3, ‘UN CRPD Committee General Comment No 3 on Women and Girls with Disabilities’, 25 November 2016, at para 64(b).

⁵¹ E/C.12/GC/22, Committee on Economic, Social and Cultural Rights, General Comment No 22 on the Right to Sexual and Reproductive Health’, 2 May 2016, at para 23.

⁵² E/C.12/GC/22, Committee on Economic, Social and Cultural Rights, General Comment No 22 on the Right to Sexual and Reproductive Health’, 2 May 2016, at para 30.

comprehensive RSE are delivered within every post-primary school in NI.

5.0 Policy Implementation and School Compliance

- 5.1 Chapter Four of our investigation report provides an analysis by independent experts of school policies and support for schools, including findings related to the provision of RSE and RSE policies in schools. This analysis pre-dates the changes introduced by the 2023 Regulations.
- 5.2 Our investigation found some positive examples of schools exercising their discretion to provide comprehensive and scientifically accurate RSE. However, based on analysis of evidence provided, in the majority of schools this was not the case.
- 5.3 The independent experts engaged in the NIHRC investigation found that, within school policies, there is limited consideration of children and young people as rights-bearers who can actively contribute to RSE. As highlighted in Chapter Two, the UN CRC Committee has recommended that the State establish structures for the meaningful participation of young people in designing laws, policies and programmes that relate to sexual and reproductive education.⁵³ Engaging with students should help ensure that RSE is 'student-sensitive', appropriate and meets the needs of all young people. This should take a trauma-informed approach, supporting pupils who may have experienced abuse to contribute and engage, or to safely make a disclosure to a trusted adult. Teachers should receive appropriate training in trauma-informed approaches and appropriate procedures should be in place to address any disclosures.
- 5.4 The independent experts found that the centrality of ethos and values in RSE was emphasised across school policies. 96.9% (n=126) of schools made reference to their "ethos", "morals" or "values" in their RSE policies. However whilst most schools (66.9%, n=87) also made reference to the need for RSE to be "balanced" and/or "unbiased", the investigation found there was an overall lack of focus on providing age- appropriate, comprehensive and scientifically accurate RSE.

⁵³ CRC/C/GBR/CO/5, 'Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 12 July 2016 at para 31(a).

- 5.5 **The NIHRC recommends that schools include students in co-developing and evaluating RSE policies to ensure they meet the needs of young people.**

6.0 Resources and Support for RSE

- 6.1 Chapter Four of our investigation report provides an analysis by independent experts of school policies and support for schools, including findings related to the CCEA. This analysis pre-dates the changes introduced by the 2023 Regulations and the re-launch of the CCEA RSE Hub in June 2024.
- 6.2 The NIHRC considers the redevelopment of the CCEA RSE Hub to be a positive step and can provide a basis for enhancing the capacity of schools to deliver RSE. However, implementation and consistency of delivery should be monitored.
- 6.3 **The NIHRC recommends that RSE resources are regularly reviewed to ensure they meet the needs of young people and the requirements set out in international human rights standards.**

7.0 Teacher Training and External Providers

- 7.1 Chapter Four of our investigation report provides an analysis by independent experts of school policies and support for schools, including findings related to the provision of RSE in schools.
- 7.2 The NIHRC investigation found that the Department of Education NI has taken steps to enhance the capacity of the teaching profession to deliver RSE. This has included engaging with those responsible for educating new entrants to the profession and funding continual professional development for teachers. The NIHRC further notes that the Belfast Health and Social Care Trust has designed and delivered an RSE training course for teachers in post-primary schools. However, the evidence gathered indicated that further investment is needed to enhance the

capacity of teachers. Furthermore, UK wide data has shown that 46% of teachers report that they do not feel confident teaching RSE.⁵⁴

- 7.3 The NIHRC considers that teacher confidence and competence is critical to the effective delivery of comprehensive RSE. The NIHRC has identified potential actions that could enhance the capacity of teachers including:
- The introduction of an accredited training scheme for teachers responsible for RSE provision;
 - Placing a requirement on schools to nominate dedicated RSE lead teachers with protected hours for continual professional development;
 - A review of teacher training programmes and continual professional development arrangements to assess how they are supporting teachers to deliver RSE; and
 - Developing opportunities for teachers to share best practice in the delivery of RSE within and across schools to support a holistic, integrated approach across the school community.
- 7.4 The role of external providers in delivering RSE was considered as part of the NIHRC investigation. Of the schools which responded to our investigation questionnaire, 94% (140 schools) said they used external providers to assist with the delivery of RSE.
- 7.5 The independent experts contracted by the NIHRC analysed materials provided by eleven external providers. The materials varied in their emphasis and providers tended to develop materials that reflected their organisational objectives and specialisms. They noted that external providers “may have specialist knowledge or comfort with certain topics that teachers themselves lack, particularly in relation to gender, abuse, and LGBTQ issues”. However, the materials were not in all cases considered to be comprehensive, pluralistic and objective. They noted that schools appeared to select the external providers, and their additional resources, based on their schools’ ethos. The experts also noted that some schools appeared to be using outdated resources produced by external providers.

⁵⁴ NSPCC, ‘Half of secondary school teachers don’t feel confident delivering sex and relationships education’. Available at: [Half of secondary school teachers don’t feel confident delivering sex and relationships education | NSPCC](#)

7.6 While a lack of teacher confidence may contribute to the dependence on external providers, the NIHRC also noted that external providers may be equipped to provide expertise on specific knowledge areas. The NIHRC considers that the involvement of external providers can ensure access to specialist insights. However, it is important that schools maintain oversight and ensure that the overall provision of RSE is comprehensive and scientifically accurate. The use of external providers should not be an alternative to a permanent supportive presence in a school. The NIHRC considers that there is a need to explore the ways in which schools are engaging with external providers in RSE and whether these arrangements are effectively contributing to the knowledge base within individual schools.

7.7 The NIHRC recommends that the Department of Education engage with teachers to invite their views on the supports they require to enable them to competently deliver RSE to post primary school children.

7.8 The NIHRC recommends that the Department of Education engage with the teacher training colleges in Northern Ireland to ensure their programmes adequately educate newly qualified teachers in the provision of RSE. The Department of Education NI should also consider arrangements for the continuing professional development of members of the teaching profession, to ensure they are trained in the delivery of comprehensive, scientifically accurate RSE.

7.9 The NIHRC recommends that the Department of Education NI develop additional guidance for schools on how to establish effective partnerships with external RSE providers. This should include guidance on ensuring that programmes and resources are compliant with international human rights standards.

8.0 Monitoring and Evaluation

8.1 Chapter Three of our investigation report provides an analysis of the relevant legal and policy framework, including monitoring arrangements. This analysis pre-dates the changes introduced by the 2023 Regulations. It also pre-dates the Education and Training Inspectorate thematic

evaluation of the Preventative Curriculum in Schools and EOTAS Centres,⁵⁵ which the NIHRC welcomed.

- 8.2 The UN CEDAW Committee specified that RSE should be “scientifically accurate”.⁵⁶ To ensure that this is the case, there is a need for monitoring arrangements which confirm that information relating to RSE is accurate and conveyed to pupils in an objective and non-judgemental matter.
- 8.3 Our investigation report notes that “there is a mutually reinforcing relationship between effective implementation and monitoring”.⁵⁷ The NIHRC considers that recent amendments to the Minimum Content Order must be accompanied by changes to the ETI arrangements. We welcome that the recently published ETI new framework for inspection states that an indicator of effective practice for RSE includes scientifically accurate information.⁵⁸
- 8.4 Along with the monitoring of implementation by ETI, it is the NIHRC’s view that the RSE curriculum itself should be subject to regular review and evaluation. The CoE Commissioner for Human Rights has recommended that RSE curricula “should also be regularly evaluated and revised, in order to ensure that they are accurate and meet existing needs”.⁵⁹ The NIHRC considers there is a need for continual monitoring of arrangements to ensure that reforms to the Minimum Content Order are properly implemented.
- 8.5 The UN CEDAW Committee, in its 2019 concluding observations to the UK, recommended that the UK Government and NI Executive “systematically collect and publish data, disaggregated by sex, gender, ethnicity, disability and age, throughout the whole of its territory to inform policymaking and assess the impact of measures taken”.⁶⁰

⁵⁵ Education and Training Inspectorate NI, ‘Thematic evaluation of The Preventative Curriculum in Schools and EOTAS Centres’, (ETINI, 2023).

⁵⁶ CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee’, 6 March 2018, at para 86(d).

⁵⁷ NI Human Rights Commission, ‘Relationships and Sexuality Education in Post-Primary School in NI: A Compelling Case for Reform’ (NIHRC, 2023) at 46.

⁵⁸ Education and Training Inspectorate NI, ‘Empowering Improvement – New Framework for Inspection’, (ETINI, 2024).

⁵⁹ Dunja Mijatović, ‘Press Release: Comprehensive sexuality education protects children and helps build a safer, inclusive society’, 21 July 2020.

⁶⁰ 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 26(d).

- 8.6 The Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023 require the Department of Education to publish a report on the implementation of RSE in grant-aided schools by the 1st September 2026.
- 8.7 In assessing the effectiveness of the amendments to the curriculum, it will be essential to collect data on the extent and impact of parental opt-outs. The NIHRC is unclear what data is currently being collected in relation to the use of the parental opt-out. The NIHRC considers it critical that disaggregated data is collected and analysed to determine whether any specific groups are disproportionately affected by the withdrawal provision and identify any particular safeguarding risks.
- 8.8 The NIHRC recommends that in line with pre-existing arrangements, the ETI monitors the delivery of comprehensive RSE.**
- 8.9 The NIHRC recommends that the RSE curriculum and statutory guidance are regularly evaluated and revised by the Department of Education NI to ensure that they are accurate, human rights compliant, and adapting to emerging needs.**
- 8.10 The NIHRC recommends that the Department of Education collects data on the number of children and young people withdrawn from RSE lessons, including the reason for their withdrawal. Data should be disaggregated to determine whether any specific groups are disproportionately impacted by the provision for opt-outs. For example, by age, disability, ethnicity, religion and sex.**

9.0 Stakeholder Engagement and Inclusivity

- 9.1 As noted above, the independent experts engaged in the NIHRC investigation found that, within school policies, there is limited consideration of children and young people as rights-bearers who can actively contribute to RSE policies.
- 9.2 Human rights treaty bodies have found that holistic RSE goes beyond education about risks and provides an opportunity to present relationships and sexuality in a way that also includes its positive aspects,

such as friendship and relationships based on mutual respect and gender equality.⁶¹ It should be inclusive of the needs of marginalised groups including, but not limited to, deaf and disabled persons,⁶² LGBTQIA+ persons,⁶³ and persons of national or ethnic minority background.⁶⁴

- 9.3 The NIHRC recommends that guidance and any further reforms are developed following engagement with relevant stakeholders and experts to ensure that RSE programmes are inclusive and meet the educational needs of all students including, but not limited to, disabled students, ethnic minority students, and those with diverse gender and sexual identities.**

10.0 Violence Against Women and Girls

- 10.1 Chapter Two of our investigation report sets out that as well as providing information on reproductive health, comprehensive RSE has a role in preventing abuse and violence against women and girls and promoting equality between women and men. It should contribute to effective safeguarding by raising awareness of the risks of sexual violence and abuse and promoting an understanding of the importance of consent within sexual relationships.⁶⁵ It has a further role in the prevention of harmful practices such as child, early and forced marriage and female genital mutilation.⁶⁶
- 10.2 The CoE Istanbul Convention is a comprehensive framework which aims to address violence against women and girls. Its obligations cover four areas: prevention, protection, prosecution and coordinated policies.
- 10.3 Article 14 of the CoE Istanbul Convention states that:

⁶¹ Council of Europe, 'Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence', (CoE, 2011) at para 94.

⁶² CRPD/C/GC/3, 'UN CRPD Committee General Comment No 3 on Women and Girls with Disabilities', 25 November 2016, at para 64(b).

⁶³ E/C.12/GC/22, Committee on Economic, Social and Cultural Rights, General Comment No 22 on the Right to Sexual and Reproductive Health', 2 May 2016, at para 23.

⁶⁴ E/C.12/GC/22, Committee on Economic, Social and Cultural Rights, General Comment No 22 on the Right to Sexual and Reproductive Health', 2 May 2016, at para 30.

⁶⁵ Council of Europe, 'Mid-term Horizontal Review of GREVIO Baseline Evaluation Reports', (CoE, 2022) at 164.

⁶⁶ United Nations Educational, Scientific and Cultural Organization, 'International Guidelines on Sexuality Education: An Evidence Informed Approach to Effective Sex, Relationships and HIV/STI Education', (UNESCO, 2009) at 18.

parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.⁶⁷

10.4 The CoE Lanzarote Convention requires states to adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

10.5 In relation to education programmes, the CoE Lanzarote Convention states that:

each Party shall take the necessary legislative or other measures to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity. This information, provided in collaboration with parents, where appropriate, shall be given within a more general context of information on sexuality and shall pay special attention to situations of risk, especially those involving the use of new information and communication technologies.⁶⁸

10.6 The Committee of the Parties to the CoE Lanzarote Convention (Lanzarote Committee) has stated that:

the fact that children are frequently victims of sexual violence within the family framework and by persons close to them or in their "circle of trust" should be highlighted and considers that the school environment is particularly appropriate to do so.⁶⁹

⁶⁷ Article 14 Convention on Combatting and Preventing Violence Against Women and Domestic Violence.

⁶⁸ Council of Europe, Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, 12 July 2007, at Article 6.

⁶⁹ Committee of the Parties to the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Committee), '2nd Implementation Report: Protection of Children Against Sexual Abuse in the Circle of Trust', (CoE, 2018), at para 45.

10.7 The UN Compendium on Comprehensive Sexuality Education (CSE) states:

comprehensive sexuality education is an effective means to address systems of patriarchal domination and toxic masculinity by changing social and cultural patterns of behaviour that tend to perpetuate discrimination and violence against women and girls.⁷⁰

10.8 The Gillen Review recognised the role that RSE plays in the prevention of sexual offences. Sir John Gillen argued that “the Department of Education, has a duty to play a positive role in addressing the justice gap that exists in our approach to serious sexual offences”⁷¹ and recommended that “the Department of Education draw up a plan to exhort all schools to include these matters within their curriculum and, if that proves ineffective, to be the subject of legislation mandating such education”.⁷²

10.9 The Review further recommended that:

The Department of Education should address the need to include in the school curriculum for disabled children, children with sensory disability and those who are members of marginalised communities’ sex education designed in a culturally sensitive manner on matters such as consent, personal space, boundaries, appropriate behaviour, relationships, fears of homophobia and transphobia, gender identity and sexuality.⁷³

10.10 The NIHRC considers violence against women and girls to be an integral component of RSE and welcomes that the Department of Education consultation last year included it on the list of nine topics that are required to be included within a school’s curriculum.⁷⁴ It is important that the

⁷⁰ Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, the Special Rapporteur on the right to education, and the Working Group on discrimination against women and girls, ‘A Compendium on Comprehensive Sexuality Education’, (UN, 2023) at 4.

⁷¹ Sir John Gillen, ‘Report into the Law and Procedures in Serious Sexual Offences in NI: Recommendations’ (Gillen Review, 2019), at 210.

⁷² Sir John Gillen, ‘Report into the Law and Procedures in Serious Sexual Offences in NI: Recommendations’ (Gillen Review, 2019), at 211.

⁷³ Sir John Gillen, ‘Report into the Law and Procedures in Serious Sexual Offences in NI: Recommendations’ (Gillen Review, 2019), at 451.

⁷⁴ Department of Education, ‘Consultation on Relationships and Sexuality Education (RSE)’ (DE, 2023), at 9.

educational materials on this subject are continually reviewed to ensure they reflect international standards.

10.11 The NIHRC recommends that the RSE curriculum includes violence against women and girls as a mandatory component and that it reflects international standards.

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