



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the Department of Education on
the School Uniform Policy Consultation**

September 2024

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Summary of Recommendations

The NI Human Rights Commission recommends that:

- the Department of Education adopts a human rights based approach to the development, implementation and monitoring of the updated statutory guidance. The full range of internationally accepted human rights standards should be clearly referenced throughout the policy, including cross-reference the right to education and the principles of availability, accessibility, acceptability and adaptability where appropriate.
- the revised statutory guidance on school uniforms makes explicit reference to the 'best interests' principle.
- the revised statutory guidance on school uniforms makes explicit reference to the evolving capacity of children and young people to ensure their views on school uniform policy are given due weight in accordance with their age and maturity.
- the revised statutory guidance specifically references international obligations on non-discrimination, including Article 14 of the ECHR. This should include a commitment to eliminate discrimination against children in disadvantaged situations, including children belonging to ethnic minority groups, asylum-seeking, refugee and migrant children, Roma, gypsy and traveller children, children with disabilities, children in alternative care, lesbian, gay, bisexual, transgender and intersex children, and socioeconomically disadvantaged children, among others.
- the Department of Education supports schools and governing bodies to improve the collection of data in relation to the statutory guidance, including disaggregation by age, sex, disability, geographical location, ethnic origin, nationality and socioeconomic background. Disaggregated data should be reported to the Department of Education during each monitoring round to inform ongoing analysis and child rights impact assessments of the guidance.
- statutory guidance should ensure that all effective measures are taken so that children in disadvantaged situations, including children in socioeconomically disadvantaged situations, are not denied access to certain schools in NI or any level of education based on their inability to meet school uniform costs. This includes the stipulation only of basic items

and colours. Moreover, any high cost items or items with unnecessary variations should be avoided.

- the Department of Education makes every effort to use all available resources to ensure school uniform grants in NI are sufficient, proportional to costs and include targeted measures for children identified as particularly disadvantaged, in accordance with the principles of non-discrimination and best interests of the child.
- the Department of Education monitors and publishes disaggregated data on school uniform grants, including:
 - Data on the average cost of school uniforms in NI (disaggregated by school type)
 - Data on the average cost of PE kits in NI (disaggregated by school type)
 - Data on the number of pupils/families eligible for a uniform grant (disaggregated by school type)
 - Data on pupils/families eligible for a uniform grant disaggregated by age, sex, disability, geographical location, ethnic origin, nationality and socioeconomic background.
- the statutory guidance specifies that schools and governing bodies must ensure that school uniform policies do not disadvantage pupils with disabilities and that consideration must be given to the need for reasonable adjustments, where necessary.
- the statutory guidance specifies that schools and governing bodies should ensure an inclusive uniform policy that does not directly or indirectly discriminate on the basis of gender or gender identity. This includes avoiding strict requirements for items of clothing to only be worn by pupils of a certain gender or gender identity, and by having a gender neutral uniform option available to all pupils.
- the statutory guidance specifies that schools and governing bodies should be sensitive to the needs of different cultures, races and religions and that reasonable accommodation should be made to meet those needs. This includes consideration of how policy can interfere with a pupil's right to manifest their religion or belief under Article 9(2) of the ECHR.

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, by 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 statutory duties the following advice is submitted to the Department of Education to inform its policy development on guidance for school uniforms in NI.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and the United Nations (UN) system and treaty obligations of the Council of Europe (CoE) and United Nations (UN).
- 1.3 The NIHRC further advises on the compatibility of this consultation with the UK Government’s commitment, in Windsor Framework Article 2(1), to ensure there is no diminution of rights, safeguards and equality of opportunity in the relevant section of the Belfast (Good Friday) Agreement as a result of the UK’s withdrawal from the EU. This is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. In addition, Section 6 of the Northern Ireland Act 1998 provides that the NI Assembly is prohibited from making any law which is incompatible with Windsor Framework Article 2. Section 24 of the 1998 Act also provides that all acts of the Department should be compatible with Windsor Framework Article 2.

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.

1.4 The NIHRC welcomes the opportunity to respond to the Department of Education's consultation on the policy framework for school uniforms in NI. While the NIHRC welcomes the intention of the policy, it could be substantially strengthened by adopting a human rights-based approach that reflects the full range of international human rights standards this response sets out. The following section highlights relevant international human rights standards and jurisprudence from courts, tribunals and treaty-monitoring bodies that should inform policy development in this area. The subsequent section considers a number of issues raised in the consultation and highlights how to give effect to a human rights-based approach in practice.

2.0 Rights-based Approach

Right to education

2.1 The UK-wide Human Rights Act 1998 incorporated the ECHR into domestic law. Section 6 of the 1998 Act makes it unlawful for a public authority, including schools and governing bodies,² to act in a way which is incompatible with the ECHR. The right to education is recognised in Article 2 of Protocol 1 of the ECHR, which confirms that "no person shall be denied the right to education". The European Court of Human Rights (ECtHR) has noted that the right to education "is indispensable to the furtherance of human rights" and "a restrictive interpretation... would not be consistent with the aim or purpose of that provision".³ Moreover, it covers access to primary, secondary and higher education.⁴ The ECtHR has also recognised that:

education is an activity that is complex to organise and expensive to run, whereas the resources that the authorities can devote to it are necessarily finite.... However, the Court cannot overlook the fact

² Ministry of Justice, 'The Human Rights Act 1998: the Definition of "Public Authority" - Government Response to the Joint Committee on Human Rights' Ninth Report of Session 2006-07' (MoJ, 2009), at 11.

³ *Leyla Şahin v Turkey* (2004) ECHR 299, at para 137.

⁴ *Catan and Others v Moldova and Russia* (2012) ECHR 1827; *Cyprus v Turkey* (2001) ECHR 331, at para 278; *Leyla Şahin v Turkey* (2004) ECHR 299, at para 137.

that, unlike some other public services... education is a right that enjoys direct protection under the [ECHR].⁵

- 2.2 The UK Government has additionally ratified several relevant UN and CoE treaties and has therefore agreed to be bound by the obligations contained within.⁶ The right to education is enshrined in a number of such treaties including: UN CRC, Articles 28-29; UN ICESCR, Article 13; UN CRPD, Article 24; UN CERD, Article 5; and the UN Refugee Convention, Article 22. General Comments and Concluding Observations attached to these treaties provide guidance and best practice standards.
- 2.3 Article 28 of the UN CRC recognises “the right of the child to education” and highlights the need to make education available and accessible by taking appropriate measures, such as “offering financial assistance in case of need”. Article 29 of the UN CRC requires that the education of the child be directed to “the development of the child's personality, talents and mental and physical abilities to their fullest potential”. Article 4 of the UN CRC acknowledges the interdependence of economic, social and cultural rights with the realisation of the rights of the child.
- 2.4 Article 13(1) of the UN International Covenant on Economic, Social and Cultural Rights (UN ICESCR) recognises the right to education and guarantees that “education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms”. Article 13(2) UN ICESCR makes specific commitments to free compulsory primary education for everyone, accessible and available secondary education and higher education that is “equally accessible to all, on the basis of capacity”.
- 2.5 Article 2 UN ICESCR prohibits discrimination of any kind on grounds of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” in the realisation of the rights in the UN ICESCR. In General Comment No 13 the UN ICESCR Committee clarified that this obligation “is subject to neither progressive realization

⁵ Ibid, at para 55.

⁶ Article 14, Vienna Convention on the Law of Treaties 1969.

nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination".⁷ The Committee further advises that special measures which "are intended to bring about de facto equality for men and women and for disadvantaged groups" are permitted.⁸

2.6 The UN ICESCR Committee affirms that, while education can be provided in different forms, it should include four "interrelated and essential features" that are common to education in all its forms and at all levels.⁹ These are that education is:

Available – availability requires functioning educational institutions to be available in sufficient quantity and includes trained teachers receiving domestically competitive salaries, teaching materials, library and computer facilities and information technology.¹⁰

Accessible – accessibility requires that everyone has access to education without discrimination, especially the most vulnerable groups.¹¹ In addition, education has to be "within safe physical reach" either by a "convenient geographic location" or "via modern technology".¹² Education must also be affordable to all.¹³

Acceptable – acceptability requires that "the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents".¹⁴

Adaptable – adaptability requires that education must be "flexible so it can adapt to the needs of changing societies and communities and

⁷ E/C.12/1999/10, 'UN ICESCR Committee General Comment No 13: Right to Education', 8 December 1999, at para 31.

⁸ E/C.12/1999/10, 'UN ICESCR Committee General Comment No 13: Right to Education', 8 December 1999, at para 31-32.

⁹ Ibid, at para 6.

¹⁰ Ibid, at para 6(a).

¹¹ Ibid, at para 6(b)(i).

¹² Ibid, at para 6(b)(ii).

¹³ Ibid, at para 6(b)(iii).

¹⁴ Ibid, at para 6(c).

respond to the needs of students within their diverse social and cultural settings”.¹⁵

- 2.7 Article 24 of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) recognises the right of disabled people to education and requires states to ensure “an inclusive education system at all levels and lifelong learning”. In addition, States are required to ensure that disabled people “receive the support required, within the general education system, to facilitate their effective education”.
- 2.8 Article 5 of the UN Convention on the Elimination of Racial Discrimination (UN CERD) requires States to “prohibit and eliminate racial discrimination” and to “guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law and the enjoyment of... the right to education and training”.
- 2.9 Article 22 of the UN Refugee Convention requires States to “accord to refugees the same treatment as is accorded to nationals with respect to elementary education”. With regard to accessing post-primary education, Article 22 requires States to provide “refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances”.
- 2.10 In summary, the right to education should be interpreted broadly.¹⁶ Education is more than academic progress; its realisation is also essential in terms of the enjoyment of other rights.¹⁷ The UN High Commissioner for Human Rights describes the right to education as a “well-known catalyst for the fulfilment of many other rights”.¹⁸ The UN ICESCR Committee highlights the multi-faceted nature of the right to education by stating that:

¹⁵ Ibid, at para 6(d).

¹⁶ E/C.12/1999/10, ‘UN CESCR Committee General Comment No 13: The Right to Education’, 8 December 1999, at para 1; CRC/C/GC/7/Rev.1, ‘UN CRC Committee General Comment No 7: Implementing Child Rights in Early Childhood’, 20 September 2006, para. 30.

¹⁷ E/C.12/1999/10, ‘UN CESCR Committee General Comment No 13: The Right to Education’, 8 December 1999, at para 1.

¹⁸ OHCHR, ‘Frequently asked questions on a human rights-based approach to development cooperation’, (OHCHR, 11).

education is both a human right in itself and an indispensable means of realising other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.¹⁹

- 2.11 In the current consultation, the Department of Education is proposing to strengthen guidance on school uniforms in NI and to place it on a statutory footing. The overarching aim of the consultation is “to ensure that all school governing bodies put affordability, comfort and sustainability at the centre of their decision-making when they set their school uniform requirements”.²⁰ Through the passage of a new School Uniform Bill in the NI Assembly, it is proposed that schools and their governing boards “will have to have regard to the guidance when developing their school uniform policies”.²¹
- 2.12 The NIHRC welcomes the proposal to ensure that schools and governing bodies are legally required to comply with updated statutory guidance on school uniforms. The NIHRC additionally welcomes the underpinning principles and the requirement that school uniform policies are developed in partnership with pupils and their parents/carers, published, and regularly reviewed.²² These proposals are inherently consistent with a human rights based approach, which centres on the guiding principles of participation, accountability, non-discrimination, empowerment and legality.²³
- 2.13 However, the NIHRC observes that the current proposals do not mention human rights in any substantive way. The Department of Education and schools and governing bodies performing a public function are required to comply with duties under the ECHR, enforced directly by the Human Rights

¹⁹ E/C.12/1999/10, ‘UN CESCR Committee General Comment No 13: The Right to Education’, 8 December 1999, at para 1.

²⁰ Department of Education, ‘Public Consultation Document: School Uniform Policy’ (DE, 2024), at 3.

²¹ Department of Education, ‘Public Consultation Document: School Uniform Policy’ (DE, 2024), at para 2.1.

²² Department of Education, ‘Public Consultation Document: School Uniform Policy’ (DE, 2024), at paras 2.41 – 2.47.

²³ European Network of National Human Rights Institutions, ‘Human Rights-Based Approach’. Available: [Human Rights-Based Approach - ENNHRI](#).

Act 1998. That includes development and implementation of school uniform policy. Both the UK Government and the Welsh Government highlight schools and governing bodies obligations under the Human Rights Act 1998 in their guidance on school uniform policy.²⁴

2.14 While the Department's current guidance on school uniforms notes the relevance of the Human Rights Act 1998 and the ECHR, it only does so in relation to the right to freedom of thought, conscience and religion.²⁵ Moreover, the NIHRC notes with caution that in relation to interferences with the 1998 Act the Department states that, "Each case will, however, depend on the circumstances of the particular school and it is for a school to determine what sort of uniform policy is appropriate for it".²⁶ While it is the responsibility of the school to develop and implement its own school uniform policy, the NIHRC consider this wording to potentially be misleading for schools and governing bodies when used in relation to their human rights obligations. The Department of Education may wish to further clarify that it is the responsibility of schools and governing bodies to develop human rights compliant policies and that, when challenged, it is ultimately for the courts to determine whether an interference is justified, based on the particular circumstances of that case.

2.15 The NIHRC continues to recommend taking a human rights-based approach to the development, implementation and monitoring of educational policy.²⁷ This review of the current guidance on school uniform policy affords the opportunity to ensure the revised policy has a human rights-based approach at its core. This approach aims to empower children and young people (rights-holders) to understand and exercise their rights

²⁴ Welsh Government, 'School uniform and appearance: policy guidance for governing bodies (WG23-17)', (Welsh Government, 2022); UK Department for Education, 'Guidance: Developing school uniform policy', (Gov.UK, 2024).

²⁵ Department of Education, 'Circular 2011/04: Guidance to schools on school uniform policy' (DE, 2011) [revised June 2018], at Annex 1.

²⁶ Department of Education, 'Circular 2011/04: Guidance to schools on school uniform policy' (DE, 2011) [revised June 2018], at Annex 1.

²⁷ See, NI Human Rights Commission, 'Response to the Department of Education consultation on Relationships and Sexuality Education' (NIHRC, 2023); NI Human Rights Commission, 'Submission to Department of Education Consultation on the Draft Statutory Guidance on the Reduction and Management of Restrictive Practices in Educational Settings in NI' (NIHRC, 2023); NI Human Rights Commission, 'Submission to the Expert Panel on Educational Underachievement' (NIHRC, 2020); NI Human Rights Commission, 'Response to Department of Education's Consultation on Supporting Newcomer Pupils' (NIHRC, 2019).

and entitlements, while supporting the Department of Education, schools and governing bodies (duty bearers) in the implementation and monitoring of their policies.

- 2.16 For instance, a human rights based approach requires duty-bearers to be accountable for failing to fulfil their obligations towards rights-holders.²⁸ While the NIHRC welcomes the strengthening of the reporting and review requirements on schools and governing bodies,²⁹ it is notable that the current proposals do not specifically outline the procedures for addressing complaints or concerns with school uniform policies. This should include complaints from pupils, parents, members of staff, governors, members of the local community. Both the UK Government and the Welsh Government highlight processes for lodging and resolving disputes about school uniforms, including specific considerations for school uniform suppliers.³⁰
- 2.17 **The NIHRC recommends that the Department of Education adopts a human rights based approach to the development, implementation and monitoring of the updated statutory guidance. The full range of internationally accepted human rights standards should be clearly referenced throughout the policy, including cross-reference the right to education and the principles of availability, accessibility, acceptability and adaptability where appropriate.**

Best interests of the child

- 2.18 The UN CRC states that the best interests of the child should be a primary consideration:

in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or

²⁸ European Network of National Human Rights Institutions, 'Human Rights-Based Approach'. Available: [Human Rights-Based Approach - ENNHRI](#).

²⁹ Department of Education, 'Public Consultation Document: School Uniform Policy' (DE, 2024), at paras 2.41 – 2.47.

³⁰ Welsh Government, 'School uniform and appearance: policy guidance for governing bodies (WG23-17)', (Welsh Government, 2022); UK Department for Education, 'Guidance: Developing school uniform policy', (Gov.UK, 2024).

legislative bodies, the best interests of the child shall be a primary consideration.³¹

2.19 Specific to education, it is in the best interests of the child “to have access to quality education, including early childhood education, non-formal or informal education and related activities, free of charge”.³²

2.20 **The NIHRC recommends that the revised statutory guidance on school uniforms makes explicit reference to the ‘best interests of the child’ principle.**

2.21 The NIHRC welcomes the proposals to strengthen schools’ commitment to engaging with pupils and parents, and to publishing the details of any consultation.³³ This is consistent with the best interests principle and Article 12 of the UN CRC, which recognises respect for the views of the child as a fundamental right. However, the NIHRC would encourage the Department of Education to consider “the evolving capacities of children and young people” within the statutory guidance, to ensure “their views being given due weight in accordance with their age and maturity”.³⁴ 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

³¹ Article 3(1), Convention on the Rights of the Child 1989.

³² CRC/C/GC/14, ‘UN CRC Committee General Comment No 14: The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration’, 29 May 2013, at para 79.

³³ 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.

³⁴ 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.

development, but will steadily increase as the child is encouraged to contribute her or his views.³⁵

- 2.22 The NIHRC recommends that the revised statutory guidance on school uniforms makes explicit reference to the evolving capacity of children and young people to ensure their views on school uniform policy are given due weight in accordance with their age and maturity.**

Non-discrimination

- 2.23 The ECHR, Article 14, requires that the enjoyment of ECHR rights, including the right to education, is upheld without discrimination. This is not a stand-alone right and must be asserted in conjunction with another right that is within the ambit of the ECHR. Article 14 guarantees that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. The ECtHR has generally given the words “other status” a wide meaning, to include grounds such as age, gender identity, sexual orientation, health and disability, among others.³⁶
- 2.24 The right to freedom from discrimination is also provided for within UN ICESCR, Article 2; UN CRPD, Article 5; UN CERD, Article 5, and UN CEDAW Article 10.
- 2.25 The UN ICESCR Committee recommends that States take “concrete, deliberate and targeted measures” to eliminate direct and indirect discrimination in the implementation of all economic, social and cultural rights, including the right to education.³⁷ The UN ICESCR Committee lists a

³⁵ 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.

³⁶ Council of Europe, ‘ECtHR: Guide on Article 14 of the Convention (prohibition of discrimination) and on Article 1 of Protocol No. 12 (general prohibition of discrimination)’, (CoE, 2024).

³⁷ E/C.12/GC/20, ‘UN ICESCR Committee General Comment No.20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2)’, 2 July 2009, at para 36; E/C.12/1999/10, ‘UN ICESCR Committee General Comment No 13: Right to Education’, 8 December 1999, at para 41.

number of grounds, such as disability, age, health status or sexual orientation under 'other status', and states:

individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places.³⁸

2.26 A number of other UN Committees have also called for the adoption of special and/or targeted measures as a means to addressing discrimination, including in education.³⁹ In 2023, the UN CRC Committee specifically recommended that the UK Government and NI Executive,

eliminate discrimination against children in disadvantaged situations, including children belonging to ethnic minority groups, asylum-seeking, refugee and migrant children, Roma, gypsy and traveller children, children with disabilities, children in alternative care, children of incarcerated parents, children of unmarried parents, lesbian, gay, bisexual, transgender and intersex children, socioeconomically disadvantaged children and children in the justice system.⁴⁰

2.27 The NIHRC notes that neither the proposals or current guidance highlight the duty on schools and governing bodies to prohibit discrimination under Article 14 ECHR, among other international standards. To ensure consistency with a human rights-based approach, the NIHRC reiterates the importance of ensuring that schools and governing bodies are sufficiently

³⁸ ³⁸ E/C.12/GC/20, 'UN ICESCR Committee General Comment No.20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2)', 2 July 2009, at para 35.

³⁹ CRC/C/GBR/CO/5, 'UN CRC Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 3 June 2016, at para 72. See also CERD/C/GC/32, 'UN CERD Committee General Recommendation No 32: The Meaning and the Scope of Special Measures in the International Covenant on the Elimination of All Forms of Racial Discrimination', 24 September 2009, at para. 11; CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child', 27 November 2003, at para 12.

⁴⁰ CRC/C/GBR/CO/6-7, 'UN CRC Committee on the Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 20(a).

aware of their legal obligations in respect of non-discrimination in the development, implementation and monitoring of their policies.

- 2.28 **The NIHRC recommends that the revised statutory guidance specifically references international obligations on non-discrimination, including Article 14 of the ECHR. This should include a commitment to eliminate discrimination against children in disadvantaged situations, including children belonging to ethnic minority groups, asylum-seeking, refugee and migrant children, Roma, gypsy and traveller children, children with disabilities, children in alternative care, lesbian, gay, bisexual, transgender and intersex children, and socioeconomically disadvantaged children, among others.**

Monitoring and data collection

- 2.29 Robust data collection and monitoring is an essential component in ensuring a policy, such as the proposed statutory guidance, is appropriately targeted and achieving its purpose. In terms of what effective monitoring requires, the UN CRC Committee notes that:

delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation).⁴¹

- 2.30 This process should be “built into government at all levels and as early as possible in the development of policy”.⁴² This includes self-monitoring and independent monitoring.⁴³ Monitoring should be set out in legislation and implemented in practice.⁴⁴

⁴¹ CRC/GC/2003/5, ‘UN CRC Committee General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child’, 27 November 2003, at para 45.

⁴² Ibid.

⁴³ Ibid, at para 46.

⁴⁴ Ibid, at para 47.

2.31 In terms of the tools required to assist with monitoring, data collection is essential. This is affirmed by the UN CRC, which requires:

States Parties to monitor the availability of and access to quality services that contribute to young children’s survival and development, including through systematic data collection, disaggregated in terms of major variables related to children’s and families’ background and circumstances.⁴⁵

2.32 The UN CRC highlights the need for data collection to be disaggregated as a means to “enable discrimination or potential discrimination to be identified”.⁴⁶ The UN CRC Committee has repeatedly called on the UK and NI to improve its collection and monitoring of comprehensive and disaggregated data relating to children.⁴⁷ In 2023, the UN CRC Committee reiterated the need for the UK Government and NI Executive to improve the collection and analysis of data regarding education and children in disadvantaged situations.⁴⁸ It recommends that the UK Government and NI Executive:

Strengthen its data-collection system with regard to both qualitative and quantitative indicators to encompass all areas of the Convention and ensure that the data are disaggregated by age, sex, disability, geographical location, ethnic origin, nationality and socioeconomic background.⁴⁹

2.33 The current proposals seek to strengthen requirements for monitoring schools’ adherence to the statutory guidance by implementing a requirement to report to the Department of Education every three years. This is welcomed, however the NIHRC would additionally encourage the

⁴⁵ CRC/C/GC/7/Rev.1, ‘UN CRC Committee General Comment No 7: Implementing Child Rights in Early Childhood’, 20 September 2006, at para 12.

⁴⁶ CRC/GC/2003/5, ‘UN CRC Committee General Comment No 5: General measures of Implementation of the Convention on the Rights of the Child’, 27 November 2003, at para 12. See also E/C.12/GC/20, ‘UN CESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights’, 2 July 2009, at para 41.

⁴⁷ CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 3 June 2016; CRC/C/GBR/CO/6-7, ‘UN CRC Committee on the Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023.

⁴⁸ CRC/C/GBR/CO/6-7, ‘UN CRC Committee on the Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 12(b).

⁴⁹ Ibid, at para 12(a).

Department to specify that schools must strengthen data collection in relation to the guidance to ensure that the Department can assess its impact on the rights of child. This should include the provision of disaggregated data as a means to “enable discrimination or potential discrimination to be identified”.⁵⁰

- 2.34 **The NIHRC recommends that the Department of Education supports schools and governing bodies to improve the collection of data in relation to the statutory guidance, including disaggregation by age, sex, disability, geographical location, ethnic origin, nationality and socioeconomic background. Disaggregated data should be reported to the Department of Education during each monitoring round to inform ongoing analysis and child rights impact assessments of the guidance.**

3.0 General Comments

Principle 1: Affordability

- 3.1 The UN CEDAW Committee has highlighted that “parents are faced with meeting the hidden cost of uniforms, transportation, textbooks and other school materials, lunch and various levies and user fees with students from the poorest quintile being most adversely affected and often stigmatised”.⁵¹ The Committee recommends that State parties take effective measures to ensure that hidden costs do not negatively impact girls’ and women’s access to education.⁵² This includes the “introduction of safety nets, and other measures to ensure that girls and women from lower socio-economic strata are not denied access to any level of education based on their inability to pay user fees and/or meet hidden costs”.⁵³

⁵⁰ CRC/GC/2003/5, ‘UN CRC Committee General Comment No 5: General measures of Implementation of the Convention on the Rights of the Child’, 27 November 2003, at para 12. See also E/C.12/GC/20, ‘UN CESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights’, 2 July 2009, at para 41.

⁵¹ CEDAW/C/GC/36 ‘UN CEDAW Committee General Recommendation No. 36 on Girls’ and Women’s Right to Education’, 16 November 2017, at para 36.

⁵² Ibid, at para 39.

⁵³ Ibid, at para 39(c).

- 3.2 The UN ICESCR Committee has highlighted that an individual's access to quality education may be impacted by their "belonging to a certain economic or social group or strata within society".⁵⁴ In the UK and NI specifically, the UN ICESCR Committee noted that certain groups are more affected by and at increased risk of poverty, including single parent families and families with children, recommending that the UK Government and NI Executive "take steps to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty".⁵⁵ It further recommended effectively implementing "measures aimed at reducing de facto discrimination and segregation of students based on their religion, national or social origin, as well as their economic background".⁵⁶
- 3.3 Further, the UN ICESCR Committee has expressed concerns about the challenges faced by asylum seekers and the likelihood of destitution.⁵⁷ The UN CERD Committee has advised States to "Ensure that public educational institutions are open to non-citizens and children of undocumented immigrants residing in the territory".⁵⁸ It also recommends States "Avoid segregated schooling and different standards of treatment being applied to non-citizens on grounds of race, colour, descent, and national or ethnic origin in elementary and secondary school and with respect to access to higher education".⁵⁹
- 3.4 In 2023, the UN CRC Committee noted with deep concern the large number of children living in poverty across the UK and urged the UK Government and NI Executive, "to ensure that measures to combat poverty comply with a child rights-based approach and include a particular

⁵⁴ E/C.12/GC/20, 'UN ICESCR Committee General Comment No.20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2)', 2 July 2009, at para 35.

⁵⁵ 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 48.

⁵⁶ 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 64.

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 24.

⁵⁸ CERD/C/64/Misc.11/rev.3, 'UN CERD Committee General Recommendation No.30 Discrimination against non-citizens', 12 March 2004.

⁵⁹ CERD/C/64/Misc.11/rev.3, 'UN CERD Committee General Recommendation No.30 Discrimination against non-citizens', 12 March 2004.

focus on children in disadvantaged situations”.⁶⁰ In terms of inequalities in education, the UN CRC Committee recommends 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, by, inter alia: (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 and exclusions to inform policies and programmes.⁶¹

- 3.5 In August 2024, the UN CERD Committee reiterated its concerns with inequalities in the education system in the UK and NI. It recommended that the UK Government and NI Executive. “Strengthen its measures to ensure the availability, accessibility and quality of education for children belonging to ethnic minority groups, notably children belonging to Gypsy, Roma and Traveller communities, children of African descent and migrant, asylum-seeking and refugee children”.⁶²
- 3.6 In 2024, the ongoing cost of living crisis continues to affect the affordability of rent, energy and food for many families across NI. School uniforms are an additional financial burden for families with children, which has a particular impact on those from lower socio-economic strata.⁶³ The most recent figures indicate that approximately 109,000 children in NI (24 per cent) live in relative poverty, while approximately 86,000 children (19 per cent) live in absolute poverty.⁶⁴ The estimated percentage of children

⁶⁰ CRC/C/GBR/CO/6-7, ‘UN CRC Committee on the Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 46(d).

⁶¹ Ibid, at para 47(a)

⁶² CERD/C/GBR/CO/24-26, ‘UN CERD Committee Concluding Observations on the combined Twenty-fourth to Twenty-sixth Periodic Reports of the UK of Great Britain and NI’, 23 August 2024.

⁶³ Robbie Meredith, ‘School uniforms: Northern Ireland policy ‘an outlier’’, *BBC News*, 18 April 2024.

⁶⁴ Department for Communities, ‘NI Poverty and Income Inequality Report 2022/23’ (DfC, 2024), at Figures 6 and 7.

in combined low income and material deprivation was 9 per cent in 2022/2023.⁶⁵

- 3.7 While uniform grants are available to families who meet certain qualifying criteria, this has proved insufficient in making school uniforms affordable.⁶⁶ In 2023, a LucidTalk poll for Save the Children NI found that six in ten respondents “were financially challenged by the cost of school uniforms and PE kits”.⁶⁷ For respondents recorded as low-income, this rises to over seven in ten. Approximately one in three respondents have had to borrow money to cover the cost of school uniforms and PE kits.⁶⁸ While one in ten respondents advised that their child has missed out on school due to issues relating to school uniform and PE kits.⁶⁹
- 3.8 In 2024, the Irish League of Credit Unions published the results of its Annual NI Back to School survey.⁷⁰ It found that primary school parents spend on average £132 on uniforms a year while secondary school parents are spending £210, on average.⁷¹ Of 540 respondents, 58 per cent recorded that the increasing costs of new school uniforms if the biggest effect of the rising cost of living.⁷² Uniform was recorded as the top expense for secondary school parents. Currently, the uniform grant for a primary school pupil is £42.90 and up to £67.20 is available for post-primary school uniforms.⁷³

⁶⁵ Respondents are asked whether they have access to a list of 21 goods and services including for example, affording to go on school trips or affording a warm winter coat. If they cannot afford a given item, this is scored in the material deprivation measure, with items more commonly owned in the population given a higher weighted score. See NI Statistics and Research Agency, ‘NI Poverty And Income Inequality Report 2022/2023’ (DfC, 2024), at Figure 8.

⁶⁶ ‘School uniforms ‘number one financial burden’’, *BBC News NI*, 20 June 2024; Jessica Lawrence, ‘School uniforms: Parents in Northern Ireland call for more help with costs’, *BBC News NI*, 28 August 2023; Rebecca McGirr, ‘Cost of living: Minister urged to ‘step up’ over uniform costs’, *BBC News NI*, 6 August 2022.

⁶⁷ Save the Children NI, ‘Uncapped Costs of School Uniforms are Causing Harm’ (Save the Children, 2023).

⁶⁸ Save the Children NI, ‘Uncapped Costs of School Uniforms are Causing Harm’ (Save the Children, 2023).

⁶⁹ Save the Children NI, ‘Uncapped Costs of School Uniforms are Causing Harm’ (Save the Children, 2023).

⁷⁰ Irish League of Credit Unions, ‘Press Release: ILCU Back to School research shows 79% of parents in NI under pressure due to schooling costs’, 10 July 2024.

⁷¹ Irish League of Credit Unions, ‘Press Release: ILCU Back to School research shows 79% of parents in NI under pressure due to schooling costs’, 10 July 2024.

⁷² Irish League of Credit Unions, ‘Press Release: ILCU Back to School research shows 79% of parents in NI under pressure due to schooling costs’, 10 July 2024.

⁷³ NI Direct, ‘School uniform and uniform grants’. Available at: [School uniform and uniform grants | nidirect](#)

- 3.9 The NIHRC welcomes the range of measures proposed which are designed to keep the cost of school uniforms as low as possible.⁷⁴ This includes strengthening statutory guidance to make it compulsory for Board of Governors to demonstrate how they have taken costs into account when designing their uniform and a requirement that schools publish details of the costs of their uniform.⁷⁵
- 3.10 In addition, the NIHRC is encouraged by the proposal that schools “must review their uniform policy and consider if unusual colours/designs are necessary”, while aiming “to have a more standardised basic uniform which can be bought in a variety of shops”. This includes having an option to purchase a reusable, sew-on crest or logo, where considered necessary as part of the uniform. The NIHRC welcomes this range of cost-saving measures and notes their consistency with the UN ICESCR Committee’s “interrelated and essential” features of education, particularly accessibility.⁷⁶
- 3.11 However, it is notable that the necessity of high cost items, such as blazers, is not given specific consideration under the principle of affordability.⁷⁷ In 2024, post-primary school parents in NI advised that the cost of a school blazer alone could take the full uniform grant.⁷⁸ This could have a disproportionate impact on lower income families who may be unable to meet the additional hidden costs of education.⁷⁹ While it is welcomed that the need for blazers is queried in respect of the principles of comfort and sustainability, the NIHRC highlights that the high cost of blazers could have significant implications for the accessibility of certain schools and should therefore be appropriately mitigated under the principle of affordability.
- 3.12 In addition, the NIHRC would encourage the Department to outline the cost implications of other variations in school uniforms. For example, the

⁷⁴ Department of Education, ‘Public Consultation Document: School Uniform Policy’ (DE, 2024), at paras 2.3 – 2.31.

⁷⁵ Department of Education, ‘Public Consultation Document: School Uniform Policy’ (DE, 2024), at paras 2.3 – 2.31.

⁷⁶ Ibid, at para 6(d).

⁷⁷ Department of Education, ‘Public Consultation Document: School Uniform Policy’ (DE, 2024), at paras 2.3 – 2.31.

⁷⁸ Robbie Meredith, ‘School uniforms: Northern Ireland policy ‘an outlier’’, *BBC News*, 18 April 2024;

⁷⁹ CEDAW/C/GC/36 ‘UN CEDAW Committee General Recommendation No. 36 on Girls’ and Women’s Right to Education’, 16 November 2017, at para 36.

UK government highlights that house colours or specific items of clothing for different year groups can drive up total costs and affects the ability of parents to pass items down between siblings.⁸⁰ To assist in addressing these concerns, the NIHRC considers that the wording of the above requirements could be strengthened. For example, the Welsh government requires that schools “*should only* stipulate basic items and colours”, with schools being explicitly advised to “*avoid* high cost items such as blazers and caps” and “*avoid* variation in colours and style for different year groups as this is expensive for parents and limits the scope for second-hand sale or handing on to siblings”.⁸¹

3.13 The current proposals stipulate that “branded sports kits should not be compulsory elements of a school PE kit”.⁸² This is welcomed. However, the NIHRC notes with caution the subsequent proposal that parents “should only have to purchase specific branded or school sports kits when their child is chosen to represent the school”. Requiring branded kit at any point of a child’s involvement in extra-curricular activities could have a prohibitive effect on their ability to fully engage if their family is unable to meet the additional costs. While the NIHRC agrees that “schools should aim to have team kits available for loan for those representing the school”, it considers that the wording of this proposal could be further strengthened by changing it to “schools should *ensure* to have team kits available for loan”.

3.14 **The NIHRC recommends that statutory guidance should ensure that all effective measures are taken so that children in disadvantaged situations, including children in socioeconomically disadvantaged situations, are not denied access to certain schools in NI or any level of education based on their inability to meet school uniform costs. This includes the stipulation only of basic items and colours. Moreover, any high cost items or items with unnecessary variations should be avoided.**

⁸⁰ UK Government, ‘Department of Education – Statutory Guidance: Cost of School Uniforms’ (Gov.UK, 2021).

⁸¹ Welsh Government, ‘School uniform and appearance: policy guidance for governing bodies (WG23-17)’ (Gov.WALES, 2023) [emphasis added].

⁸² Department of Education, ‘Public Consultation Document: School Uniform Policy’ (DE, 2024), at para 2.18.

Uniform grants

3.15 In relation to preventing discrimination in the implementation of economic, social and cultural rights, including the right to education, the ICESCR Committee advises that:

A failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority.⁸³

3.16 To address issues regarding access to education for women and girls, the CEDAW Committee recommends that States,

- a) provide adequate budgetary, human and administrative resources to ensure that adequate provision is made at the primary and secondary levels to accommodate all girls in the respective population age cohorts;
- b) address imbalances in budgetary allocations for disadvantaged and marginalised groups of girls and women based on socioeconomic status, location, ethnicity, gender identity and religious persuasion.⁸⁴

3.17 In 2023, the UN CRC Committee specifically recommended that the UK Government and NI Executive incorporate a child rights-based approach into budgeting processes, and:

- a) implement a tracking system for the allocation, use and monitoring of resources for children, with a view to eliminating disparities and ensuring equitability, and assess how investments in all sectors serve the best interests of children;

⁸³ E/C.12/GC/20, 'UN ICESCR Committee General Comment No.20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2)', 2 July 2009, at para 13.

⁸⁴ CEDAW/C/GC/36 'UN CEDAW Committee General Recommendation No. 36 on Girls' and Women's Right to Education', 16 November 2017, at para 31.

- b) introduce budgetary allocations for children in disadvantaged situations and ensure that children are not affected by austerity measures;
- c) ensure that, in situations of economic crisis, regressive measures are not taken without meeting the requirements set out in paragraph 31 of the Committee's general comment No. 19 (2016) on public budgeting for the realization of children's rights, including that children participate in the decision-making process relating to such measures.⁸⁵

3.18 The NIHRC welcomes the current proposals for taking a holistic approach to the regulation of school uniforms as a way of tackling overall costs, including a requirement that schools must use a range of suppliers and possible introduction of a cap on the total costs of school uniforms.⁸⁶ However, in the interim, the school uniform grant is a critical measure for tackling the disparities currently seen in the NI education system. If the school uniform grant does not provide sufficient financial assistance for families, then it is foreseeable that the cost of school uniforms would have a prohibitive effect on a child's ability to access certain schools. The NIHRC remains concerned that, due to budgetary pressures, additional funding has not been allocated to the Education Authority to implement a rise in the rate of the uniform grant for the 2024-25 academic year, as seen in other UK jurisdictions.⁸⁷

3.19 The NIHRC welcomes the proposal to introduce additional banding for provision of the uniform grant, which targets the increased costs of uniforms during transition from primary to post-primary.⁸⁸ However, the consultation notes that support from the uniform grant is "targeted at families on low income and is not targeted on the needs of specific children".⁸⁹ In accordance with the principles of non-discrimination and best interests of the child, the NIHRC encourages the Department of

⁸⁵ CRC/C/GBR/CO/6-7, 'UN CRC Committee on the Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 11(a)-(c).

⁸⁶ Department of Education, 'Public Consultation Document: School Uniform Policy' (DE, 2024), at paras 2.19 – 2.31.

⁸⁷ NI Assembly Hansard, 'Official Report: School Uniform Grant – Paul Givan MLA', 3 June 2024.

⁸⁸ Department of Education, 'Public Consultation Document: School Uniform Policy' (DE, 2024), at paras 3.4 – 3.5.

⁸⁹ Department of Education, 'Public Consultation Document: School Uniform Policy' (DE, 2024), at para 3(2).

Education to consider cost-saving measures and targeted mitigations for those children identified as particularly disadvantaged.

- 3.20 For example, neither the consultation document or current guidance highlight the specific needs of asylum seeking children and their families in terms of affordability. Asylum seeking families may be required to move home, which can then necessitate a school move. This can cause difficulties for families in respect of school uniforms because, under the current policy, pupils can usually only get one clothing allowance for each school year.
- 3.21 **The NIHRC recommends that the Department of Education makes every effort to use all available resources to ensure school uniform grants in NI are sufficient, proportional to costs and include targeted measures for children identified as particularly disadvantaged, in accordance with the principles of non-discrimination and best interests of the child.**
- 3.22 To ensure the needs of children are appropriately identified and mitigated, further data collection and analysis is required, as explored at paragraphs 2.28 – 2.31 above. The consultation document advises that uniform grant support is currently provided to over 94,000 school pupils. However, disaggregated data on school uniform grants is not publicly available. For instance, current statistics on school enrolments show that approximately 96,300 pupils are entitled to free school meals, representing approximately 28 per cent of children in funded education.⁹⁰ However, the statistics reveal a significant disparity in terms of free school meal entitlement with regards to school type. Special schools have a much higher than average proportion of pupils entitled to free school meals (52 per cent), while non-grammar school pupils are also much more likely than grammar school pupils to be entitled to free school meals (35 per cent compared to 13 per cent).⁹¹ Monitoring data on school uniforms will provide useful insight on

⁹⁰ NI Statistics and Research Agency, 'Annual enrolments at schools and in funded pre-school education in NI 2022-23' (DE, 2023).

⁹¹ NI Statistics and Research Agency, 'Annual enrolments at schools and in funded pre-school education in NI 2022-23' (DE, 2023).

any disparities in the operation of grants and the potential implications on the availability of and access to schools.

3.23 The NIHRC recommends that the Department of Education monitors and publishes disaggregated data on school uniform grants, including:

- **Data on the average cost of school uniforms in NI (disaggregated by school type)**
- **Data on the average cost of PE kits in NI (disaggregated by school type)**
- **Data on the number of pupils/families eligible for a uniform grant (disaggregated by school type)**
- **Data on pupils/families eligible for a uniform grant disaggregated by age, sex, disability, geographical location, ethnic origin, nationality and socioeconomic background.**

Principle 2: Comfort

3.24 The current consultation proposes making it “compulsory for schools to demonstrate how their school uniform policy fulfils the conditions of comfort, flexibility and safety”.⁹² Under this principle, the Department of Education highlights that consideration should be given to children with additional needs when specifying a uniform, particularly those who may have sensory issues.

3.25 The NIHRC welcomes these proposals and notes their consistency with the UN ICESCR Committee’s “interrelated and essential” features of education, particularly adaptability.⁹³ The UN ICESCR Committee emphasises that schools must “respond to the needs of students within their diverse social and cultural settings”.⁹⁴ While current guidance refers to the domestic equality protections on the protected grounds of sex, sexual orientation, race and disability,⁹⁵ the NIHRC would encourage the Department to

⁹² Department of Education, ‘Public Consultation Document: School Uniform Policy’ (DE, 2024), at para 2.36.

⁹³ Ibid, at para 6(d).

⁹⁴ Ibid, at para 6(d).

⁹⁵ Special Educational Needs and Disability (NI) Order 2005; Sex Discrimination (NI) Order 1976; Race Relations (NI) Order 1997; Equality Act (Sexual Orientation) Regulations (NI) 2006.

additionally integrate international human rights standards and guidance which provide useful, practical advice for ensuring children's diverse needs are taken into account when designing and implementing educational policy.

Children with disabilities

3.26 Article 24(2)(c) of the CRPD obligates States Parties to make reasonable accommodations to the individual's requirements to ensure that persons with disabilities are not excluded from the general education system. Reasonable accommodation is defined by the UN CRPD Committee as:

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.⁹⁶

3.27 In respect of Article 14 of the ECHR on non-discrimination, the ECtHR has held that decisions pertaining to resource allocation for education must be made carefully and have regard for children with disabilities. It consequently considered that "discrimination on grounds of disability also covers refusal to make reasonable accommodation".⁹⁷ Schools in NI also have a responsibility in domestic legislation not to discriminate against pupils on the protected ground of disability.⁹⁸

3.28 **The NIHRC recommends that the statutory guidance specifies that schools and governing bodies must ensure that school uniform policies do not disadvantage pupils with disabilities and that consideration must be given to the need for reasonable adjustments, where necessary.**

⁹⁶ Article 2, UN CRPD.

⁹⁷ *Çam v Turkey* (2016) ECHR, at para 67.

⁹⁸ Special Educational Needs and Disability (NI) Order 2005.

Gender and gender identity

- 3.29 Article 10 of the UN Convention on the Elimination of Discrimination against Women (UN CEDAW) requires States to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education” and ensure equality in “pre-school, general, technical, professional and higher technical education, as well as in all types of vocational education”.
- 3.30 The UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity highlights that “LGBT pupils and the children of LGBT parents face abuse in educational settings, including teasing, name-calling, intimidation, physical violence, social isolation, cyberbullying, physical and sexual assault, and death threats, all in a manner disproportional to that affecting the general population”. The Independent Expert specifically identifies that “Trans and gender non-conforming students can face humiliation through gendered uniforms”.⁹⁹
- 3.31 In 2023, the UN CRC Committee urged the UK Government and NI Executive to “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”.¹⁰⁰
- 3.32 The Equality Commission for NI advises that schools are “allowed to have a different uniform policy for boys than girls, however an appearance code is a “living instrument” and there must be a mechanism in place to facilitate and allow change over time”.¹⁰¹ It elaborates that what is an acceptable form of dress in school depends on what is currently considered to be a “conventional form of dress”:

⁹⁹ UN OHCHR, ‘Press Release: The inclusion of LGBT people in education settings of paramount importance to “leaving no one behind”’, 2 October 2019.

¹⁰⁰ CRC/C/GBR/CO/6-7, ‘UN CRC Committee on the Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 20(e).

¹⁰¹ Equality Commission for NI, ‘Schools: Education service providers’. Available at: [ECNI - Schools, Education Service Providers, Equality Commission, Northern Ireland \(equalityni.org\)](https://equalityni.org)

Smart trousers are now a widely accepted alternative to skirts for women at work, and trousers have practical advantages for school life. Because it is quite normal for girls to wear trousers, there is a strong argument that it is unlawful sex discrimination to deny a girl the opportunity to wear smart trousers as an alternative to skirts as part of a uniform code.¹⁰²

- 3.33 Research conducted by the NI Assembly found that school uniform policies that have separate rules for boys and girls can reinforce negative gender stereotypes, while leaving trans and gender non-conforming children vulnerable to bullying, stress, and anxiety.¹⁰³ It highlights that, as a matter of good practice, schools in NI may wish to adopt a flexible approach to school uniform policy by avoiding strict requirements and by having a gender neutral uniform option available.¹⁰⁴
- 3.34 **The NIHRC recommends that the statutory guidance specifies that schools and governing bodies should ensure an inclusive uniform policy that does not directly or indirectly discriminate on the basis of gender or gender identity. This includes avoiding strict requirements for items of clothing to be worn by pupils of a certain gender or gender identity, and by having a gender neutral uniform option available to all pupils.**

Religion or beliefs

- 3.35 Article 9(2) of the ECHR protects an individual's freedom to manifest one's religion or beliefs. This right is not absolute and can be limited where "such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

¹⁰² Equality Commission for NI, 'Schools: Education service providers'. Available at: [ECNI - Schools, Education Service Providers, Equality Commission, Northern Ireland \(equalityni.org\)](https://www.equalityni.org/ECNI-Reports/Schools-Education-Service-Providers)

¹⁰³ NI Assembly, 'Research and Information Service Briefing Paper: School Uniforms – Cost, Gender and Behavioural considerations', (NIA, 2021).

¹⁰⁴ NI Assembly, 'Research and Information Service Briefing Paper: School Uniforms – Cost, Gender and Behavioural considerations', (NIA, 2021).

3.36 The NIHRC welcomes the consideration of ECHR Article 9(2) in the Department's current guidance and the acknowledgment that "It may be possible for many religious requirements to be met within a school uniform policy and schools should accommodate these where they can".¹⁰⁵ However, the NIHRC notes the following wording with caution:

In fulfilling their obligations, schools may have to balance the rights of individual pupils against the best interests of the school as a whole. Where schools have good reasons for restricting an individual's freedoms, for example, to ensure the effective delivery of teaching and learning, the promotion of good order in a school, the prevention of bullying, or for genuine health and safety or security considerations, then the restriction of an individual's rights to manifest their religion may be justified.¹⁰⁶

3.37 The NIHRC would encourage the Department of Education to revert to the wording in Article 9(2) with regard to limitations that are capable of justification. The NIHRC would additionally encourage the Department to underline that the best interests of the child should be a primary consideration in deciding whether any reasonable accommodations could be made to its school uniform policy. The Department may wish to consider adopting the approach taken by the Welsh government's guidance, which provides schools and governing bodies with a practical example of how to make reasonable accommodations regarding religious dress.¹⁰⁷ The guidance highlights that a recognised religious practice may require a pupil to wear a particular item of clothing, therefore "the governing body could decide that the item could be worn in the school uniform colours".¹⁰⁸

¹⁰⁵ Department of Education, 'Circular 2011/04: Guidance to schools on school uniform policy' (DE, 2011) [revised June 2018], at Annex 1.

¹⁰⁶ Department of Education, 'Circular 2011/04: Guidance to schools on school uniform policy' (DE, 2011) [revised June 2018], at Annex 1.

¹⁰⁷ Welsh Government, 'School uniform and appearance: policy guidance for governing bodies (WG23-17)', (Welsh Government, 2022).

¹⁰⁸ Welsh Government, 'School uniform and appearance: policy guidance for governing bodies (WG23-17)', (Welsh Government, 2022).

3.38 The NIHRC recommends that the statutory guidance specifies that schools and governing bodies should be sensitive to the needs of different cultures, races and religions and that reasonable accommodation should be made to meet those needs. This includes consideration of how policy can interfere with a pupil's right to manifest their religion or belief under Article 9(2) of the ECHR.

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