



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

# The Annual Statement 2024

Human Rights in  
Northern Ireland



# About Us

The Northern Ireland Human Rights Commission (the Commission) protects and promotes the human rights of everyone in NI. We do this by:

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

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

# Our Mission Statement

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

**Chief Commissioner:**

Alyson Kilpatrick BL

**Commissioners:**

Helen Henderson

Mairead Holder

Jonathan Kearney

Justin Kouame

David Lavery CB

Stephen White OBE

**Chief Executive:**

Dr David Russell

# Abbreviations

<b>CJEU</b>	Court of Justice of the European Union
<b>CoE</b>	Council of Europe
<b>ECHR</b>	Council of Europe European Convention on Human Rights 1950
<b>ECtHR</b>	European Court of Human Rights
<b>EEA</b>	European Economic Area
<b>EU</b>	European Union
<b>Istanbul Convention</b>	Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence 2011
<b>Lanzarote Convention</b>	Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse 2007
<b>NI</b>	Northern Ireland
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UN CAT</b>	United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment 1984
<b>UN CERD</b>	United Nations Convention on the Elimination of All Forms of Racial Discrimination 1965
<b>UN CEDAW</b>	United Nations Convention on the Elimination of All Forms of Discrimination Against Women 1981
<b>UN CRC</b>	United Nations Convention on the Rights of the Child 1989
<b>UN CRPD</b>	United Nations Convention on the Rights of Persons with Disabilities 2006
<b>UN ICCPR</b>	United Nations International Covenant on Civil and Political Rights 1966
<b>UN ICESCR</b>	United Nations International Covenant on Economic, Social and Cultural Rights 1966

# Understanding the Annual Statement

## Purpose

The Annual Statement provides an overview of the human rights landscape in NI for the given year.

The Annual Statement does not aim to provide an academic analysis of each identified issue. Instead, it aims to be used as a reference document that provides a summary of the NI-specific international obligations and domestic context, which lead to the Commission's recommendations on steps that should be taken to ensure human rights compliance. This format is followed for each human rights issue contained within. Reading from cover-to-cover is encouraged, however the table of contents can be utilised to navigate to issues of interest within the Annual Statement.

## Audience

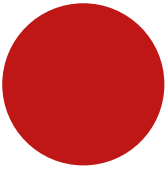
The Annual Statement's audience is far reaching. Its recommendations are based on the SMART approach,<sup>1</sup> with a clear identification of who has responsibility for delivering the necessary change. This places public authorities as the main audience. However, the Annual Statement covers a broad range of issues that will be of interest, in whole or in part, to monitoring bodies, civil society, specialist professionals, academics, media and individuals.

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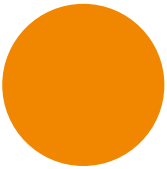
<sup>1</sup> SMART stands for specific, measurable, achievable, relevant and time-bound.

## Traffic light system

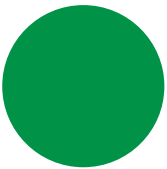
The Annual Statement uses a traffic light system to assist readers.



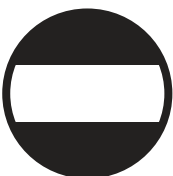
**Red** identifies an issue where there are grave concerns on human rights grounds that require immediate action by the UK Government, NI Executive or relevant public authority. It has been determined that there is a level of severity and there is little to no progress in implementing the steps required to effectively resolve the identified issue.



**Amber** identifies an issue where there are concerns on human rights grounds that require action by the UK Government, NI Executive or relevant public authority. It has been determined that significant steps are required to resolve the identified issue, or the significant steps that have been taken to date still require an effective plan for implementation to resolve the identified issue.




**Green** identifies an issue where there have been concerns, including grave concerns, on human rights grounds that required action by the UK Government, NI Executive or relevant public authority. It has been determined that the issue is resolved, or it is in the final stages of being resolved with an effective long-term plan in place that is being implemented at pace.



identifies an issue where there has been no significant development, either progressive or regressive, in year.









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# Foreword

With the passage of another challenging year, the Commission continues to develop. We have built on our achievements but also recognise that there is more we need to do. We are steadfast in our commitment to honouring all our functions for all the people of Northern Ireland.

We proceed in the hope of an uplift to our budget, so that we really can live up to the trust and support we receive from all our stakeholders. While we do not believe we ever failed to fulfil our responsibilities, there is no doubt that we were severely limited in our ability to discharge them to the fullest. We have undergone an independent review, the outcome of which we trust will allow us the necessary scope and capacity to improve the delivery of our service. We will strive for continual improvement.

With a change of administration, the Commission will look forward to working closely with our colleagues at Westminster and Stormont. We will advise and we will also hold to account, as required by the Northern Ireland Act 1998.

We are hopeful that we will be able to move forward in the spirit of cooperation to achieve our shared objective; a society governed by and respectful of the rule of law, with an enthusiasm for honouring the universal application of human rights.

I am pleased to share this Annual Statement which outlines our work this year. It is testament to the dedication of staff and commissioners that this statement is both broad and detailed. I am enormously grateful to them all.

# Introduction

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

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

submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.<sup>2</sup>

The Commission publishes this Annual Statement, operating in accordance with the NI Act 1998, and recalling its mandate to:

- keep under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights; and
- advise the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights.<sup>3</sup>

In the context of domestic human rights standards and treaty obligations of the UN and European systems that are legally binding in NI,<sup>4</sup> this Annual Statement considers developments throughout 2024 concerning human rights protections in NI.

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<sup>2</sup> A/RES/48/134, 'UN General Assembly Principles Relating to the Status of National Institutions', 20 December 1993.

<sup>3</sup> Section 69, NI Act 1998.

<sup>4</sup> By ratifying a treaty the State agrees to be bound by the contents of that treaty.



Moreover, since 1 January 2021, the Annual Statement also considers developments in the context of the requirements of Windsor Framework Article 2.<sup>5</sup> This Annual Statement focuses on developments between 1 December 2023 and 8 November 2024.

The Commission is mandated in accordance with Article 2(1) of the Windsor Framework,<sup>6</sup> formerly known as the Protocol on Ireland/Ni, to the UK-EU Withdrawal Agreement<sup>7</sup> to oversee the UK Government's commitment to rights and equality in NI after UK Withdrawal from the EU.<sup>8</sup>

The Commission exercises this mandate alongside the Equality Commission for NI, and, together with the Irish Human Rights and Equality Commission, the three Commissions provide oversight of, and reporting on Windsor Framework Article 2 issues with an island of Ireland dimension. This is in addition to its role under the Belfast (Good Friday) Agreement 1998 as part of the Joint Committee of representatives of the Commission and the Irish Human Rights and Equality Commission.

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

<sup>5</sup> Article 2, Windsor Framework, formerly the Protocol on Ireland/Ni to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020.

<sup>6</sup> Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework.

<sup>7</sup> Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community, 24 January 2020.

<sup>8</sup> In December 2022 the Commission, together with Equality Commission for NI, published a joint working paper on the scope of Article 2(1) of the Windsor Framework. Appendix 1 to the working paper sets out the EU law which the Commissions have identified as of that date as falling within the scope of Windsor Framework Article 2. The two Commissions published a further table which sets out the EU directives identified in the Appendix together with the associated underpinning domestic transposing legislation. See NI Human Rights Commission and Equality Commission for NI 'Working Paper: The Scope of Article 2(1) of the Ireland/Ni Protocol' (NIHRC and ECNI, 2022); NI Human Rights Commission and Equality Commission for NI, 'Table of EU Directives which Underpin the Rights, Safeguards and Equality of Opportunity Provisions included in the Chapter of the Belfast (Good Friday) Agreement of the Same Name and Implementing Domestic Legislation' (NIHRC and ECNI, 2022).

- to monitor the implementation of Article 2 of the Windsor Framework (formerly known as the Protocol on Ireland/NI) to the UK-EU Withdrawal Agreement (Windsor Framework Article 2);<sup>9</sup> and
- to advise the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to implement Windsor Framework Article 2.<sup>10</sup>

## Domestic standards

The ECHR is given direct domestic effect across the UK by virtue of the Human Rights Act 1998. Subject to limited exceptions, all public authorities in NI must ensure that their actions are compatible with the Human Rights Act and therefore with the ECHR. The definition of a public authority includes a court or tribunal, and any person certain of whose functions are of a public nature.<sup>11</sup>

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

Human rights law applies directly in NI by virtue of section 24(1) of the NI Act 1998. This means that Ministers of the Executive Committee of the NI Assembly (NI Executive) and NI Executive departments are required to ensure that all legislation and actions are compatible with the ECHR and Windsor Framework Article 2.<sup>13</sup>

<sup>9</sup> Section 78A(1), NI Act 1998.

<sup>10</sup> Section 78A(5), NI Act 1998.

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

<sup>12</sup> Section 7A, EU (Withdrawal) Act 2018.

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

The NI Assembly is prohibited from making any law that is incompatible with the ECHR or with Windsor Framework Article 2.<sup>14</sup>

Moreover, section 26 of the NI Act 1998 requires compliance with other international human rights obligations, including additional human rights treaties that the UK has ratified.<sup>15</sup> For that purpose, the Secretary of State for NI may, by direct order, prohibit any proposed action by Ministers of the NI Executive and devolved Executive departments.<sup>16</sup>

## Binding international standards

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

- CoE European Convention on Human Rights 1950 (ECHR);<sup>17</sup>
- CoE European Social Charter 1961;<sup>18</sup>
- UN Convention on the Elimination of All Forms of Racial Discrimination 1965 (UN CERD);<sup>19</sup>
- UN International Covenant on Civil and Political Rights 1966 (UN ICCPR);<sup>20</sup>
- UN International Covenant on Economic, Social and Cultural Rights 1966 (UN ICESCR);<sup>21</sup>
- UN Convention on the Elimination of All Forms of Discrimination Against Women 1981 (UN CEDAW);<sup>22</sup>
- UN Convention Against Torture, Inhuman or Degrading Treatment or Punishment 1984 (UN CAT);<sup>23</sup>

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

<sup>15</sup> Under Articles 2(a) and 14 of the Vienna Convention, by the UK ratifying a treaty it is consenting to be bound by the provisions within the treaty.

<sup>16</sup> Section 26 of the NI Act 1998 states that “if the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order, he may by order direct that the proposed action shall not be taken”.

<sup>17</sup> UK ratification 1951 and given further domestic effect by the Human Rights Act 1998.

<sup>18</sup> UK ratification 1962. The UK has signed, but not ratified, the CoE Revised European Social Charter 1991.

<sup>19</sup> UK ratification 1969.

<sup>20</sup> UK ratification 1976.

<sup>21</sup> UK ratification 1976.

<sup>22</sup> UK ratification 1986.

<sup>23</sup> UK ratification 1988.

- UN Convention on the Rights of the Child 1989 (UN CRC);<sup>24</sup>
- CoE European Charter for Regional or Minority Languages 1992;<sup>25</sup>
- CoE Framework Convention for the Protection of National Minorities 1998;<sup>26</sup>
- UN Optional Protocol to the UN CRC on the Involvement of Children in Armed Conflict 2000;<sup>27</sup>
- UN Optional Protocol to the UN CRC on the Sale of Children, Child Prostitution and Child Pornography 2000;<sup>28</sup>
- CoE Convention on Action against Trafficking in Human Beings 2005;<sup>29</sup>
- UN Educational, Scientific and Cultural Organisation Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005;<sup>30</sup>
- UN Convention on the Rights of Disabled Persons 2006 (UN CRPD);<sup>31</sup>
- CoE Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse 2007 (Lanzarote Convention);<sup>32</sup> and
- CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence 2011 (Istanbul Convention).<sup>33</sup>

## Human rights monitoring

The Commission, in assessing compliance with international human rights standards, takes account of the findings of international monitoring bodies that are directed to or otherwise apply to NI, as well as the general comments and other interpretative texts adopted by such bodies.<sup>34</sup> Human rights monitoring in 2024 that is relevant to NI is set out below.

<sup>24</sup> UK ratification 1991.

<sup>25</sup> UK ratification 2001.

<sup>26</sup> UK ratification 1998.

<sup>27</sup> UK ratification 2003.

<sup>28</sup> UK ratification 2009.

<sup>29</sup> UK ratification 2008.

<sup>30</sup> UK ratification 2007.

<sup>31</sup> UK ratification 2009.

<sup>32</sup> UK ratification 2018.

<sup>33</sup> UK ratification 2022.

<sup>34</sup> These standards developed by the human rights bodies of the CoE and UN are non-binding, but provide further guidance in respect of specific rights areas.

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

In December 2023, the Commission provided written evidence to the CoE Group of Experts on Action against Violence Against Women and Domestic Violence (GREVIO) as part of its first monitoring cycle of the UK's compliance with the Istanbul Convention.<sup>35</sup> In January 2024, the Commission met with GREVIO during its visit to the UK, including NI. A report of GREVIO's findings and recommendations is expected in early 2025.

## **CoE Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)**

In December 2023, the Commission provided written evidence to the Lanzarote Committee's thematic monitoring round on the protection of children against sexual exploitation and sexual abuse in the circle of trust.<sup>36</sup> The Lanzarote Committee's first overview report on the UK, which will consider this information, is pending with no clear timeframe.

## **CoE European Charter for Regional or Minority Languages**

In February 2024, the Commission provided written evidence to the CoE Committee of Experts of the European Charter for Regional or Minority Languages to inform its sixth evaluation of the UK.<sup>37</sup> In September 2024, the CoE Committee of Experts published its report, which includes recommendations for how the UK can improve in its implementation of the European Charter for Regional or Minority Languages.<sup>38</sup>

<sup>35</sup> NI Human Rights Commission, 'Submission to the CoE Group of Experts on Action Against Violence Against Women and Domestic Violence: Parallel Report for the Baseline Report in Monitoring the UK' (NIHRC, 2023).

<sup>36</sup> Letter from the NI Human Rights Commission to the Lanzarote Committee, 6 December 2023.

<sup>37</sup> NI Human Rights Commission, 'Submission to the CoE Committee of Experts of the European Charter for Regional or Minority Languages - Parallel Report for the Sixth Periodic Report of the UK and NI' (NIHRC, 2024).

<sup>38</sup> CoE Committee of Experts of the European Charter for Regional or Minority Languages, 'Sixth Evaluation Report on the UK and the Isle of Man' (COMEX, 2024).

## CoE European Commission Against Racism and Intolerance

In May 2023, the Commission provided written evidence to the CoE European Commission Against Racism and Intolerance to inform its sixth cycle monitoring of the UK.<sup>39</sup> In November 2023, the CoE European Commission visited the UK, including NI, and met with several stakeholders, including the Commission. In October 2024, the CoE European Commission published its report, which includes recommendations for how the UK can address racism and intolerance, including in NI.<sup>40</sup>

## UN International Covenant on Civil and Political Rights

In January 2020, the Commission provided written evidence to inform the UN Human Rights Committee's list of issues or questions of the UK Government regarding its compliance with the UN ICCPR.<sup>41</sup> In May 2020, the UN Human Rights Committee published its list of issues.<sup>42</sup> In February and March 2024, the Commission provided further written and oral evidence to the UN Human Rights Committee.<sup>43</sup> In March 2024, the UN Human Rights Commission published its concluding observations or recommendations for improving the UK's compliance with the UN ICCPR.<sup>44</sup>

## UN Convention on the Rights of Persons with Disabilities

In 2017, the UN CRPD Committee published its inquiry report on the cumulative impact of the legislation, policies and measures adopted by the UK Government relating to social security schemes and to work and employment, from 2010 to October 2017, directed to persons with disabilities or affecting their enjoyment of their rights under Articles 19, 27 and 28 of the

<sup>39</sup> NI Human Rights Commission, 'Submission to the CoE European Commission Against Racism and Intolerance: Parallel Report for the Sixth Cycle in Monitoring the UK' (NIHRC, 2023).

<sup>40</sup> CoE European Commission Against Racism and Intolerance, 'Report on the UK (Sixth Monitoring Cycle)' (ECRI, 2024).

<sup>41</sup> NI Human Rights Commission, 'Submission to the UN Human Rights Committee Regarding the UK's Eighth Periodic Report on Compliance with the UN ICCPR: List of Issues' (NIHRC, 2020).

<sup>42</sup> CCPR/C/GBR/QPR/8, 'UN Human Rights Committee List of Issues Prior to Submission of the Eighth Periodic Report of the UK of Great Britain and NI', 5 May 2020.

<sup>43</sup> NI Human Rights Commission, 'Submission to the UN Human Rights Commission on the UK's Eighth Periodic Report on Compliance with the UN ICCPR' (NIHRC, 2024).

<sup>44</sup> CCPR/G/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 28 March 2024.



UN CRPD.<sup>45</sup> In 2022, the UK Government submitted a follow-up written report on the steps it had taken to address the UN CRPD Committee's inquiry recommendations.<sup>46</sup> In August 2023, under the umbrella of the UK Independent Mechanism to the UN CRPD, the Commission, the Equality Commission for NI, the Equality and Human Rights Commission, and the Scottish Human Rights Commission provided written and oral evidence to the UN CRPD Committee as part of this process.<sup>47</sup> In March 2024, following additional written and oral evidence from the UK Independent Mechanism to the UN CRPD,<sup>48</sup> the UN CRPD Committee published a follow-up report to the inquiry.<sup>49</sup>

## UN Convention on the Elimination of All Forms of Racial Discrimination

In June 2024, following written evidence from the Commission,<sup>50</sup> the UN CERD Committee published its list of themes or questions for the UK Government, for the purposes of monitoring its compliance with the UN CERD.<sup>51</sup> In July and August 2024, the Commission provided further written and oral evidence to inform the UN CERD Committee's monitoring.<sup>52</sup> In August 2024, the UN CERD Committee published its concluding observations or recommendations for improving the UK's compliance with the UN CERD.<sup>53</sup>

<sup>45</sup> CRPD/C/15/4, 'UN CRPD Committee Inquiry Concerning the UK of Great Britain and NI Carried Out By the UN CRPD Committee Under Article 6 of the Optional Protocol to the UN CRPD: Report of the UN CRPD Committee', 24 October 2017.

<sup>46</sup> CRPD/C/GBR/FIR/1/Add.2, 'UN CRPD Committee Inquiry Concerning the UK of Great Britain and NI Conducted Under Article 6 of the Optional Protocol of the UN CRPD: Follow-up Reported Submitted by the UK of Great Britain and NI', 5 May 2023.

<sup>47</sup> UK Independent Mechanism, 'Seven Years On: disabled people's rights to independent living, employment and standard of living in the UK' (ECNI, EHRC, NIHRC and SHRC, 2023); NI Human Rights Commission and Equality Commission for NI, 'Jurisdictional "Parallel" Submission on the Implementation, in NI, of the Recommendations by the UN CPRD Committee in its 2016 Report on an Inquiry, Carried Out Under Article 6 of the Optional Protocol, into the UK' (NIHRC and ECNI, 2023).

<sup>48</sup> UK Independent Mechanism, 'Additional Information for the UN Committee on the Rights of Persons with Disabilities to Inform Its Inquiry Review into the UK' (UKIM, 2024).

<sup>49</sup> CRPD/C/GBR/FUIR/1, 'UN CRPD Committee Report on Follow-up to the Inquiry Concerning the UK of Great Britain and NI', 22 March 2024.

<sup>50</sup> NI Human Rights Commission, 'Submission to the UN CERD Committee for the Review of the Twenty-fourth to Twenty-sixth Periodic Report on the UK's Compliance with the UN CERD: List of Themes' (NIHRC, 2024).

<sup>51</sup> NI Human Rights Commission, 'Submission to the UN CERD Committee' (NIHRC, 2024).

<sup>52</sup> CERD/C/GBR/Q/24-26, 'UN CERD Committee List of Themes in Relation to the Combined Twenty-Fourth to Twenty-Sixth Periodic Reports of the UK of Great Britain and NI', 25 June 2024.

<sup>53</sup> 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

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

In April 2023, the Commission met with the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, during his visit to the UK. In April 2024, the UN Independent Expert's full report of findings and recommendations following his visit to the UK was published.<sup>54</sup>

## **UN Special Rapporteur on Violence Against Women and Girls**

In February 2024, the Commission provided written and oral evidence to the UN Special Rapporteur on Violence against Women and Girls, Reem Alsalem, during her visit to the UK.<sup>55</sup> A report of the UN Special Rapporteur's findings and recommendations is awaited.

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<sup>54</sup> A/HRC/56/49/Add.1, 'Report of the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz on Visit to the UK of Great Britain and NI', 11 April 2024.

<sup>55</sup> NI Human Rights Commission, 'Submission to the UN Special Rapporteur on Violence Against Women and Girls' (NIHRC, 2024).



# Constitutional Protections

## A Bill of Rights for NI

In 2024, the UN CERD Committee and UN Human Rights Committee recommended that the UK Government and NI Executive, “expedite the process of adopting the Bill of Rights for NI” and ensure that it is in line with the UN CERD and UN ICCPR.<sup>56</sup>

In 2023, the UN CRC Committee recommended that the UK Government “enact a Bill of Rights for NI”.<sup>57</sup> In 2016, the UN ICESCR Committee also recommended a Bill of Rights for NI.<sup>58</sup>

In 2008, as required by the Belfast (Good Friday) Agreement 1998 and the NI Act 1998, the Commission provided advice to the UK Government on a Bill of Rights for NI. On receipt of its advice the NI Office conducted a public consultation, which found “considerable support from human rights and community groups for a wide-ranging Bill of Rights along the lines of that recommended by the NI Human Rights Commission”.<sup>59</sup>

<sup>56</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of UK of Great Britain and NI’, 28 March 2024, at para 5(c); 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, at para 12.

<sup>57</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 8(d).

<sup>58</sup> CERD/C/GBR/CO/21-23, ‘UN CERD Committee Concluding Observations on the Combined Twenty-first to Twenty-third Periodic Reports of the UK of Great Britain and NI’, 3 October 2016, at para 10; E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 10.

<sup>59</sup> UK Parliament Hansard, ‘House of Commons (Westminster Hall) - Bill of Rights (NI)’, 16 July 2003.

Since 2010, the UK Government has referred to a lack of political consensus around a Bill of Rights for NI.<sup>60</sup> This lack of political consensus is reflected in the absence of any significant development.

A panel of five experts was to be appointed by the First Minister and Deputy First Minister to support the work of the Ad Hoc Committee on a Bill of Rights.<sup>61</sup> In 2022, the Expert Panel had not been appointed at conclusion of the Ad Hoc Committee on a Bill of Rights' work,<sup>62</sup> which affected the Ad Hoc Committee's ability to make decisions.<sup>63</sup> In 2024, this remained the case.

In 2022, the Ad Hoc Committee on a Bill of Rights' concluding report reaffirmed that "human rights of many individuals and groups in NI are not sufficiently protected" and that a majority supports a Bill of Rights for NI.<sup>64</sup> The report also referenced the Commission's evidence which highlighted the importance of the EU Charter in the absence of a Bill of Rights and the limits of Windsor Framework Article 2.<sup>65</sup> The Ad Hoc Committee on a Bill of Rights concluded that it "supported the creation of a Bill of Rights [for NI] in principle", but was unable to advise as to what form this should take due to the absence of an expert panel and the Democratic Unionist Party's disagreement with this position.<sup>66</sup>

In 2024, there was no further progress on creating a Bill of Rights for NI. In May 2024, the First Minister, Michelle O'Neill MLA, stated that "personally... I am absolutely committed to a Bill of Rights [for NI]. Unfortunately, there have been political barriers to that being achieved, but those of us who want to bring that about should work together to do so".<sup>67</sup>

<sup>60</sup> John Manley, 'No Bill of Rights until Stormont consensus says British government', *Irish News*, 17 May 2022; Stormont House Agreement, 23 December 2014, at para 69; NI Office, 'Written Statement to Parliament: A Bill of Rights for NI – Next Steps', 16 November 2010.

<sup>61</sup> NI Office, 'New Decade, New Approach' (NIO, 2020), at para 5.26.

<sup>62</sup> NI Assembly, 'Report of the Ad Hoc Committee on Bill of Rights' (NIA, 2022), at para 8.

<sup>63</sup> *Ibid*, at para 13.

<sup>64</sup> *Ibid*, at paras 9 and 11.

<sup>65</sup> *Ibid*, at paras 180 and 186-188.

<sup>66</sup> *Ibid*, at para 13.

<sup>67</sup> NI Assembly Hansard, 'EU Convention on Human Rights: UK Withdrawal – Michelle O'Neill MLA', 28 May 2024.

## Recommendations

The Commission continues to recommend that the UK Government, particularly the NI Office, actively engages with and expeditiously implements its commitment to legislate for a Bill of Rights for NI, as set out in the Belfast (Good Friday) Agreement 1998.

## A Charter of Rights for the island of Ireland

The Commission and the Irish Human Rights Commission were mandated by the Belfast (Good Friday) Agreement 1998 to consider through a Joint Committee “the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland”.<sup>68</sup>

In 2011, the Commission and the Irish Human Rights Commission jointly presented advice to the UK Government and Government of Ireland, the Speaker of the NI Assembly and the Ceann Comhairle of Dáil Éireann.<sup>69</sup> The Speaker and Ceann Comhairle both agreed to forward the advice to political parties in their respective legislative bodies for further consideration. In 2024, over a decade later, no further communication was received on this matter.

## Recommendations

The Commission recommends that political parties in both NI and Ireland adopt a Charter of Rights for the island of Ireland, with the UK Government and Government of Ireland as co-guarantors.

<sup>68</sup> Joint Committee of the NI Human Rights Commission and the Irish Human Rights Commission, ‘The Advice of the Joint Committee on a Charter of Rights for the Island of Ireland’ (NIHRC, 2011).

<sup>69</sup> Ibid.

## ● Birthright

Recognition in the Belfast (Good Friday) Agreement 1998, of the “birthright of all the people of [NI]... to identify themselves and be accepted as Irish or British, or both”, has attracted renewed focus in the context of UK withdrawal from the EU, due to the implications for access to EU free movement rights. Under section 1 of the British Nationality Act 1981, anyone born in the UK to a British, Irish, or settled parent, is deemed British.

In 2019 and 2021, unsuccessful attempts were made to challenge these provisions before the Upper Immigration and Asylum Tribunal and High Court of Justice in NI.<sup>70</sup> In 2022, the Court of Appeal in NI found that section 1 of the British Nationality Act 1981 was compatible with the UK’s international obligation to protect individuals against statelessness and that section 12 of the 1981 Act provides for a right to renounce one’s citizenship.<sup>71</sup>

In 2020, the Joint Committee of the Commission and the Irish Human Rights and Equality Commission published a legal analysis and proposals for reform to enshrine the birthright commitment in the Belfast (Good Friday) Agreement in domestic law.<sup>72</sup> In 2020, following a commitment in New Decade, New Approach Agreement,<sup>73</sup> temporary changes came into force to allow for a “relevant person of NI” to access EU free movement law protections.<sup>74</sup> On 30 June 2021, this scheme closed, in line with the EU Settlement Scheme.<sup>75</sup>

<sup>70</sup> *De Souza (Good Friday Agreement: Nationality)* [2019] UKUT 355, at para 54-57; *In the Matter of Ní Chuinneagain* [2021] NIQB 79, at para 17.

<sup>71</sup> *In the Matter of Ní Chuinneagain* [2022] NICA 56, at paras 75-76

<sup>72</sup> Alison Harvey, ‘A Legal Analysis of Incorporating into UK Law the Birthright Commitment under the Belfast (Good Friday) Agreement 1998’ (NIHRC and IHREC, 2020).

<sup>73</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 48.

<sup>74</sup> Home Office, ‘Statement of Changes in Immigration Rules CP232’ (HO, 2020), at 10.

<sup>75</sup> NI Human Rights Commission, ‘EU Settlement Scheme Extended to the People of NI: What Does it Mean for Me?’ (NIHRC, 2020).

In 2021, following written and oral evidence from the Commission,<sup>76</sup> the NI Affairs Committee recommended that the UK Government and Government of Ireland agree a shared approach to the birthright provisions to remove any remaining ambiguity and clarify how the phrase ‘to be accepted as’ in Article 1(vi) of the Belfast (Good Friday) Agreement is to be upheld and respected by the UK Government’s approach towards the birthright provisions for the people of NI.<sup>77</sup>

In 2022, the UK Government restated its view that “UK nationality legislation - including the British Nationality Act 1981 - is compliant with the agreed text of the Belfast (Good Friday) Agreement”.<sup>78</sup>

In June 2024, the British Nationality (Irish Citizens) Act 2024 received Royal Assent. The 2024 Act makes provision for Irish citizens who have been resident in the UK for five years to acquire British citizenship without the need for an English language or ‘Life in the UK’ test. Before the introduction of the 2024 Act, Irish citizens, born in Ireland and living in NI, or anywhere else in the UK, had the right to work, study and vote in the UK, but they had to follow the same process towards citizenship as any other foreign national.

## Recommendation

The Commission recommends that the Home Office amends nationality and immigration laws to reflect the commitment under the Belfast (Good Friday) Agreement 1998 that it is the birthright of all the people of NI to identify, and be accepted, as Irish or British or both, without any loss of rights or entitlements.

<sup>76</sup> NI Human Rights Commission, ‘Submission to the NI Affairs Committee Inquiry into Citizenship and Passport Processes’ (NIHRC, 2021); UK Parliament Hansard, ‘NI Affairs Committee Inquiry into Citizenship and Passport Processes in NI - NI Human Rights Commission’, 10 March 2021; NI Human Rights Commission, ‘NI Affairs Committee Inquiry into Citizenship and Passport Processes in NI: NI Human Rights Commission Commentary on the NI Office/Home Office Submission to the Committee’ (NIHRC, 2021).

<sup>77</sup> NI Affairs Committee, ‘First Report of Session 2021/2022 on Citizenship and Passport Processes Relating to NI’ (HoC, 2021), at para 14.

<sup>78</sup> NI Affairs Committee, ‘Second Special Report of Session 2021/2022 on Citizenship and Passport Processes Relating to NI: Government Response to the Committee’s First Report of Session 2021-2022’ (HoC, 2022), at paras 12 and 16.

## Common Travel Area

Article 3 of the Windsor Framework recognises that the UK and Ireland “may continue to make arrangements between themselves relating to the movement of persons between their territories”, subject to Ireland’s obligations under EU law. In the context of UK withdrawal from the EU, UK Government guidance advised that Irish nationals did not need to apply for the EU Settlement Scheme, as the Common Travel Area arrangements protected their rights.<sup>79</sup> The Commission has long-standing concerns about rights protections under the Common Travel Area. Research published by the Commission and the Irish Human Rights and Equality Commission found that the limited legal underpinning that the Common Travel Area had was largely dependent on EU rights.<sup>80</sup> Rights under the EU Settlement Scheme are, by contrast, anchored in an international treaty, incorporated into domestic law.

Since 2021, individuals travelling into Great Britain from Ireland may be asked to show a document confirming their identity and nationality.<sup>81</sup> EEA and Swiss citizens may be asked to show their passport or identity card to enter Great Britain when travelling from Ireland, if they are encountered by Border Force. The Commission continues to be concerned about the risk of racial profiling in the context of additional checks arising from the UK’s withdrawal from the EU.<sup>82</sup>

In 2023, the Commission published a briefing on access to healthcare in NI, and on the island of Ireland, after the UK’s withdrawal from the EU.<sup>83</sup> The Commission highlighted potential

<sup>79</sup> Home Office, ‘Common Travel Area Guidance’, (HO, 2021), at Section 8A; Memorandum of Understanding between the Government of the UK of Great Britain and NI and the Government of Ireland Concerning the Common Travel Area and Associated Reciprocal Rights and Privileges, 8 May 2019; Convention on Social Security between the Government of the UK and the Government of Ireland 2019.

<sup>80</sup> Sylvia de Mars et al, ‘Discussion Paper on the Common Travel Area’ (IHREC and NIHRC, 2018).

<sup>81</sup> Home Office, ‘Common Travel Area - Version 11.0’ (HO, 2021), at 44-47.

<sup>82</sup> Letter from NI Human Rights Commission to Home Office, 20 December 2021; Letter from Equality Commission for NI to Home Office, January 2021.

<sup>83</sup> NI Human Rights Commission, ‘Briefing Paper and Recommendations on Brexit, Health and Its Potential Impact on Article 2 of the Windsor Framework’ (NIHRC, 2023); Tamara Hervey, ‘Brexit, Health and Its Potential Impact on Article 2 of the Ireland/NI Protocol’ (NIHRC, 2022).

difficulties in accessing cross-border and all-island healthcare resulting from the residency and nationality limitations of the Common Travel Area.<sup>84</sup>

### **Nationality and Borders Act: Electronic Travel Authorisations**

The Nationality and Borders Act 2022 provides for Electronic Travel Authorisations for all non-British citizens who require leave to enter the UK when travelling from Ireland to the UK. Irish citizens are excluded as individuals not requiring leave to enter the UK.<sup>85</sup> The permission of British and Irish citizens to travel “will be their nationality, demonstrated by their passports”.<sup>86</sup>

The Commission has expressed concern about the immigration checks associated with the 2022 Act and the risk of increased racial profiling.<sup>87</sup> In 2023, the previous UK Government updated its guidance on Electronic Travel Authorisations confirming that such non-visa nationals, who are lawfully resident in Ireland, will be exempt from the requirement.<sup>88</sup> This partially addressed the Commission’s concerns. However, as they come into effect, non-visa nationals not resident in Ireland will still need to apply for an Electronic Travel Authorisation when travelling from Ireland to NI.<sup>89</sup>

In 2023, in a report on the Common Travel Area post-Brexit, the Sovereign Affairs Committee to the British-Irish Parliamentary Assembly raised concerns about the incompatibility of the Electronic Travel Authorisation system with tourism on the island of Ireland.<sup>90</sup> The Sovereign Affairs Committee recommended

<sup>84</sup> NI Human Rights Commission, ‘Briefing Paper and Recommendations on Brexit, Health and Its Potential Impact on Article 2 of the Windsor Framework’ (NIHRC, 2023).

<sup>85</sup> Section 3ZA, Immigration Act 1971.

<sup>86</sup> Explanatory Notes to the Nationality and Borders Act 2022, at para 720.

<sup>87</sup> Letter from NI Human Rights Commission to Priti Patel MP, Home Secretary, 20 December 2021.

<sup>88</sup> Home Office, ‘Statement of Changes to the Immigration Rules - HC 1160’, 9 March 2023. Home Office, ‘Electronic Travel Authorisation: Irish Resident Exemption’ (HO, 2023).

<sup>89</sup> Home Office, ‘Electronic Travel Authorisation - Version 4 (dated 4 April 2024)’ (HO, 2024), at 7. Note that Electronic Travel Authorisations are being introduced gradually for specified countries. The list of relevant countries will be updated in Home Office, Immigration Rules – Appendix Electronic Travel Authorisation (6 June 2024) <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-electronic-travel-authorisation>.

<sup>90</sup> Sovereign Affairs Committee (Committee A) of the British Irish Parliamentary Assembly, ‘Protecting the Common Travel Area in the Post-Brexit Era’ (BIPA, 2023).



that all permanent residents in NI or Ireland be exempt from the requirement to obtain a visa for short visits to other jurisdictions.<sup>91</sup>

## Recommendations

The Commission recommends that the Common Travel Area and rights associated with it are enshrined in a comprehensive bilateral treaty by the UK Government and Government of Ireland and incorporated into domestic legislation. The Commission further recommends that this agreement codifies reciprocal free movement rights and rights to employment, education, health care, justice and security to maintain the same level of protection as existed on 31 December 2020.

The Commission recommends that Department of Health, in consultation with the Government of Ireland's Department of Health, reviews the residency requirements for Common Travel Area entitlements relating to cross-border and all-island healthcare, and engages with the Home Office as necessary to ensure that rights of access are clear, comprehensible and generous.

The Commission recommends that the Home Office enforces the prohibition on racial profiling and ensures it does not occur in the implementation of the revised guidance on the Common Travel Area and the Electronic Travel Authorisation requirements, including at entry to NI at ports and airports and in the context of cross-border travel. This should include effective collection and monitoring of appropriate data, including disaggregated ethnic data, of people examined by enforcement officers. It should also include effective training and clear guidance for enforcement officers, as well as management oversight and disciplinary measures.

The Commission continues to recommend that the Home Office ensures that all journeys into NI, originating from Ireland, are exempt from Electronic Travel Authorisation requirements.

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<sup>91</sup> Ibid.



## ● EU Settlement Scheme and frontier workers

The EU Settlement Scheme is relevant to the Commission's role under Windsor Framework Article 2, since it concerns the rights of EU nationals living in NI prior to 1 January 2021 and, therefore interacts with the 'no diminution' commitment. The Independent Monitoring Authority has responsibility for monitoring the EU Settlement Scheme.

The EU Settlement Scheme gives effect to the Citizens' Rights provisions in the UK-EU Withdrawal Agreement and protects the rights of EU and EEA citizens and their family members living in the UK prior to 1 January 2021.<sup>92</sup> Applicants, and their families, can be granted either settled status or pre-settled status. Settled status is indefinite leave to remain, and pre-settled status, which is a temporary right to reside for five years, allows the applicant to remain in the UK, subject to conditions, in order to fulfil the residency requirements for settled status. EU, EEA and Swiss citizens who come to the UK from 1 January 2021 are subject to the UK's points-based immigration system.

In 2022, the CJEU found that the UK had wrongfully required private comprehensive health insurance cover as part of its residence requirements on EU citizens in relation to the EU Citizens Rights Directive.<sup>93</sup> In a research report published by the Commission, together with the Equality Commission for NI and the Irish Human Rights and Equality Commission, the researchers took the view this could be interpreted as supporting 'prospective obligations' to provide EU citizens resident in NI and their family with a right to access health and social care benefits.<sup>94</sup>

<sup>92</sup> Part 2, UK-EU Withdrawal Agreement 2020.

<sup>93</sup> *VI v Commissioners for Her Majesty's Revenue and Customs*, Case C247/20, 10 March 2022.

<sup>94</sup> Sarah Craig et al, 'European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC, IHREC 2022), at 91.

## Pre-settled status

Since 2023, an interim policy has allowed EU citizens in NI with pre-settled status who are unable to work, as well as their children, to be assessed individually for Universal Credit.<sup>95</sup> In 2021, the CJEU found that applications for Universal Credit by applicants with pre-settled status can only be refused if the claimants and their dependents would not be exposed to “an actual and current risk of violation of their fundamental rights”.<sup>96</sup> In 2023, the requirement to undertake an individual assessment for EU citizens with Pre-settled Status who apply for Universal Credit was upheld by the Court of Appeal of England and Wales.<sup>97</sup> In 2024, the Department for Communities was developing guidance for decision makers to ensure claimants, within scope of 2023 judgment, are individually assessed in respect of Universal Credit, State Pension Credit and Housing Benefit.<sup>98</sup>

In 2022, the High Court of England and Wales confirmed that applicants with pre-settled status should have the right to reside permanently in the UK once they meet the five-year residence requirement.<sup>99</sup> Following this decision, the previous UK Government announced changes to the EU Settlement Scheme designed to ensure that people with pre-settled status under the EU Settlement Scheme would automatically have their status extended by two years before it expires.<sup>100</sup> This extension was automated, the applicant is notified, and the extension is reflected on their digital status. In addition, the previous UK Government committed to automatically converting applicants from pre-settled to settled status, if they are eligible, starting in 2024.

<sup>95</sup> Law Centre NI, ‘Press release: Positive change in social security policy’, 25 May 2023; Email correspondence from the Department for Communities to the NI Human Rights Commission, 4 September 2024. The policy is in line with the decision in *CG v The Department for Communities in NI*, Case C-709/20, 15 July 2021.

<sup>96</sup> *CG v Department for Communities*, Case C-709/20, 15 July 2021, at para 93.

<sup>97</sup> *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307.

<sup>98</sup> Email correspondence from the Department for Communities to the NI Human Rights Commission, 4 September 2024.

<sup>99</sup> See *R (Independent Monitoring Authority for the Citizens’ Rights) v Secretary of State for the Home Department* [2022] EWHC 3274 (Admin), at para 192.

<sup>100</sup> Home Office, ‘News release: EU Settlement Scheme enhancements confirmed’, 17 July 2023.

The Independent Monitoring Authority expressed concern that the retention of the expiry period for pre-settled status would be incompatible with the UK-EU Withdrawal Agreement.<sup>101</sup> In May 2024, the previous UK Government announced further changes to the EU Settlement Scheme, extending the duration of pre-settled status extensions from two to five years.<sup>102</sup> The pre-settled status expiry date will also be removed from the digital profiles shown to third parties in the online checking services for ‘Right to Work, and View and Prove’.<sup>103</sup> In June 2024, the Independent Monitoring Authority welcomed the changes to the EU Settlement Scheme as a “a pragmatic way of ensuring the principles of the judgment are upheld”.<sup>104</sup>

Further concerns have been raised that the changes to the EU Settlement Scheme still cause confusion, particularly among individuals who have been granted pre-settled status as the family member of an EEA national and whose circumstances may have changed, for example, due to breakdown of that relationship.<sup>105</sup> The automatic extension of pre-settled status does not alter the requirement to meet eligibility requirements and, if challenged, such individuals may have a tight timeframe to demonstrate their eligibility to remain in the UK under the EU Settlement Scheme.<sup>106</sup>

### **Delays in issuing a Certificate of Application**

In 2023, the Independent Monitoring Authority’s inquiry into EU Settlement Scheme Certificates of Application found that in some cases the Home Office failed to comply with the obligation under the UK-EU Withdrawal Agreement to issue a certificate

<sup>101</sup> Independent Monitoring Authority, ‘Press Release: Citizens’ rights watchdog gives update on judicial review’, 1 December 2023. The Independent Monitoring Authority was particularly concerned that maintaining an expiry period for pre-settled status could have practical effects, for example by allowing for an employer or landlord to discriminate against a citizen who holds pre-settled status that is due to expire soon.

<sup>102</sup> Home Office, ‘Press Release: Home Office confirms changes to the EU Settlement Scheme’, 21 May 2024.

<sup>103</sup> Ibid.

<sup>104</sup> Independent Monitoring Authority, ‘Press Release: Independent Monitoring Authority welcomes Home Office decisions on measures to implement landmark judgment’, 18 June 2024.

<sup>105</sup> Nick Gore, ‘EU Settlement Scheme: Automatic extensions and potential curtailments’, *FreeMovement*, 30 July 2024.

<sup>106</sup> Ibid.

on time.<sup>107</sup> In 2023, the previous UK Government published a response to the report and agreed to consider whether the extraction of meaningful data from systems would enhance the ability to monitor and manage the process for issuing Certificates of Application.<sup>108</sup>

The Independent Monitoring Authority responded to the previous UK Government reiterating its view that establishing a timescale for issuing Certificates of Application would be helpful as it would provide clarity for applicants.<sup>109</sup> In 2023, the Independent Monitoring Authority launched a further inquiry to investigate EU Settlement Scheme application delays.<sup>110</sup> In 2024, the inquiry was ongoing.

### Late applications

In 2023, the Home Office closed the ‘Family Member and the Qualifying British Citizen’ routes for applications to the EU Settlement Scheme, on the basis that they were temporary measures.<sup>111</sup> The new guidelines have tightened the criteria for late applications and stipulate that for example, individuals who failed to meet the June 2021 deadline and now make an application, will need to show reasonable grounds for not having applied in the intervening period.<sup>112</sup> Further, an applicant who has had an in-time application refused will not normally be able to make a late application based on reasonable grounds for delay.<sup>113</sup>

<sup>107</sup> Obtaining a Certificate of Application protects the applicant’s rights pending a decision on their status. See Independent Monitoring Authority for the Citizens’ Rights Agreements, ‘An Inquiry by the Independent Monitoring Authority for the Citizens’ Rights Agreements into Certificates of Application’ (IMA, 2023); UK Government, ‘Guidance: Apply to the EU Settlement Scheme (Settled and Pre-settled Status)’. Available at: <https://www.gov.uk/settled-status-eu-citizens-families>

<sup>108</sup> Home Office, ‘Response to the Independent Monitoring Authority for the Citizens’ Rights Agreements Report: An Inquiry by the Independent Monitoring Authority into Certificates of Application’ (HO, 2023).

<sup>109</sup> Independent Monitoring Authority, ‘Press Release: Independent Monitoring Authority issues statement following Home Office response to inquiry findings’, 6 September 2023.

<sup>110</sup> Independent Monitoring Authority, ‘Press Release: Independent Monitoring Authority launches new inquiry to investigate EU Settlement Scheme application delays’, 4 September 2023.

<sup>111</sup> Home Office, ‘Statement of Changes in Immigration Rules’, 17 July 2023.

<sup>112</sup> Home Office, ‘EU Settlement Scheme: EU, Other EEA and Swiss Citizens and their Family Members. Version 23.0’ (HO, 2024), at 38.

<sup>113</sup> Ibid, at 39.

Despite the deadline for applications to the Settlement Scheme ending on 31 December 2020, the scheme is still active and late applications are still being processed. Between January and March 2024, there were 33,520 late applications.<sup>114</sup> Since August 2023, following changes to the validity criteria, applications concluded as invalid have increased.<sup>115</sup> The majority of late applications have been made without reasonable grounds for the delay.<sup>116</sup>

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

## Deferrals

It has been well documented that, particularly over the COVID-19 pandemic, applicants to the EU Settlement Scheme with pending criminal proceedings have been experiencing extensive delays in getting their applications processed and their status confirmed.<sup>117</sup>

In June 2024, the Asylum and Immigration Upper Tribunal found that the Home Office policy of pausing consideration of EU Settlement Scheme applications where the applicant had a pending criminal prosecution<sup>118</sup> was unlawful as it extends to alleged conduct that, if proven, is not sufficiently likely to result in a conviction and deportation.<sup>119</sup> In September 2024, the Home Office published updated guidelines on processing EUSS applications where there is a pending prosecution against the applicants stating that “if the applicant satisfies the eligibility criteria and suitability criteria (setting aside the allegations which are the subject of the pending prosecution) leave may be granted”.<sup>120</sup> The Independent Monitoring Authority is currently reviewing the guidelines.<sup>121</sup>

<sup>114</sup> Home Office, ‘Immigration System Statistics Year Ending March 2024 – How Many People have been Granted Settlement via the EU Settlement Scheme?’ (Home Office, 2024).

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Cormac Campbell, ‘Coronavirus: COVID-19 courthouse closures create huge backlog’, *BBC News*, 15 July 2020; NI Audit Office, ‘Speeding Up Justice: Avoidable Delay in the Criminal Justice System’ (NIAO, 2018).

<sup>118</sup> Home Office, ‘EU Settlement Scheme: Suitability Requirements – Version 8.0’ (HO, 2022), at 28.

<sup>119</sup> *R (Lukasz Krzysztolik) v Secretary of State for the Home Department* [2024], at para 92.

<sup>120</sup> Home Office, ‘EU Settlement Scheme: Suitability Requirements – Version 9.0’ (HO, 2022), at 28.

<sup>121</sup> Email correspondence from the Independent Monitoring Authority to the NI Human Rights Commission, 1 October 2024.

The Commission continues to monitor the situation regarding applicants for the EU Settlement Scheme who have had their applications deferred due to minor criminal convictions or pending prosecutions.

## Frontier workers

The Frontier Workers Permit Scheme was established by the previous UK Government to ensure that EU citizens living in the EU, but working in the UK, on or before 1 July 2021, can prove their right to work in the jurisdiction.<sup>122</sup> Any EU citizens wishing to come to the UK to work on or after 1 January 2021, and EU citizens wishing to take up frontier work for the first time after 1 July 2021, have to apply through the new points-based immigration system.

In 2023, the Commission published a briefing on access to healthcare in NI, and on the island of Ireland, after the UK's withdrawal from the EU.<sup>123</sup> This briefing raised questions about the relationship between the Frontier Workers' Permit Scheme, rules on access to healthcare and the Common Travel Area.<sup>124</sup>

In 2023, the Commission also published research on Windsor Framework Article 2 and the rights of frontier workers and their families.<sup>125</sup> The report highlights the complex, layered way in which rights of frontier workers are protected following UK withdrawal from the EU and the pre-existing and current gaps in the legal framework, including potential diminutions under Windsor Framework Article 2.<sup>126</sup> The research recommends several changes to clarify and implement rights including through a new, domestically enforceable, UK-Ireland bilateral treaty on the Common Travel Area, better guidance directed at frontier workers and advisers, and definitions of different categories of frontier workers.<sup>127</sup>

<sup>122</sup> Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

<sup>123</sup> NI Human Rights Commission, 'Briefing Paper and Recommendations on Brexit, Health and Its Potential Impact on Article 2 of the Windsor Framework' (NIHRC, 2023); Tamara Hervey, 'Brexit, Health and Its Potential Impact on Article 2 of the Ireland/NI Protocol' (NIHRC, 2022).

<sup>124</sup> Ibid.

<sup>125</sup> Sylvia de Mars and Charlotte O'Brien, 'Frontier Workers and Their Families: Rights After Brexit' (NIHRC, 2023).

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.



In 2023, the Independent Monitoring Authority published the findings of its third annual survey, which found the top three areas where citizens continued to experience difficulties accessing their rights were employment, travel and healthcare.<sup>128</sup>

The Commission is aware of concerns about ambiguity over whether a frontier worker who enters the UK, without a frontier worker permit, may be entering the UK unlawfully, or is merely in breach of an administrative requirement.

Regulation 5 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 provides for an exemption from immigration control for individuals entitled to enter the UK "by virtue of their frontier workers' rights". The 2020 Regulations do not make the exemption contingent upon a person holding a frontier worker permit. Regulation 3 of the 2020 Regulations defines 'frontier worker' without reference to the holding of a permit, setting out requirements in relation to EEA nationals engaged in frontier work prior to and since Brexit.

However, guidance for caseworkers suggests that possession of a frontier worker permit is necessary to enter the UK. The Home Office has confirmed that a frontier worker permit is "required to evidence the right to enter the UK" for individuals who do not otherwise have leave to enter.<sup>129</sup> The Home Office has also confirmed that a frontier worker permit is not required to evidence the right to work or access benefits and services, referencing other means of evidencing entitlement.<sup>130</sup>

## Recommendations

The Commission welcomes the Home Office proposals to automatically transition all eligible EU citizens with pre-settled status to the EU Settled status and recommends that appropriate monitoring and safeguards are in place to ensure that no eligible EU citizen experiences a loss of rights or entitlements.

<sup>128</sup> Independent Monitoring Authority, 'Press Release: Independent Monitoring Authority survey identifies concerns about current and future protection of citizens' rights', 15 December 2023.

<sup>129</sup> Home Office, 'Frontier Worker Permit Scheme Guidance - Version 2.0' (HO, 2021), at 60.

<sup>130</sup> UK Parliament Hansard, 'Written Answers: Frontier Workers: Work Permits - Robert Jenrick MP - UIN 194579', 25 July 2023.

The Commission recommends that the Home Office ensures that all eligible high risk groups and individuals, who did not apply to the EU Settlement Scheme by 30 June 2021, are supported to regularise their status in an efficient and timely way.

The Commission recommends that the Home Office takes immediate action to resolve all outstanding applications under the EU Settlement Scheme and ensures that no one is left without the ability to prove their right to live and work in the UK based on pending minor criminal prosecutions that would otherwise not meet the threshold for refusal.

The Commission recommends that the Home Office ensures that the provision of an option for EU citizens to obtain physical proof of pre-settled or settled status.

The Commission recommends that the UK Government and NI Executive review the judgment in the *VI* case and CJEU case-law relating to compensation for violations of EU fundamental rights and ensure that policies and law implementing the EU Settlement Scheme reflect these developments.

The Commission advises that people living and working in Ireland are in a particularly vulnerable situation and recommends that the Home Office adopts a flexible approach to late applications to the Frontier Workers Scheme.

The Commission recommends that the Home Office clarifies that a frontier worker entering the UK from Ireland to NI without a frontier worker permit has not entered the UK unlawfully in terms of immigration law.

The Commission recommends that the Home Office clarifies in all guidance and on all relevant platforms that a frontier worker permit is not required to demonstrate the right to work or access benefits and services, where entitlement can be evidenced by other means.



## ● Human Rights after UK Exit from the EU

The Commission is required in accordance with Windsor Framework Article 2 of the UK-EU Withdrawal Agreement to oversee the UK Government's commitment on rights and equality in NI after EU withdrawal. The UK signed the UK-EU Withdrawal Agreement in January 2020 and the Protocol on Ireland/NI (now known as the Windsor Framework), which is part of the treaty, took effect from 1 January 2021.<sup>131</sup>

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

Section 7A of the EU (Withdrawal) Act 2018 gives effect to all the rights, obligations and remedies arising under the UK-EU Withdrawal Agreement in UK law without the need for further enactment. Section 6 of the NI 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 departments should be compatible with Windsor Framework Article 2.

In 2022, the Commission, jointly with the Equality Commission for NI published a joint working paper on the scope of Windsor Framework Article 2(1), which provides an initial assessment of Windsor Framework Article 2, how it is engaged and what rights and safeguards fall within its scope.<sup>132</sup> The Appendix sets out the

<sup>131</sup> Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020. Following the Joint Declaration by the UK and the EU and the decision of the Joint Committee in March 2023, the Protocol on Ireland/NI has been renamed as the Windsor Framework. See Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework; Joint Declaration No 1/2023 of the EU and the UK in the Joint Committee established by the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community, 24 March 2023.

<sup>132</sup> NI Human Rights Commission and Equality Commission for NI, 'Working Paper: Scope of Article 2(1) of the Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020' (NIHRC and ECNI, 2022).

EU law which the Commissions have identified as falling within the scope of Windsor Framework Article 2. The Commission takes the view that, subject to anticipated consideration by the courts, this is a reasoned and robust interpretation and that it provides an essential contribution to our understanding of the UK Government commitment in Windsor Framework Article 2.

The Commissions also published a further table which contains the associated underpinning domestic legislation.<sup>133</sup>

In September 2024, the Commission, jointly with the Equality Commission for NI, published its Annual Report on the implementation of Article 2 of the Windsor Framework 2023-2024.<sup>134</sup> The Commissions were disappointed not to receive a formal response from the then Secretary of State for NI, Chris Heaton-Harris, to their Annual Report 2022-2023 within the reporting period.<sup>135</sup> While, regrettably, the Executive Office also failed to respond, the Commissions noted that there was limited time for a response between restoration of the institutions in February 2024 and the reporting deadline of 31 March 2024.

## Court judgments on Windsor Framework Article 2

In 2023, the UK Supreme Court confirmed that:

the answer to any conflict between the Protocol and any other enactment whenever passed or made is that those other enactments are to be read and have effect subject to the rights and obligations which are to be recognised and available in domestic law by virtue of section 7A(2) [of the EU (Withdrawal) Act 2018].<sup>136</sup>

<sup>133</sup> NI Human Rights Commission and Equality Commission for NI, 'Table of EU Directives which Underpin the Rights, Safeguards and Equality of Opportunity Provisions included in the Chapter of the Belfast (Good Friday) Agreement of the Same Name and Implementing Domestic Legislation' (ECNI and NIHRC, 2022).

<sup>134</sup> NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024' (NIHRC and ECNI, 2024).

<sup>135</sup> Under section 78A(3) of the NI Act 1998, the Commission may require the Secretary of State or the Executive Office in NI to reply in writing to recommendations contained in their annual report on the implementation of Windsor Framework Article 2.

<sup>136</sup> *Re James Hugh Allister* [2023] UKSC 5, at para 66.

In 2023, the Court of Appeal in NI confirmed that the UN CRPD was a part of the EU legal order prior to UK withdrawal and, as such, the NI Assembly was prohibited from legislating contrary to the UN CRPD as EU law where matters fell within the competence of the EU.<sup>137</sup> The Court of Appeal in NI also set out a six-point test to establish a breach of Windsor Framework Article 2.<sup>138</sup>

In November 2023, the Court of Appeal of England and Wales found that the EU Charter of Fundamental Rights applies to the interpretation and application of the UK-EU Withdrawal Agreement and that the approach taken by the CJEU in the *CG* case<sup>139</sup> should be the benchmark for determining whether there is a breach of the right to human dignity in the EU Charter.<sup>140</sup>

In February 2024, the High Court of Justice in NI handed down a judgment in a legal challenge brought by several victims raising concerns about the compliance of the NI Troubles (Legacy and Reconciliation) Act 2023 with the ECHR and Windsor Framework Article 2. The High Court of Justice in NI found that the conditional immunity scheme breaches Articles 2 and 3 of the ECHR<sup>141</sup> and that the removal of the possibility of prosecution was incompatible with the EU Victims Directive and therefore breaches Windsor Framework Article 2.<sup>142</sup> The High Court of Justice in NI concluded that the Vienna Convention on the Law of Treaties applied to the interpretation of the Belfast (Good Friday) Agreement 1998 and that it is, therefore, entitled to take a generous and purposive approach in interpreting Windsor Framework Article 2.<sup>143</sup> The High Court of Justice in NI further held that the fundamental rights of victims “are encompassed within the notion of ‘civil rights’ and are protected through the

<sup>137</sup> *Society for the Protection of the Unborn Child Pro-Life Ltd v Secretary of State for NI* [2023] NICA 35, at paras 57 and 68.

<sup>138</sup> *Ibid*, at para 54.

<sup>139</sup> *CG v Department for Communities*, Case C-709/20, 15 July 2021.

<sup>140</sup> *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307, at para 113. For further discussion of the policy implications of this case, see section on the EU Settlement Scheme in this Annual Statement.

<sup>141</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 187.

<sup>142</sup> *Ibid*, at paras 608 and 710.

<sup>143</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at paras 533-535.

commitment to victims at paragraph 11” in the relevant part of the Belfast (Good Friday) Agreement.<sup>144</sup> The High Court of Justice in NI also found that a narrow interpretation of “civil rights” undermines the future-facing dimension of the non-diminution commitment in Article 2 and that the rights of victims of crime, recognised in the 1998 Agreement are within the competence of EU law and are underpinned by EU law in the form of the Victims’ Directive and the EU Charter of Fundamental Rights.<sup>145</sup> The High Court of Justice in NI found that where the provisions of the 2023 Act breached Windsor Framework Article 2, the appropriate remedy was disapplication, noting that “any assessment of the diminution of rights also requires assessment of the enforcement mechanisms and procedures available to protect those rights”.<sup>146</sup> The High Court of Justice in NI found that the immunity provisions of the 2023 Act should be disapplied in NI.<sup>147</sup>

In July 2024, the Secretary of State for NI, Hilary Benn MP, confirmed that the UK Government was no longer appealing the declaration of incompatibility issued by the High Court of Justice in NI in respect of the conditional immunity provisions of the 2023 Act.<sup>148</sup> However, the UK Government was continuing its appeal against the High Court of Justice in NI decision in respect of Windsor Framework Article 2.

In September 2024, the Court of Appeal in NI upheld the decision of the High Court of Justice in respect of the disapplication of the immunity provisions of the NI Troubles

<sup>144</sup> Ibid, at para 561.

<sup>145</sup> Ibid, at paras 554 and 582. This aligns with an earlier decision of the High Court of Justice in NI which rejected the argument that the rights and safeguards in the relevant part of the Belfast (Good Friday) Agreement 1998 are frozen in time and limited to the political context of 1998. See *In the Matter of an Application by Aman Angsom for Judicial Review* [2023] NIKB 102).

<sup>146</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at paras 608, 613 and 710(ii). For further discussion on this point, see Constitutional Issues - Divergence of Rights on the Island of Ireland in Chapter 3.

<sup>147</sup> Sections 7(3), 8, 12, 19, 20, 21, 22, 39, 41 and 42(1), NI Troubles (Legacy and Reconciliation) Act 2023. *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 710(ii).

<sup>148</sup> UK Parliament Hansard, ‘House of Commons Written Statement: NI Troubles (Legacy and Reconciliation) Act 2023 – Hilary Benn MP – UIN HCWS30’, 29 July 2024.

(Legacy and Reconciliation) Act 2023.<sup>149</sup> The Court of Appeal in NI noted that the Secretary of State of NI’s approach to the appeal was “essentially a frontal attack” on the Justice Colton’s reasoning on Windsor Framework Article 2.<sup>150</sup> The Court of Appeal in NI confirmed that Windsor Framework Article 2 has direct effect<sup>151</sup> and, while finding that the Vienna Convention on the Law of Treaties applied to interpretation of both the Belfast (Good Friday) Agreement 1998 and UK-EU Withdrawal Agreement, stated that it had arrived at its conclusion independently of any such reliance.<sup>152</sup> The Court of Appeal in NI found that Justice Colton had correctly identified the breadth of ‘civil rights’ in the 1998 Agreement, that the relevant chapter provides for a broad suite of rights and there is no reason to construe the broad language of the chapter restrictively.<sup>153</sup> The Court of Appeal in NI also found that victims’ rights are encompassed within civil rights,<sup>154</sup> that the EU Victims’ Directive underpinned those rights and fall within Windsor Framework Article 2<sup>155</sup> and that the EU Directive should be interpreted in accordance with the EU Charter and general principles of EU law.<sup>156</sup> However, distinguishing its analysis from that of Justice Colton, the Court of Appeal in NI found that to claim a freestanding justiciable right under the EU Charter of Fundamental Rights “goes too far” in the absence of some other anchoring measure of EU law.<sup>157</sup>

In October 2024, the Secretary of State for NI stated that the UK Government was considering carefully the findings of the Court of Appeal in NI and noted the decision introduces legal

<sup>149</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at paras 154 and 161. This aligns with the decision of the Court of Appeal of England and Wales which confirmed that Article 4 of the UK-EU Withdrawal Agreement and Section 7A of the EU (Withdrawal) Act 2018 confer “direct effect on litigants and a connected power and duty on the national courts to disapply inconsistent domestic law”. See *Secretary of State for Work and Pensions v AT* [2023] ECWA Civ 1307, at para 106.

<sup>150</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 45.

<sup>151</sup> *Ibid*, at para 57.

<sup>152</sup> *Ibid*, at paras 79, 81 and 89.

<sup>153</sup> *Ibid*, at para 115.

<sup>154</sup> *Ibid*, at para 117.

<sup>155</sup> *Ibid*, at paras 117 and 121.

<sup>156</sup> *Ibid*, at para 126.

<sup>157</sup> *Ibid*, at paras 137, 139 and 160-161.

uncertainty concerning Windsor Framework Article 2 and how legislation applies across the UK.<sup>158</sup> The UK Government is appealing the Court of Appeal in NI's decision.<sup>159</sup>

In January 2024, the Commission brought a legal challenge on the compliance of the Illegal Migration Act 2023 with the ECHR and Windsor Framework Article 2. In March 2024, the High Court of Justice in NI heard a further challenge to the Illegal Migration Act in respect of an unaccompanied minor.<sup>160</sup> The Commission was concerned that provisions of the Illegal Migration Act fell below the minimum standards in the EU Procedures Directive,<sup>161</sup> EU Qualification Directive,<sup>162</sup> EU Trafficking Directive (2011)<sup>163</sup> and EU Dublin III Regulation.<sup>164</sup> In May 2024, the High Court of Justice in NI found that provisions of the Illegal Migration Act were in breach of the ECHR<sup>165</sup> and minimum EU standards and therefore breached Windsor Framework Article 2.<sup>166</sup> The High Court of Justice in NI made a declaration of incompatibility in respect of several provisions of the of Illegal Migration Act and disapplied several provisions in respect of NI.<sup>167</sup>

The High Court of Justice in NI found that the Belfast (Good Friday) Agreement 1998 was broad in scope when read as a whole, that people seeking asylum were not excluded from the “wide compass of ‘everyone in the community’” and that the rights of people seeking asylum fall within the definition of

<sup>158</sup> UK Parliament Hansard, ‘House of Commons Written Statement: Legacy – NI – Hillary Benn MP – UIN HCWS108’, 7 October 2024.

<sup>159</sup> Julian O’Neill, ‘Government to challenge Legacy Act court ruling’, *BBC News*, 21 October 2024.

<sup>160</sup> *In the Matter of an Application by JR295 for Leave to Apply for Judicial Review* [2024] NIKB 7.

<sup>161</sup> Directive 2005/85/EC, ‘EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005.

<sup>162</sup> Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004.

<sup>163</sup> Directive 2011/36/EU, ‘Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

<sup>164</sup> Regulation 2013/604/EU, ‘EU Parliament and Council Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person’, 26 June 2013.

<sup>165</sup> *In the Matter of an Application by the NI Human Rights Commission for Judicial Review* [2024] NIKB 35, para 210, 229 and 243.

<sup>166</sup> *Ibid.*, para 108, 117, 133, 137, 146, 158, 164, 168 and 173.

<sup>167</sup> *Ibid.*



‘civil rights’.<sup>168</sup> The High Court of Justice in NI also confirmed that section 7A of the EU (Withdrawal) Act 2018 was the conduit pipe through which the provisions of the UK-EU Withdrawal Agreement flow into UK law.<sup>169</sup> The High Court of Justice in NI found that the EU Charter of Fundamental Rights continues to have effect in the UK where the EU continues to be implemented, and therefore read the right to an effective remedy in the EU Procedures Directive, in light of the Article 47 of the EU Charter.<sup>170</sup>

## Political developments

In February 2024, following the agreement to restore the NI Executive and NI Assembly, the NI Assembly Windsor Framework Democratic Scrutiny Committee was established.<sup>171</sup> The purpose of the Windsor Framework Democratic Scrutiny Committee is to assist with the observation and implementation of the ‘Stormont brake’ mechanism under Articles 13(3a) and 13(4) of the Windsor Framework.

The Commission, jointly with the Equality Commission for NI, has previously highlighted that given the potential implications of the ‘Stormont brake’, it is vital that equality and human rights considerations are built into the revised process under Article 13(4) of the Windsor Framework as well as all key stages of the ‘Stormont brake’ mechanism. The Windsor Framework Democratic Scrutiny Committee should also undertake meaningful and timely engagement with the Commission and the Equality Commission for NI and equality and human rights groups in NI to seek their views on the implications of proposed EU measures for the promotion and protection of equality and human rights in NI.<sup>172</sup>

<sup>168</sup> Ibid, para 69-70.

<sup>169</sup> Ibid, para 53.

<sup>170</sup> Ibid, para 65 and 115.

<sup>171</sup> Windsor Framework (Democratic Scrutiny) Regulations 2024.

<sup>172</sup> Equality Commission for NI and NI Human Rights Commission, ‘Submission of NI Human Rights Commission and Equality Commission for NI to House of Lords Sub-Committee on the Protocol’s Call for Evidence for its Inquiry on the Windsor Framework’ (ECNI and NIHRC, 2023); Equality Commission for NI, ‘Submission to the House of Lords Sub-Committee on the Windsor Framework’s Call for Evidence for its Inquiry on Regulatory Divergence and the Windsor Framework’ (ECNI, 2023), at 9-10.

In February 2024, the UK Government also published the Windsor Framework (Constitutional Status of NI) Regulations 2024. The 2024 Regulations seek to amend section 7A of the EU (Withdrawal) Act 2018 to confirm that the application of EU law relating to the trade in goods in NI is subject to democratic consent and scrutiny provisions in the Windsor Framework. The former Secretary of State for NI, Chris Heaton-Harris, confirmed that this amendment will not result in a regression of rights in NI.<sup>173</sup>

In 2023, the UK-EU political agreement on a new way forward on the Windsor Framework committed to establishing enhanced mechanisms for UK-EU cooperation, including sub-groups to the Joint Consultative Working Group and enhanced engagement with NI stakeholders.<sup>174</sup>

The Commission, along with the Equality Commission for NI, had previously highlighted that the establishment of a Windsor Framework Article 2 ‘structured sub-group’ within the Joint Consultative Working Group that focuses on issues relating to Windsor Framework Article 2 and equality and human rights in NI would be beneficial.<sup>175</sup> However, the Commission notes recent developments to ensure greater, albeit informal, engagement with equality and human rights stakeholders in NI.

The Commission has welcomed the introduction of enhanced measures to deepen engagement, including with people in NI, and recognition by the EU Commission of the importance of engagement with NI stakeholders.<sup>176</sup>

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<sup>173</sup> UK Parliament Hansard, ‘House of Commons: Ministerial Statement - NI Executive Formation - Volume 744, Column 886-887’, 31 January 2024.

<sup>174</sup> UK Government and EU Commission, ‘Windsor Political Declaration by the European Commission and UK’ (HM Government, 2023), at 3; EU Commission, ‘Commission Statement on Enhanced Engagement with NI Stakeholders’ (EU Commission, 2023).

<sup>175</sup> Equality Commission for NI and NI Human Rights Commission, ‘Submission of the NI Human Rights Commission and Equality Commission for NI to the House of Lords Sub-Committee on the Protocol’s Call for Evidence for its Inquiry on the Windsor Framework’ (ECNI and NIHRC, 2023).

<sup>176</sup> NI Human Rights Commission and Equality Commission for NI, ‘Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024’ (NIHRC and ECNI, 2023).



## Embedding consideration of Windsor Framework Article 2

Any new international commitment, such as that set out in Windsor Framework Article 2, requires sustained leadership and a significant body of work by Government and others to implement.

Regarding the UK Government, in 2022, the NI Office confirmed that it was working with colleagues across government to “consider mechanisms that could be put in place to ensure future Bills or Statutory Instruments being proposed by the UK Government do not diminish rights protected by [Windsor Framework] Article 2”.<sup>177</sup>

In 2023, the then Leader of the House of Commons, Penny Mordaunt, advised that in addition to updated Explanatory Memorandum guidance for statutory instruments, that the next update of the guide to making legislation<sup>178</sup> will reference the importance of compliance with Windsor Framework Article 2.<sup>179</sup> In 2024, the timeline for this update remained unclear.

In January 2024, the Cabinet Office published updated guidance on preparing explanatory memoranda for statutory instruments which advises that where legislation may have interactions with Windsor Framework Article 2 contact should be made with the Windsor Framework Taskforce in the Cabinet Office.<sup>180</sup> However the guidance does not provide clarity on what considerations should be taken into account when identifying such situations.

In January 2024, the UK Government published its Command Paper on Safeguarding the Union, which states that “the Windsor Framework applies only in respect of the trade in goods - the vast majority of public policy is entirely untouched by it”.<sup>181</sup>

<sup>177</sup> Letter from the Minister of State for NI to the NI Human Rights Commission and Equality Commission for NI, 1 December 2022.

<sup>178</sup> Cabinet Office, ‘Guide to Making Legislation’ (CO, 2022).

<sup>179</sup> Letter from Leader of the House of Commons, Penny Mordaunt, to Chair of the NI Affairs Committee, Simon Hoare MP, 28 March 2023.

<sup>180</sup> Cabinet Office, ‘Guide to Preparing Explanatory Memoranda to Statutory Instruments’ (CO, 2024), at para 6.1.

<sup>181</sup> NI Office, ‘Safeguarding the Union’ (NIO, 2024), at para 46.

The Command Paper further sets out the UK Government’s position that “Article 2 of the Framework does not apply EU law or CJEU jurisdiction, and only applies in the respect of rights set out in the relevant chapter of the Belfast (Good Friday) Agreement and a diminution of those rights which arises as a result of the UK’s withdrawal from the EU”.<sup>182</sup>

In January 2024, the Home Office also updated its factsheet on the Safety of Rwanda (Asylum and Immigration) Bill to address the application of the then Bill in NI, but this dismissed the relevance of Windsor Framework Article 2 without detailed consideration.<sup>183</sup>

In February 2024, four months after writing to the Home Office a second time on the Illegal Migration Act 2023, the House of Lords Sub-Committee on the Windsor Framework received a reply stating that the UK Government had concluded that “our approach is compatible with international law and specifically the [Illegal Migration Act] proposals are compatible with Article 2”.<sup>184</sup> In March 2024, the Sub-Committee on the Windsor Framework expressed regret at the lack of information provided by the Home Office in response to the Sub-Committee on the Windsor Framework’s request to set out a detailed and specific assessment of the Bill’s compliance with Windsor Framework Article 2.<sup>185</sup>

The Sub-Committee on the Windsor Framework further noted limited information provided by the Parliamentary Under Secretary of State in the Home Office, Lord Sharpe of Epsom, noting that in the Safeguarding the Union Command Paper, the UK Government was able to “express clear and frank views on the interrelation of Article 2 of the Windsor Framework and the UK’s immigration policy that you are either unwilling or

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<sup>182</sup> Ibid.

<sup>183</sup> Home Office, ‘Policy Paper – Safety of Rwanda (Asylum and Immigration) Bill: Factsheet’ (HO, 2024).

<sup>184</sup> Letter from Parliamentary Under Secretary of State in the Home Office, Lord Sharpe of Epsom, to the Chair of the House of Lords Sub-Committee on the Windsor Framework, Lord Jay, 12 February 2024.

<sup>185</sup> Letter from the Chair of the House of Lords Sub-Committee on the Windsor Framework, Lord Jay, to Parliamentary Under Secretary of State in the Home Office, Lord Sharpe of Epsom, 7 March 2024.

unable to share with this Committee”.<sup>186</sup> The Sub-Committee on the Windsor Framework also expressed concern that the “failure of the Government to respond to letters from this Committee promptly has unacceptably constrained the ability of the Committee (and the House) to scrutinise the issues raised around this legislation and Article 2”.<sup>187</sup>

Regarding NI, in 2023, the Executive Office issued a Windsor Framework Article 2 Impact Assessment accompanying a consultation.<sup>188</sup> However this has not been consistent across the Executive Office or other NI departments. The Commission takes the view that when screening for compliance, the impact assessment should consider all provisions of EU law engaged under the Windsor Framework Article 2 relevant to the legislation or policy being assessed, including EU law which underpins relevant ECHR rights.<sup>189</sup>

In 2023, the NI Executive Office delivered an initial webinar for civil servants on the screening of Windsor Framework Article 2. The interdepartmental working group continues to meet monthly to share information and learning on Windsor Framework Article 2.<sup>190</sup>

The Commission remains concerned that comprehensive training and guidance on Windsor Framework Article 2 has not yet been rolled out across UK Government and NI departments. There is limited evidence that early consideration of Windsor Framework Article 2 has been systematically embedded in policy and legislative development and processes.<sup>191</sup>

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<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> The Executive Office, ‘Article 2(1) Windsor Framework Impact Assessment for the Draft Strategic Framework to End Violence Against Women and Girl’ (TEO, 2023). NI Human Rights Commission, ‘Submission to the Executive Office’s Consultation on the Ending Violence Against Women and Girls Strategic Framework’ (NIHRC, 2023).

<sup>189</sup> NI Human Rights Commission, ‘Submission to the Executive Office’s Consultation on the Ending Violence Against Women and Girls Strategic Framework’ (NIHRC, 2023).

<sup>190</sup> Email correspondence from the NI Executive Office to the NI Human Rights Commission, 10 November 2023.

<sup>191</sup> NI Human Rights Commission, ‘Submission to the Executive Office’s Consultation on the Ending Violence Against Women and Girls Strategic Framework’ (NIHRC, 2023), at paras 7.0-7.41.

## Island of Ireland dimension of Windsor Framework Article 2

Under Article 2(2) of the Windsor Framework, the Commission, the Irish Human Rights and Equality Commission and the Equality Commission for NI work together on rights falling within Windsor Framework Article 2 that have an island of Ireland dimension.<sup>192</sup> The Commission takes the view that long-term North-South equivalence of rights was envisaged by the Belfast (Good Friday) Agreement 1998 and is important for the enjoyment of rights on a cross-border basis and access to island of Ireland and cross-border services.<sup>193</sup> It also underpins North-South co-operation, consistent with Article 11 of the Windsor Framework.

In 2023, the Equality Commission for NI, on behalf of the Commission and the Irish Human Rights and Equality Commission, published a research report on the impact of UK withdrawal from the EU on the divergence of rights and best practice on the island of Ireland.<sup>194</sup> The three Commissions published key policy recommendations arising from this research.<sup>195</sup> In 2024, the Equality Commission for NI commissioned an update to the research on the divergence of rights on the island of Ireland on behalf of the three Commissions.

<sup>192</sup> NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in Northern Ireland: What does it Mean and How will it be Implemented?' (NIO, 2020), at para 19.

<sup>193</sup> NI Human Rights Commission and Irish Human Rights and Equality Commission 'Policy Statement on the UK Withdrawal from the EU' (NIHRC and IHREC, 2018), at 6.

<sup>194</sup> Sarah Craig et al, 'EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC, IHREC, 2022).

<sup>195</sup> Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: EU Developments in Equality and Human Rights - The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC and IHREC, 2023).

## Recommendations

The Commission recommends that equality and human rights considerations are built into all key stages of the 'Stormont brake' mechanism, including inquiries by the Windsor Framework Democratic Scrutiny Committee and the revised process under Article 13(4) of the Windsor Framework.

The Commission recommends that in the development of any laws or policies the UK Government and NI Executive ensure that compliance with Windsor Framework Article 2 is embedded in policy and processes at an early stage.

To ensure effective embedding of Windsor Framework Article 2 in policy and processes the Commission recommends that UK Government and NI Executive roll out effective training on Windsor Framework Article 2 to all relevant officials and act promptly to ensure UK and NI government guidance on policy and legislative development is updated to include consideration of Windsor Framework Article 2.

The Commission continues to recommend that the UK Government and NI Executive ensure that documents accompanying Bills and legislation (Explanatory Memoranda/Notes, Human Rights Memoranda/impact assessments) set out detailed consideration of compliance with Windsor Framework Article 2. This should include reviewing all provisions of EU law engaged under Windsor Framework Article 2 relevant to the legislation or policy being assessed, including EU law which underpins relevant ECHR rights.

The Commission recommends that the NI Executive prioritises in the new Programme for Government action to embed implementation of Windsor Framework Article 2 and comply promptly with keep pace obligations relating to the Annex 1 Directives.

The Commission recommends that, to facilitate compliance with the keep pace obligation pursuant to Articles 2 and 13 of the Windsor Framework, the Executive Office, the Department for Communities and other relevant departments publish an annual report monitoring any proposed changes by the EU to the EU equality directives listed in Annex 1 and relevant CJEU case law.

The Commission recommends that the Executive Office works with the UK Government and on a North-South basis to build strong, open channels of communication to keep informed of key developments of relevance to Windsor Framework Article 2. This includes working with the UK Government to establish formal relationships for timely information to flow through the Specialised Committee on the implementation of the Windsor Framework and the Joint Consultative Working Group on developments relating to relevant EU human rights and equality obligations.

The Commission recommends that, on a voluntary basis, the UK Government and NI Executive align NI law with changes to EU equality and human rights law introduced on or after 1 January 2021, which enhance protections to ensure equivalence of rights and protections on the island of Ireland.

The Commission recommends that the UK Government and EU undertake regular reviews of new EU equality and human rights laws to identify new measures to be considered for addition to the Annex 1 equality directives, as provided for under Article 13(4) of the Windsor Framework. Particular consideration should be given to alignment of standards across the two jurisdictions on the island of Ireland.

## ● National human rights institution

In August 2024, the UN CERD Committee recommended that the UK Government:

adopts the measures necessary notably by implementing the recommendations of the Global Alliance of National Human Rights Institutions, to ensure that its national human rights institutions fully comply with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and are able to carry out their mandates effectively and independently.<sup>196</sup>

The UN CERD Committee also recommended that the UK Government “strengthen the functions and powers of... [national human rights institutions], including through legislative or other measures, to promote and protect human rights”.<sup>197</sup> The UN CERD Committee further recommended that the UK Government “ensures the allocation of adequate human, financial and technical resources to... [national human rights institutions] to enable them to perform their mandates effectively”.<sup>198</sup>

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

In 2021, when considering whether the Commission should retain its accreditation as an ‘A status’ national human rights institution, the Sub-Committee on Accreditation identified funding, financial autonomy, diversity and pluralism, and the inability to visit places of deprivation of liberty without notice as areas of concern.<sup>199</sup> The Sub-Committee on Accreditation sought for these areas to be “improved” and for the Commission to be placed in a “sustainable position”.<sup>200</sup>

<sup>196</sup> 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, at para 16.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Email correspondence between the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation and the NI Human Rights Commission, 2 November 2021.

<sup>200</sup> Ibid.



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

In 2023, the independent review's report and the response by the UK Government were published.<sup>201</sup> The independent review made several recommendations including an uplift and comprehensive review of the Commission's budget, and a revised sponsorship arrangement between the Commission and the NI Office.<sup>202</sup> The UK Government accepted most of the independent review's recommendations.<sup>203</sup>

In 2023, the Sub-Committee on Accreditation decided that the Commission should retain its 'A-status'.<sup>204</sup> Consequently, the Commission has retained its voting rights at the Global Alliance of National Human Rights Institutions and has speaking rights at the UN Human Rights Council. The Commission's accreditation is due to be reviewed again in 2028. However, if the concerns identified by the Sub-Committee on Accreditation are not addressed through the implementation of the independent review recommendations and resulting economic appraisal, the Commission is under an obligation to self-report to Sub-Committee on Accreditation in 2025. The Commission has advised that there would be a potential breach of Windsor Framework Article 2(2) if its 'A-status' is not retained.<sup>205</sup>

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<sup>201</sup> Simon Routh-Jones, 'Independent Review of the NI Human Rights Commission' (UK Gov, 2022); NI Office, 'UK Government Response to the Independent Review of the NI Human Rights Commission 2022' (NIO, 2023).

<sup>202</sup> Ibid.

<sup>203</sup> Ibid.

<sup>204</sup> Letter from the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation to the NI Human Rights Commission, 1 November 2023.

<sup>205</sup> Letter from NI Human Rights Commission to Brandon Lewis, Secretary of State for NI, 17 November 2021.



## Recommendations

The Commission recommends that the NI Office and HM Treasury implement all the Sub-Committee on Accreditation and independent review's recommendations, including providing adequate and secure resources with sufficient flexibility and stability to enable the Commission to consistently fulfil its statutory functions, in line with its role as an A status institution under the UN Paris Principles.

## Reform of the UK human rights framework

Between 2016 and 2024, several human rights bodies recommended that the UK Government should ensure that there is no regression of human rights in any potential reform of the Human Rights Act 1998.<sup>206</sup> Furthermore, in 2023, the UN Committee on the Rights of the Child recommended that the UK Government:

reconsider its decision to replace the Human Rights Act and ensure that any revision to the Act protects all the rights of the child in the [UN CRC]... provides effective judicial remedies, ensures a child rights-based approach, and follows transparent and participatory processes, including by ensuring the meaningful participation of civil society and children.<sup>207</sup>

<sup>206</sup> 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, at para 12; CCPR/C/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of UK of Great Britain and NI', 28 March 2024; A/HRC/52/10, 'Report of the Working Group on the Universal Periodic Review: UK of Great Britain and NI', 9 January 2023, at paras 43.21; 43.23; 43.29; 43.30; 43.31; 43.32; 43.34; 43.40; 43.42; 43.44; 43.46; 43.48; 43.49 and 43.50; CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, at para 5(c); E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 10; CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 11; CoE Commissioner for Human Rights, 'Press Release: UK - backsliding on human rights must be prevented', 4 July 2022.

<sup>207</sup> CRC/C/GBR/CO/6-7, 'UN Committee on the Rights of the Child Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 8(c).

Under Windsor Framework Article 2, there can be no diminution of those ECHR rights which were underpinned by EU law prior to 1 January 2021.<sup>208</sup> The Commission has advised the UK Government that, where required by Windsor Framework Article 2, the EU Charter of Fundamental Rights continues to have relevance in NI and highlighted that the link between rights in the EU Charter and the ECHR is well established.<sup>209</sup>

In 2022, the Bill of Rights Bill was introduced to the UK Parliament. In 2023, the House of Commons and House of Lords Joint Committee on Human Rights found that the proposed Bill of Rights Bill undermined the universality of human rights, weakened human rights protection and that there was an overwhelming lack of support for the proposed reforms.<sup>210</sup> The Joint Committee on Human Rights concluded that the UK Government “should not progress the... [Bill of Rights Bill] in its current form through Parliament”.<sup>211</sup> This conclusion echoed the advice provided by the Commission.<sup>212</sup>

In 2023, the previous UK Government confirmed that it was not proceeding with the Bill of Rights Bill, instead seeking to reform the UK’s human rights framework through a piecemeal approach, such as the now Illegal Migration Act 2023 and the now NI Troubles (Legacy and Reconciliation) Act 2023.<sup>213</sup> The Commission has raised additional concerns with the compatibility of these proposed pieces of legislation with human rights law and Windsor Framework Article 2.<sup>214</sup> Specific to NI, the Commission remains concerned that the two 2023 Acts, among other measures, will reduce access to domestic courts

<sup>208</sup> NI Human Rights Commission, ‘Advice on the Bill of Rights Bill’, (NIHRC, 2022); NI Human Rights Commission, ‘Response to the Consultation on Human Rights Act Reform: A Modern Bill of Rights’ (NIHRC, 2022).

<sup>209</sup> Ibid.

<sup>210</sup> House of Commons and House of Lords Joint Committee on Human Rights, ‘Legislative Scrutiny: Bill of Rights Bill’ (HC and HoL, 2023), at Chapter 9.

<sup>211</sup> Ibid, at para 339.

<sup>212</sup> Ibid.

<sup>213</sup> ‘Government officially scraps Dominic Raab’s Bill of Rights plan’, *Politics.Co.UK*, 27 June 2023.

<sup>214</sup> NI Human Rights Commission, ‘Submission to the House of Lords on the Illegal Migration Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Advice on NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2022); NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Additional Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023).

for individuals seeking human rights-based remedy, which is contrary to the ECHR and the Belfast (Good Friday) Agreement 1998.<sup>215</sup> Moreover, the protections in Windsor Framework Article 2, while an important safeguard against the diminution of rights following UK withdrawal from the EU, are not a substitute for the comprehensive framework of human rights protections under the Human Rights Act.

In 2024, the new UK Government made a commitment to “uphold human rights and international law” and expressed that it “values international law because of the security it brings”.<sup>216</sup> It further committed that the UK “will unequivocally remain a member of the ECHR”.<sup>217</sup> In terms of the piecemeal approach of the previous UK Government to reforming the UK human rights framework, the new UK Government has committed to “repeal and replace... [the NI Troubles (Legacy and Reconciliation) Act 2023]”.<sup>218</sup> Regarding the Illegal Migration Act 2023, the Border Security, Asylum and Immigration Bill is to be introduced for the purposes of “modernising the asylum and immigration system, establishing a new Border Security Command and delivering enhanced counter terror powers to tackle organised immigration crime”.<sup>219</sup>

## Recommendations

The Commission continues to recommend that the UK Government recognises the Human Rights Act 1998 as a constitutional statute and ensures any legislative developments adhere to and build on the Human Rights Act, as part of further progress in the promotion and protection of human rights.

<sup>215</sup> NI Human Rights Commission, ‘Evidence to Joint Committee on Human Rights Legislative Scrutiny of the Bill of Rights Bill’ (NIHRC, 2022); NI Human Rights Commission, ‘Advice on the Bill of Rights Bill’ (NIHRC, 2022); NI Human Rights Commission, ‘Submission to the House of Lords on the Illegal Migration Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Advice on NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2022); NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Additional Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023).

<sup>216</sup> Labour Party, ‘Change: Labour Party Manifesto 2024’ (LP, 2024), at 118-119.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid, at 113; Prime Minister’s Office, ‘Press Release: The King’s Speech 2024’, 17 July 2024.

<sup>219</sup> Prime Minister’s Office, ‘Press Release: The King’s Speech 2024’, 17 July 2024.

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

## Retained EU Law/assimilated law

The Retained EU Law (Revocation and Reform) Act 2023 sought to expedite the removal of EU law, norms and principles from the UK statute book.

In 2023, the Commission, jointly with the Equality Commission for NI, raised several concerns with the then Retained EU Law (Revocation and Reform) Bill.<sup>220</sup> Speaking on behalf of the previous UK Government, Lord Callanan, stated that the then Bill would “not disturb section 7A of the European Union (Withdrawal) Act 2018”, which incorporates the UK EU Withdrawal Agreement into UK law.<sup>221</sup>

In 2023, the then Secretary of State for Business and Trade, Kemi Badenoch MP, repeated this assessment, but stated that “[Windsor Framework] Article 2 does not itself apply EU law, and so domestic law giving effect to [Windsor Framework] Article 2 rights may be affected by the abolition of retained EU interpretive effects. We therefore expect it may be necessary to use Bill powers to restate the relatively small number of instruments within [Windsor Framework] Article 2 to codify any required effects”.<sup>222</sup>

In the subsequent exchange of letters between the House of Lords Sub-Committee on the Ireland/NI Protocol and the then Minister for Industry and Economic Security, Nusrat Ghani MP, the Sub-Committee asked whether the process of codification

<sup>220</sup> NI Human Rights Commission and Equality Commission for NI, ‘Briefing on the Retained EU Law (Revocation and Reform) Bill’ (NIHRC and ECNI, 2023).

<sup>221</sup> UK Parliament Hansard, ‘House of Lords: Retained EU Law (Revocation and Reform) Bill - Lord Callanan’, 2 March 2023.

<sup>222</sup> Letter from the Secretary of State for Business and Trade, Kemi Badenoch MP, to the House of Lords Sub Committee on the Ireland/NI Protocol, 16 June 2023.

was unnecessarily complex and time-consuming, and queried the risk of incomplete, inaccurate or out-of-date codification.<sup>223</sup> The then Minister for Industry and Economic Security suggested that codifying EU interpretive effects from case law will provide legal certainty and clarity.<sup>224</sup>

In 2023, the Sub-Committee on the Ireland/Ni Protocol requested that the then UK Government published guidance on the methodology and approach to the codification of EU interpretive effects and a central list of EU measures falling in scope of Windsor Framework Article 2.<sup>225</sup> In response, the then Minister for Industry and Economic Security advised that written guidance had been supplied to the UK Government and NI Civil Service officials to support their analysis of the impact of the 2023 Act, including on the removal of interpretive effects from the UK statute book.<sup>226</sup> The Minister for Industry and Economic Security also advised that “although interpretive effects will cease from the end of 2023, the UK will remain in compliance with our international obligations under [Windsor Framework] Article 2”.<sup>227</sup> In January 2024, the then UK Government published its programme of revocation and reform of retained EU law, now known as ‘assimilated law’, followed by an update report in July 2024, in line with section 17 of the Retained EU Law (Revocation and Reform) Act 2023.<sup>228</sup> The Commission welcomes restatement of a number of CJEU judgments on, for example, pension equality and survivors’ benefits<sup>229</sup> and the stated commitment to preserving and strengthening rights.<sup>230</sup>

<sup>223</sup> Letter from the Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, to the House of Lords Sub-Committee on the Ireland/Ni Protocol, 11 September 2023.

<sup>224</sup> Ibid.

<sup>225</sup> Letter from the Chair of the House of Lords Sub-Committee on the Ireland/Ni Protocol, Lord Jay, to the Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, 19 October 2023.

<sup>226</sup> Letter from Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, to the House of Lords Sub-Committee on the Ireland/Ni Protocol, 24 November 2023.

<sup>227</sup> Ibid.

<sup>228</sup> Department for Business and Trade, ‘Retained EU Law Parliamentary Report: June 2023 – December 2023’ (DBT, 2024); Department for Business and Trade, ‘Assimilated Law Parliamentary Report: January 2024 – June 2024’ (DBT, 2024).

<sup>229</sup> Department for Business and Trade, ‘Retained EU Law Parliamentary Report: June 2023 – December 2023’ (DBT, 2024) at 43-44.

<sup>230</sup> Department for Business and Trade, ‘Retained EU Law Parliamentary Report: January 2024 – June 2024’ (DBT, 2024) at para 31.

In February 2024, the European Scrutiny Committee launched an inquiry into the progress and the mechanics of reforming retained EU law.<sup>231</sup> In its evidence to the inquiry, the Commission advised that, in contrast to the view presented by the UK Government, the Commission, jointly with the Equality Commission for NI consider that section 7A EU (Withdrawal) Act 2018, which incorporates the Withdrawal Agreement into domestic law, requires that relevant EU measures be read in keeping with EU interpretive requirements. Furthermore, that related domestic provisions should be interpreted in a manner that ensures no diminution of standards, contrary to Windsor Framework Article 2. In addition, in September 2024, the Court of Appeal in NI relied upon the position of the UK Supreme Court in *Allister*<sup>232</sup> in finding that section 7A of the 2018 Act, has “powerful legal effects within the UK, including the possibility of prevailing over primary legislation”.<sup>233</sup>

In July 2024, the UK Supreme Court delivered a judgment on the proper interpretation of retained EU law in the context of the cancellation of a flight in 2018.<sup>234</sup> The question for the UK Supreme Court was how to interpret EU law in the context of the EU (Withdrawal) Act 2018. Section 3 of the 2018 Act provides that EU regulations in operation before 31 December 2022 remained in UK law as retained EU law. The UK Supreme Court found that where a cause of action arises out of facts that occur pre-Brexit, that cause of action is brought forward as retained EU law by the 2018 Act.<sup>235</sup>

In 2023, the Commission responded to a Department for Business and Trade’s consultation on proposed reforms and

<sup>231</sup> NI Human Rights Commission and Equality Commission for NI, ‘NI Human Rights Commission and Equality Commission for NI Submission to the European Scrutiny Committee Inquiry on Retained EU law: The Progress and Mechanics of Reform’ (NIHRC and ECNI, 2024).

<sup>232</sup> *In the Matter of an Application by James Hugh Allister and Others for Judicial Review* [2023] UKSC 5, at para 66; *In the Matter of an Application by James Hugh Allister and Others for Judicial Review* [2022] NICA 15.

<sup>233</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 69.

<sup>234</sup> *Lipton and another v BA Cityflyer Ltd* [2024] UKSC 24.

<sup>235</sup> *Ibid*, at paras 59, 83 and 193. In the minority judgment, Lloyd Jones LJ concluded that there was no need to rely on the EU (Withdrawal) Act 2018 to preserve the accrued rights as they were automatically preserved by the operation of the Interpretation Act and the general legal presumption is that legislation does not act retrospectively.



repeal of several provisions of retained EU employment law.<sup>236</sup> The Commission identified two provisions where changes could apply to NI and advised that consideration of Windsor Framework Article 2 should be embedded at all stages of policy and decision making to ensure compliance.<sup>237</sup> In November 2023, the Department for Business and Trade's consultation response did not address these concerns.<sup>238</sup> The subsequent regulations confirmed that the reform of the Transfer of Undertakings (Protection of Employment) Regulations 2006 would not extend to NI.<sup>239</sup> However, the revocation of the European Cooperative Society (Involvement of Employees) Regulations 2006 does extend to NI and no impact assessment relating to this part of the regulations was undertaken.<sup>240</sup> The UK Government advised this change is designed to tidy up the statute book.<sup>241</sup>

## Recommendations

The Commission recommends that the relevant UK or NI department ensures that compliance with Windsor Framework Article 2 be considered in advance of amendment, repeal or revocation of retained EU law/assimilated law and fully explained in associated Explanatory Memoranda/Notes or Human Rights Impact Assessments. The Commission further recommends that the relevant UK or NI Minister makes a statement confirming that a Windsor Framework Article 2 assessment has been undertaken and that there is no breach of Windsor Framework Article 2.

<sup>236</sup> Department for Business and Trade, 'Retained EU Employment Law: Consultation on Reforms to the Working Time Regulations, Holiday Pay and the Transfer of Undertakings (Protection of Employment) Regulations' (DBT, 2023).

<sup>237</sup> Letter from the NI Human Rights Commission to the Secretary of State for Business and Trade, Kemi Badenoch MP, 7 July 2023.

<sup>238</sup> Department for Business and Trade, 'Retained EU Employment Law - A Government Response to the Consultation on Reforms to Retained EU Employment Law and the Consultation on Calculating Holiday Entitlement for Part-year and Irregular Hours Workers' (DBT, 2023).

<sup>239</sup> Part 1, The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023.

<sup>240</sup> Department of Business and Trade, 'Impact Assessment: Changing Transfer of Undertakings (Protection of Employment) Regulations in Relation to Retained EU Law' (DBT, 2023); Department of Business and Trade, 'Reducing the Administrative Burden of the Working Time Regulations' (DBT, 2022); Department of Business and Trade, 'Holiday Pay and Entitlement Reforms in Relation to Retained EU Law' (DBT, 2023).

<sup>241</sup> Department of Business and Trade, 'Explanatory Memorandum to the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023' (DBT, 2023).

The Commission advises that section 7A of the EU (Withdrawal) Act 2018 requires that relevant EU measures be read in keeping with EU interpretive requirements and that related domestic provisions should be interpreted in a manner that ensures no diminution of standards, contrary to Windsor Framework Article 2.

The Commission recommends that Cabinet Office and Executive Office update relevant guidance to provide that amendment or repeal of retained EU law/assimilated law, affecting human rights and/or equality protections in NI, should conform to the UK constitutional convention of realising policy change via the primary legislative process, with technical and operational detail addressed in subordinate legislation.

The Commission recommends that the Department for Business and Trade bring forward amending legislation confirming that the provisions of the Retained EU Law (Revocation and Reform) Act 2023 are without prejudice to section 7A of the EU Withdrawal Act 2018.

The Commission recommends that the Department for Business and Trade establishes a comprehensive notification process to identify any amendment, repeal or restatement of laws pursuant to the Retained EU Law (Revocation and Reform) Act 2023, relevant to Windsor Framework Article 2.



# Equality and Non-discrimination

## ● Consolidating, strengthening and clarifying equality protections

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

ensure the adoption of comprehensive anti-discrimination and equality legislation in all jurisdictions... particularly in NI... containing a clear definition of racial discrimination, which comprises direct, indirect, structural... forms of discrimination, covering all fields of law in public and private domains, and all prohibited grounds of discrimination in accordance with Article 1 of the [UN CERD].<sup>242</sup>

In 2022, the CoE Advisory Committee on the Framework Convention for Protection of National Minorities called on the UK Government and NI Executive to “effectively guarantee to persons belonging to national minorities the right to equality before the law by adopting comprehensive equality legislation for NI”.<sup>243</sup>

In 2019, the UN CEDAW Committee recommended that the NI Executive “revise its legislation in NI to ensure that it affords protection to women on an equal footing with women in other administrations of the... [UK]”.<sup>244</sup>

<sup>242</sup> CERD/C/GBR/CO/24-26, ‘UN CERD Committee Concluding Observations on the Combined Twenty-fourth to Twenty-sixth Reports of the UK of Great Britain and NI’, 23 August 2024, at para 14(a).

<sup>243</sup> ACFC/OP/V(2022)003, ‘CoE Advisory Committee on the Framework Convention for the Protection of National Minorities Fifth Opinion on the UK’, 8 December 2022, at para 65.

<sup>244</sup> 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 16(a).

In 2017, the UN CRPD Committee recommended reform of equality law in NI “to protect persons with disabilities in NI from direct and indirect disability-based discrimination and discrimination through association”.<sup>245</sup>

In 2016, the UN ICESCR Committee stated its regret that no action had been taken on its earlier recommendation to extend “comprehensive anti-discrimination legislation” to NI.<sup>246</sup>

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU, including the right to equality of opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity. Article 2 and 13 of the Windsor Framework require the UK Government to ensure NI law ‘keeps pace’ with any changes made by the EU to six Annex 1 Equality Directives which improve the minimum levels of protection available.<sup>247</sup>

In May 2024, the EU adopted two new directives setting minimum standards for equality bodies.<sup>248</sup> The EU directives require, for

<sup>245</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 17(b).

<sup>246</sup> 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 22.

<sup>247</sup> Directive 2000/43/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000; Directive 2000/78/EC, ‘EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000; Directive 2004/113/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment Between Men and Women in the Access To and Supply of Goods and Services’, 13 December 2004; Directive 2006/54/EC, ‘EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006; Directive 2010/41/EU, ‘EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-employed Capacity’, 7 July 2010; Directive 79/7/EEC, ‘EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security’, 19 December 1978.

<sup>248</sup> Council Directive 2024/1499/EU, ‘Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC’, 7 May 2024; Directive 2024/1500, ‘Directive of the European Parliament and of the Council on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Amending Directives 2006/54/EC and 2010/41/EU’, 14 May 2024.

example, that equality bodies are provided with the human, technical and financial resources necessary to perform their mandates under the relevant EU equality directives in Annex 1. The Commission considers, and the UK Government has accepted,<sup>249</sup> that these EU directives amend or replace provisions EU equality directives in Annex 1 of the Windsor Framework.<sup>250</sup> NI law should therefore be amended to keep pace with such changes within the transposition deadline.

In NI, discrimination is prohibited across several pieces of legislation, resulting in a complex framework. Unlike other parts of the UK, there is no single legislative instrument to consolidate, clarify and enhance existing equality protections in NI.

In 2024, the NI Assembly Committee for the Executive Office conducted an inquiry on the differences in equality legislation between NI, rest of the UK and Ireland.<sup>251</sup> The purpose of the inquiry was to understand the effect that different approaches to equality legislation have.<sup>252</sup> The Commission provided written evidence emphasising that there is no single legislative equality instrument in NI.<sup>253</sup> The outcome of the inquiry is awaited.

## Recommendations

The Commission continues to recommend that the Executive Office introduces a Single Equality Act for NI and that the NI Executive supports the Executive Office in securing the necessary political consensus to deliver this.

<sup>249</sup> Letter from the Minister of State for NI, Steve Baker, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Ni, 18 September 2023.

<sup>250</sup> NI Human Rights Commission and Equality Commission NI, 'Annual Report of the NI Human Rights Commission and the Equality Commission for NI on the Implementation of Article 2 of the Windsor Framework 2022-2023' (NIHRC and ECNI, 2023), at para 4.84.

<sup>251</sup> NI Assembly Committee for the Executive Office, 'Gaps in Equality Legislation Inquiry - Call for Evidence'. Available at: [Gaps in Equality Legislation Inquiry - Call for Evidence - Northern Ireland Assembly - Citizen Space \(nia-yourassembly.org.uk\)](https://nia-yourassembly.org.uk)

<sup>252</sup> Ibid.

<sup>253</sup> NI Human Rights Commission, 'Submission to the Committee for the Executive Office Inquiry into Gaps in Equality Legislation' (NIHRC, 2024).

The Commission recommends that the Executive Office and the Department for Communities, pursuant to Articles 2 and 13 of the Windsor Framework, bring forward legislation to amend NI law to ensure it keeps pace with those provisions EU directives on standards for equality bodies which amend or replace the EU Equality Directives in Annex 1 in line with transposition deadline.

The Commission recommends that, to facilitate compliance with the keep pace obligation pursuant to Articles 2 and 13 of the Windsor Framework, the Executive Office, Department for Communities and other relevant departments publish an annual report monitoring any proposed changes by the EU to the EU Equality Directives in Annex 1 and relevant CJEU case law.

## **Age discrimination**

In 2023, the UN CRC Committee found that there was “insufficient progress in ensuring protection of all children under 18 years of age against discrimination on the grounds of their age”.<sup>254</sup> The UN CRC Committee recommended that the UK Government and the NI Executive “take legislative and other measures to ensure the protection of all children below 18 years of age from discrimination on the grounds of their age, particularly in... NI”.<sup>255</sup>

Articles 2 and 13 of the Windsor Framework require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the EU Employment Equality (Framework) Directive which protects against discrimination on the grounds of age in employment and vocational training.<sup>256</sup> The EU Employment Equality

<sup>254</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seven Periodic Report of the UK of Great Britain and NI’, 2 June 2023, at para 46(d).

<sup>255</sup> Ibid, at para 20(f).

<sup>256</sup> Directive 2000/78/EC, ‘Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000.

(Framework) Directive was amended in 2024 by the EU directive on strengthening the role of equality bodies, requiring domestic legislation to keep pace.<sup>257</sup> The obligation also requires compliance with current and future CJEU case-law.<sup>258</sup>

There is legislation in NI prohibiting age discrimination in the areas of employment and occupation, further and higher education and vocational training.<sup>259</sup> However, there is no equality legislation prohibiting discrimination in the provision of goods, facilities and services in NI based on age, unlike in the rest of the UK.<sup>260</sup>

In 2015, the Office of the First Minister and Deputy First Minister (now the Executive Office) proposed extending age discrimination legislation to cover the provision of goods, facilities and services.<sup>261</sup> The Commission welcomed the initiative but, along with the NI Commissioner for Children and Young People and several children's organisations, highlighted that discrimination against children under 16 years old should be included.<sup>262</sup>

<sup>257</sup> Directive 2024/1499, 'EU Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC, 7 May 2024. This is one of two EU directives aimed at strengthening equality bodies Council of EU, 'Press Release: Strengthening the role of equality bodies across the EU: Council adopts two directives', 7 May 2024. More detail on the Commission's advice and recommendations is available in NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the implementation of Article 2 of the Windsor Framework 2023-2024', (NIHRC and ECNI, 2024), at para 3.59-3.69. See also the 'Equality and Non-Discrimination - Consolidating, Strengthening and Clarifying Equality Protections' section of this Annual Statement.

<sup>258</sup> More detail on the Commission's advice on Windsor Framework Article 2 can be found in NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024' (NIHRC and ECNI, 2024).

<sup>259</sup> Employment Equality (Age) Regulations (NI) 2006.

<sup>260</sup> Equality Commission for NI, 'Gaps in Equality Law between Great Britain and NI' (ECNI, 2014).

<sup>261</sup> Office of the First Minister and Deputy First Minister, 'Proposals to Extend Age Discrimination Legislation (Age Goods, Facilities and Services) Consultation Document' (OFMDFM, 2015).

<sup>262</sup> NI Commissioner for Children and Young People, 'Don't Exclude Us! Strengthening Protection for Children and Young people when Accessing Goods, Facilities and Services' (NICCY, 2013); Children's Law Centre and Save the Children NI, 'NI NGO Alternative Report Submission to the UN CRC Committee for Consideration During the Committee's Examination of the UK of Great Britain and NI Government Report' (CLC and StC NI, 2015), at 14; NI Human Rights Commission, 'Response to Consultation on Proposals to Extend Age Discrimination Legislation (Age, Goods, Facilities and Services)' (NIHRC, 2015).

In February 2024, the First Minister, Michelle O’Neill MLA, stated that this needed to be looked at “urgently and to build on the work that has gone before to bring it forward in this [NI Assembly] mandate”.<sup>263</sup> However, in July 2024, the Executive Office confirmed that no decision had been reached on the scope of legislation to extend age discrimination protections to goods, facilities, and services, with further work required.<sup>264</sup> In October 2024, noting the omission of a commitment to introduce age discrimination legislation in the Programme for Government, Claire Sugden MLA indicated an intention to bring a Private Members Bill to address this, with the details awaited.<sup>265</sup>

## Recommendations

The Commission recommends that the Executive Office promptly introduces legislation that extends age discrimination protection in the provision of goods, facilities and services to all children under 18 years old. Any proposals should be developed in consultation with children, including the NI Youth Assembly, and representative organisations.

## Business and human rights

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

- a) ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from the State Party’s territory in relation to international and national human rights, labour, environmental and other standards;
- b) require companies to undertake assessments of consultations on and full public disclosure of the environmental, health-related and children’s rights impacts of their business activities and their plans to address such impacts.<sup>266</sup>

<sup>263</sup> NI Assembly Hansard, ‘Age Discrimination Legislation – Michelle O’Neill MLA’, 19 February 2024.

<sup>264</sup> Email correspondence from the Executive Office to NI Human Rights Commission, 1 July 2024.

<sup>265</sup> NI Assembly Hansard, ‘Programme for Government – Claire Sugden MLA’, 7 October 2024.

<sup>266</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 16(a) and 16(b).



In 2020, the UK Government published an update on implementing its National Action Plan, which aims to embed the UN Guiding Principles on Business and Human Rights. It highlights some of the key developments and projects but does not have a specific NI focus.

In June 2024, the EU adopted a new directive on corporate sustainability due diligence which sets out obligations for large companies operating within the EU and liability for violation of those obligations, in respect of actual and potential human rights adverse impacts, and environmental adverse impacts, within their own operations, the operations of their subsidiaries and business partners.<sup>267</sup> Small and medium businesses do not directly fall under the scope of the EU Directive. However, they may be impacted as direct or indirect business partners.<sup>268</sup> The deadline for EU Members States to implement this EU Directive is July 2026 with a phased approach to its application to companies between 2027 and 2029. Where there is no requirement for NI law to keep pace with EU developments, the Executive Office and other relevant NI departments can consider aligning with those developments which strengthen protections and ensure equivalence of rights on the island of Ireland.<sup>269</sup>

## Modern slavery

The Modern Slavery Act in 2015 requires businesses in the UK to publicly report on their progress in relation to identifying and addressing modern slavery risks in both their operation and supply chains.

<sup>267</sup> Article 1, Directive 2024/1760/EU, 'EU Parliament and Council Directive on Corporate Sustainability Due Diligence' 13 June 2024.

<sup>268</sup> EU Commission, 'Directive on Corporate Sustainability Due Diligence - Frequently Asked Questions' (EU Commission, 2024).

<sup>269</sup> NI Human Rights Commission and Equality Commission NI, 'Policy Recommendations: EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (NIHRC and ECNI, 2023). See also Island of Ireland Dimension of the Windsor Framework in the 'Constitutional Protections - Human Rights after UK exit for the EU' section in this Annual Statement.

In 2021, the NI Department of Justice consulted on additional measures proposed to increase transparency in supply chains for both private enterprises and public sector bodies.<sup>270</sup> This included a proposed requirement on public sectors bodies with a budget threshold of £36 million or more in procurement exercises to publish a modern slavery statement.<sup>271</sup> In 2024, an amendment to section 54 of the Modern Slavery Act 2015 is required to make publication of a modern slavery statement compulsory, which is the responsibility of the UK Parliament.<sup>272</sup> However, while the necessary legislative amendment is awaited, the new modern slavery and trafficking strategy for NI includes guidance on how to develop a modern slavery statement for businesses that may wish to do so voluntarily.<sup>273</sup>

## NI Business and Human Rights Index

In 2023, with support from the European Network of National Human Rights Institutions, the Commission partnered with the Queen's University Belfast Law School to conduct an assessment of corporate human rights implementation to develop the first ever NI Business and Human Rights Index.

In October 2024, the NI Business and Human Rights Index was launched. The Business and Human Rights Index creates a league table of businesses operating in NI. It aims to strengthen the Commission's work in promoting human rights within the NI business sector. It further supports the work of public authorities responsible for procuring services by assisting with due diligence and the incorporation of human rights considerations into tendering processes. Additionally, the project highlights good practice and learning experiences. The Business and Human Rights Index supports the previously introduced a procurement policy note that requires all government departments and designated public bodies conducting a procurement process

<sup>270</sup> Department of Justice, 'Engagement with Commercial Sector Businesses in NI on Legislative Changes to Section 54 of the Modern Slavery Act 2015: Transparency in Supply Chains in NI' (DoJ, 2021).

<sup>271</sup> Ibid, at 20.

<sup>272</sup> Department of Justice, 'NI and Modern Slavery and Human Trafficking Strategy 2024-2027' (DoJ, 2024), at para 1.36.

<sup>273</sup> Ibid, at paras 1.36-1.40.



to incorporate human rights considerations into the tendering exercises and contracts.<sup>274</sup> The Business and Human Rights Index also offers a source of information to inform future policy and legislative initiatives regarding modern slavery, business and human rights in NI.

## Recommendations

The Commission recommends that the NI Executive ensures that all relevant stakeholders in NI are provided with meaningful opportunities to assist in the design, implementation and monitoring of measures aimed at implementing the UN Guiding Principles on Business and Human Rights in NI.

The Commission recommends that the NI Executive adopts a national action plan on business and human rights for NI. This should be informed by the Public Procurement Note and NI Business and Human Rights Index.

The Commission recommends that the NI Executive Office reviews the EU Directive on Corporate Sustainability Due Diligence and, on a voluntary basis, ensures NI law aligns with changes that enhance equality or human rights protections and reflect international human rights standards.

The Commission recommends that businesses in NI incorporate a policy commitment to respect human rights and identify and address any adverse human rights impact across their activities (including supply chains), providing a remedy for any abusive activity linked to their operations. This includes carrying out corporate human rights due diligence to identify, prevent, mitigate, and account for their activities' impacts on human rights, including both actual and potential future harm.

<sup>274</sup> Department of Finance, 'Procurement Policy Note PPN 05/21: Human Rights in Public Procurement' (DoF, 2021).

## Discrimination on grounds of sexual orientation

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “ensure that children who experience discrimination, bullying and harassment in relation to their sexual orientation or gender identity receive protection and support, including through targeted anti-bullying measures”.<sup>275</sup>

In May 2024, the then UN Independent Expert on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, recommended that the UK Government and NI Executive “gather data on sexual orientation and gender identity at the central, national and local levels at all relevant service access points, to better guide implementation of services, including by closing information and protection gaps in census data”.<sup>276</sup>

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive:

in NI... set up a working group with the view to developing and adopting, in close consultation with relevant civil society actors and representatives of the lesbian, gay, bisexual, transgender and intersex communities, a national lesbian, gay, bisexual, transgender and intersex action plan.<sup>277</sup>

Articles 2 and 13 of the Windsor Framework require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the Employment Equality (Framework) Directive which protects against discrimination

<sup>275</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 20(e).

<sup>276</sup> A/HRC/56/49/Add.1, ‘Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity: Visit to the UK of Great Britain and NI’, 11 April 2024, at para 89(a).

<sup>277</sup> CoE European Commission Against Racism and Intolerance, ‘Report on the UK (Sixth Monitoring Cycle)’ (ECRI, 2024), at para 55.

on the grounds of sexual orientation.<sup>278</sup> This EU Directive was amended in 2024 by the EU directive on strengthening the role of equality bodies, requiring domestic legislation to keep pace.<sup>279</sup> The obligation also requires compliance with current and future CJEU case-law.<sup>280</sup>

Under the Criminal Justice (No 2) (NI) Order 2004, sexual orientation is recognised as a ground for inciting hatred. In 2023/2024, the Police Service of NI reported that there were 384 sexual orientation motivated incidents, a decrease from 435 in 2022/2023.<sup>281</sup> The number of sexual orientation crimes recorded by the police was 241, a decrease from 289 in 2022/2023.<sup>282</sup>

In 2020, the Marrinan Review recommended that statutory aggravations should be added to all existing offences in NI, including homophobic hate crime, following the model adopted

<sup>278</sup> Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment Between Men and Women in the Access To and Supply of Goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.; Directive 79/7/EEC, 'EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978.

<sup>279</sup> Directive 2024/1499, 'EU Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC', 7 May 2024. This is one of two EU directives aimed at strengthening equality bodies Council of EU, 'Press Release: Strengthening the role of equality bodies across the EU: Council adopts two directives', 7 May 2024. More detail on the Commission's advice and recommendations is available in NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the implementation of Article 2 of the Windsor Framework 2023-2024', (NIHRC and ECNI, 2024), at para 3.59-3.69. See also the 'Equality and Non-Discrimination - Consolidating, Strengthening and Clarifying Equality Protections' section of this Annual Statement.

<sup>280</sup> More detail on the Commission's advice on Windsor Framework Article 2 can be found in NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024' (NIHRC and ECNI, 2024), at para 3.59-3.69. See also the 'Equality and Non-Discrimination - Consolidating, Strengthening and Clarifying Equality Protections' section of this Annual Statement.

<sup>281</sup> Police Service of NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in NI' (PSNI, 2024).

<sup>282</sup> Ibid.

in Scotland.<sup>283</sup> The Commission has highlighted the relevance of the EU Victim’s Directive<sup>284</sup> and Windsor Framework Article 2 in the context of hate crime.<sup>285</sup> The Department of Justice is consulting on measures to strengthen hate crime legislation in two stages, phase one was consulted on in 2022 with phase two of the consultation process expected in 2025.<sup>286</sup> In 2024, work continued on the Department of Justice’s intentions to introduce a statutory aggravator model through a Sentencing Bill and provisions for victims of hate crime in a Victims Bill.<sup>287</sup>

In October 2024, the Minister for Communities, Gordon Lyons MLA, confirmed that the Department for Communities was moving “forward on development of the Social Inclusion Strategies on a phased basis”.<sup>288</sup> The Anti-poverty Strategy and Disability Strategy were identified as priorities.<sup>289</sup> The details of the proposed timetable for the next steps in developing the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy is expected “in the coming months”.<sup>290</sup> However, final decisions on content and timelines for implementation of the Strategy will be subject to agreement by the NI Executive.<sup>291</sup>

## Recommendations

The Commission recommends that the Department of Justice ensures that Marrinan Review’s recommendations on homophobic hate crime are promptly implemented in full and that the Department of Justice considers carefully and ensures compliance with Windsor Framework Article 2, including the provisions of the EU Victims’ Directive, in the development of hate crime legislation.

<sup>283</sup> Desmond Marrinan, ‘Hate Crime Legislation in NI: Independent Review’ (DoJ, 2020).

<sup>284</sup> Directive 2012/29/EU, ‘EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>285</sup> NI Human Rights Commission, ‘Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI’, (NIHRC, 2022). See also the ‘Hate Crime’ section in this Annual Statement.

<sup>286</sup> Email correspondence from the Department of Justice to the NI Human Rights Commission, 10 July 2024.

<sup>287</sup> Ibid.

<sup>288</sup> Letter from Minister for Communities, Gordon Lyons MLA, to Gender Equality Co-design Group Members, 11 October 2024.

<sup>289</sup> Ibid.

<sup>290</sup> Ibid.

<sup>291</sup> Email correspondence from the Department for Communities to the NI Human Rights Commission, 25 March 2024.

The Commission recommends that the Department for Communities promptly publishes and implements a robust and adequately resourced Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. This strategy should be accompanied by a measurable plan of action and effective monitoring mechanisms.

## Gender Equality Strategy

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive “in close consultation with organisations of women and girls with disabilities, mainstream the rights of women and girls with disabilities into disability and gender equality policies”.<sup>292</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive “take all necessary measures to ensure the full enjoyment of economic, social and cultural rights by all persons under its jurisdiction”.<sup>293</sup>

In 2015, the UN Human Rights Committee recommended that the UK Government and NI Executive “ensure that all existing and future gender equality strategies and policies, including the gender equality strategy for NI, identify and address effectively the barriers hindering women’s access to high positions in the civil service and the judiciary”.<sup>294</sup>

Articles 2 and 13 of the Windsor Framework require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including four equal treatment

<sup>292</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 19.

<sup>293</sup> 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 8.

<sup>294</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 12.

directives which protect against gender discrimination in the areas of employment and vocational training,<sup>295</sup> access to goods and services,<sup>296</sup> and social security.<sup>297</sup> In addition to the developments set out below, these Directives were amended in 2024 by the EU directives on setting minimum standards for equality bodies, requiring domestic legislation to keep pace.<sup>298</sup> The obligation also requires compliance with current and future CJEU case-law.<sup>299</sup>

The rights, safeguards and equality of opportunity provisions set out in the relevant chapter of the Belfast (Good Friday) Agreement 1998 include the “right to equal opportunity in all social and economic activity, regardless of ... gender”. To the extent that additional EU obligations fall within scope of Windsor Framework Article 2, such as the EU Parental Leave Directive<sup>300</sup> and the EU Pregnant Worker’s Directive,<sup>301</sup> there should be no diminution of rights, safeguards and equality of opportunity following the UK withdrawal from the EU.

<sup>295</sup> Directive 2006/54/EC, ‘EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006; Directive 2010/41/EU, ‘EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-employed Capacity’, 7 July 2010.

<sup>296</sup> Directive 2004/113/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment Between Men and Women in the Access to and Supply of Goods and Services’, 13 December 2004.

<sup>297</sup> Directive 79/7/EEC, ‘EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security’, 19 December 1978.

<sup>298</sup> Directive 2024/1499/EU, ‘EU Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC’, 7 May 2024; Directive 2024/1500, ‘Directive of the European Parliament and of the Council on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Amending Directives 2006/54/EC and 2010/41/EU’, 14 May 2024.

<sup>299</sup> More detail on the Commission’s advice on Windsor Framework Article 2 can be found in NI Human Rights Commission and Equality Commission for NI, ‘Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024’ (NIHRC and ECNI, 2024), at para 3.59-3.69. See also the ‘Equality and Non-Discrimination – Consolidating, Strengthening and Clarifying Equality Protections’ section of this Annual Statement.

<sup>300</sup> Directive 2010/18/EU, ‘EU Council Directive Implementing the Revised Framework Agreement on Parental Leave’, 8 March 2010.

<sup>301</sup> Directive 92/85/EEC, ‘EU Council Directive on the Introduction of Measures to Encourage Improvements in the Safety and Health at Work of Pregnant Workers and Workers who have Recently Given Birth or are Breastfeeding’, 19 October 1992.



In June 2023, the EU Pay Transparency Directive came into force.<sup>302</sup> The EU Directive aims to strengthen the existing enforcement tools and procedures regarding the rights and obligations and equal pay provisions set out in the EU Gender Equality (Employment) Directive.<sup>303</sup> The Commission, and the Equality Commission for NI, take the view that NI equality law must be amended to keep pace with these changes within the transposition deadline, further to the UK Government's dynamic alignment obligation in the Windsor Framework.<sup>304</sup>

In May 2024, the EU Directive on Combating Violence against Women and Domestic Violence was adopted.<sup>305</sup> The EU Directive provides for specialist provision for victims of sexual harassment at work<sup>306</sup> and for managers and supervisors to receive training on how to recognise, prevent and address sexual harassment at work.<sup>307</sup> The Commission is currently examining the extent to which the EU Directive on Combating Violence against Women and Domestic Violence amends and/or replaces provisions of the EU Gender Equality (Employment) Directive.<sup>308</sup> In addition to any changes required by the keeping pace obligation under the Windsor Framework, the Department for Communities can review EU developments, even where it is not required by Windsor Framework Article 2, which strengthen protections and ensure equivalence of rights on the island of Ireland.<sup>309</sup>

<sup>302</sup> Directive 2023/970/EU, 'EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value Between Men and Women Through Pay Transparency and Enforcement Mechanisms', 10 May 2023. For further discussion of the EU Pay Transparency Directive see section on 'Right to Work and to Just and Favourable Conditions to Work – Gender Pay Gap' of this Annual Statement.

<sup>303</sup> Directive 2006/54/EC, 'EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.

<sup>304</sup> Equality Commission for NI and NI Human Rights Commission, 'Briefing Paper: The EU Pay Transparency Directive: The UK Government's Dynamic Alignment Obligations Relating to Windsor Framework Article 2' (ECNI and NIHRC, 2024)

<sup>305</sup> Directive 2024/1385/EU, 'EU Parliament and EU Council Directive on Combating Violence Against Women and Domestic Violence', 14 May 2024.

<sup>306</sup> Article 28 and Recital 65, Directive 2024/1385/EU, 'EU Parliament and EU Council Directive on Combating Violence Against Women and Domestic Violence', 14 May 2024.

<sup>307</sup> Article 36, Directive 2024/1385/EU, 'EU Parliament and EU Council Directive on Combating Violence Against Women and Domestic Violence', 14 May 2024.

<sup>308</sup> Directive 2006/54/EC, 'EU Parliament and EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.

<sup>309</sup> NI Human Rights Commission and Equality Commission NI, 'Policy Recommendations: EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (NIHRC and ECNI, 2023). See also Island of Ireland Dimension of the Windsor Framework in the 'Constitutional Protections – Human Rights after UK exit for the EU' section in this Annual Statement.



In 2020, the New Decade, New Approach Agreement committed the NI Executive to publish a new Gender Equality Strategy.<sup>310</sup> The Department for Communities appointed an Expert Advisory Panel and created a Co-Design Group made up of key stakeholders, including the Commission. A cross-departmental working group was also created. In 2021, the Expert Advisory Panel published its report, which highlighted key human rights obligations relevant to gender equality and outlined several key themes for discussion by the Co-Design Group.<sup>311</sup> In October 2024, the Minister for Communities, Gordon Lyons MLA, confirmed that the Department for Communities was moving “forward on development of the Social Inclusion Strategies on a phased basis”.<sup>312</sup> The details of the proposed timetable for the next steps in developing the Gender Equality Strategy is expected in “the coming months”.<sup>313</sup>

In 2021, additional research demonstrated the existence of a gender-neutral approach within policymaking in NI which is having a detrimental effect on the effectiveness of such policies.<sup>314</sup> Consequently, experts have recommended that a gender-sensitive approach, which includes gender budgeting, is adopted within policymaking in NI.<sup>315</sup> In 2024, this research and its recommendations are still relevant.<sup>316</sup>

## Recommendations

The Commission recommends that the Department for Communities promptly publishes and implements a robust, gender-sensitive Gender Equality Strategy, which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. This strategy should be accompanied by measurable plan of action and effective monitoring mechanisms that are guided by gender budgeting.

<sup>310</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020).

<sup>311</sup> Department for Communities, ‘Gender Equality Strategy Expert Advisory Panel Report’ (DfC, 2021), at 12.

<sup>312</sup> Letter from Minister for Communities, Gordon Lyons MLA, to Gender Equality Co-design Group Members, 11 October 2024.

<sup>313</sup> Ibid.

<sup>314</sup> Joan Ballantine et al, ‘Gender Budgeting: Working Paper 1 – What Does the Literature Tell Us? Lessons for NI’ (Ark Working Papers, 2021).

<sup>315</sup> Ibid.

<sup>316</sup> Meeting between Ulster University Gender Budgeting Group and NI Human Rights Commission, 4 July 2024.

The Commission recommends that the Department for Communities, in line with the keep pace obligation pursuant to Articles 2 and 13 of the Windsor Framework, reflect the EU Pay Transparency Directive in the development and implementation of a Gender Equality Strategy.

The Commission recommends that, in addition to any changes required by the keeping pace obligation under the Windsor Framework, the Department for Communities reflect those provisions of the EU Directive on Combating Violence Against Women which strengthen rights and align with international human rights standards in the development and implementation of the Gender Equality Strategy.

## Gender recognition

In May 2024, the UN Human Rights Committee recommended that the UK Government:

take legislative and other measures to eliminate intrusive requirements for legal gender recognition, including psychiatric diagnosis, and provide for and effectively implement a quick, transparent and accessible procedure for legal gender recognition that is compatible with the provisions of the [UN ICCPR].<sup>317</sup>

In 2023, the UN CRC Committee noted the UK Government's decision to prevent the Gender Recognition Reform (Scotland) Bill from proceeding to Royal Assent and recommended that the UK Government and NI Executive:

recognise the right to identity of lesbian, gay, bisexual, transgender and intersex children, and put in place measures to ensure that all adolescents enjoy their freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy.

<sup>317</sup> CCPR/C/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 3 May 2024.

In this context, the State Party should ensure that any decisions regarding systems of gender recognition for children are taken in close consultation with transgender children and in line with children’s rights, including the right to be heard and the right to identity, in accordance with their evolving capacities, to free and informed consent and with appropriate safeguards.<sup>318</sup>

In 2019, the UN CAT Committee recommended that the UK Government and NI Executive ensure that:

- a) the parents or guardians of intersex children receive impartial counselling services and psychological and social support, including information on the possibility of deferring any decision on unnecessary treatment until they can be carried out with the full, free and informed consent of the person concerned; [and]
- b) persons who have been subjected to such procedures without their consent and resulting in severe pain and suffering, obtain redress, including the means for rehabilitation.<sup>319</sup>

In April 2024, the then UN Independent Expert on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, recommended that the UK Government and NI Executive “simplify the administrative process of legal recognition of gender identity, in accordance with internationally recognized good practices of legal recognition of gender identity based on self-determination by the applicant, without abusive requirements, including for non-binary persons and children”.<sup>320</sup>

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive:

<sup>318</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 25.

<sup>319</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019.

<sup>320</sup> A/HRC/56/49/Add.1, ‘Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity: Visit to the UK of Great Britain and NI’, 11 April 2024, at para 87(a).

in NI... set up a working group with the view to developing and adopting, in close consultation with relevant civil society actors and representatives of the lesbian, gay, bisexual, transgender and intersex communities, a national lesbian, gay, bisexual, transgender and intersex action plan.<sup>321</sup>

Articles 2 and 13 of the Windsor Framework require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework. The obligation also requires compliance with current and future CJEU case-law. Four of these EU non-discrimination Directives cover employment and vocational training,<sup>322</sup> access to goods and services,<sup>323</sup> and social security<sup>324</sup> and relate to a prohibition of discrimination on grounds of sex, which includes transgender people. The CJEU has made it clear in that “to tolerate such discrimination would be tantamount, as regards such a person, to a failure to respect the dignity and freedom to which he or she is entitled, and which the... [CJEU] has a duty to safeguard”.<sup>325</sup> These Directives were amended in 2024 by the EU directive on setting minimum standards for equality bodies, requiring domestic legislation to keep pace.<sup>326</sup>

<sup>321</sup> CoE European Commission Against Racism and Intolerance, ‘Report on the UK (Sixth Monitoring Cycle)’ (ECRI, 2024), at para 55.

<sup>322</sup> Directive 2006/54/EC, ‘EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006; Directive 2010/41/EU, ‘EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-employed Capacity’, 7 July 2010.

<sup>323</sup> Directive 2004/113/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment Between Men and Women in the Access to and Supply of Goods and Services’, 13 December 2004.

<sup>324</sup> Directive 79/7/EEC, ‘EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security’, 19 December 1978.

<sup>325</sup> *P v S and Cornwall County Council*, Case C-13/94, 30 April 1996, at para 22.

<sup>326</sup> Directive 2024/1499/EU, ‘EU Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC’, 7 May 2024; Directive 2024/1500, ‘Directive of the European Parliament and of the Council on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Amending Directives 2006/54/EC and 2010/41/EU’, 14 May 2024. More detail on the Commission’s advised and recommendations is available in NI Human Rights Commission and Equality Commission for NI, ‘Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024’, (NIHRC and ECNI, 2024), at para 3.59-3.69. See also the ‘Equality and Non-Discrimination – Consolidating, Strengthening and Clarifying Equality Protections’ section of this Annual Statement.

Under the Gender Recognition Act 2004, for a transgender person's acquired gender to be legally recognised in the UK, an application must be submitted to a Gender Recognition Panel. The Gender Recognition Panel will then assess the application and, if successful, will issue a Gender Recognition Certificate. Currently, the Gender Recognition Panel process for the UK is centralised and based in England. Consultations on possible amendments to the gender recognition process have been conducted in England, Wales and Scotland, but not NI.<sup>327</sup>

Eligibility criteria for a Gender Recognition Certificate requires that an applicant is over 18, diagnosed with gender dysphoria, has lived in the acquired gender for more than two years and intends to do so permanently.<sup>328</sup> In 2022, the fee for a gender recognition certificate in NI was reduced to five pounds.<sup>329</sup> Reflecting the Yogyakarta Principles,<sup>330</sup> transgender representatives in NI consider the self-declaration model to be more appropriate.<sup>331</sup>

In 2022, research identified that people's experiences of the gender recognition process in NI tended to be negative.<sup>332</sup> In 2024, there continues to be significant delays in accessing gender-affirming healthcare in NI.<sup>333</sup> The Brackenburn Clinic, which is the regional facility providing gender care in NI, has a waiting list of at least seven years.<sup>334</sup>

In 2021, the Expert Advisory Panel for the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy recommended that gender recognition legislation is fit for

<sup>327</sup> Scottish Government, 'Gender Recognition Reform (Scotland) Bill: A Consultation' (Scottish Gov, 2020); UK Government, 'Gender Recognition Act Consultation and Response' (UK Gov, 2022).

<sup>328</sup> NI Direct, 'Gender Recognition'. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>

<sup>329</sup> Ibid.

<sup>330</sup> Principle 31, Yogyakarta Principles Plus 10, 10 November 2017.

<sup>331</sup> Roundtable discussion with civil society representatives, November 2018.

<sup>332</sup> Queen's University Belfast, 'Gender Recognition Act 2004 Evaluation and Policy Options' (DoF, 2022), at 94.

<sup>333</sup> Email correspondence from the Rainbow Project to the NI Human Rights Commission, 3 July 2024.

<sup>334</sup> Belfast Health and Social Care Trust, 'Brackenburn Clinic'. Available at: [Brackenburn Clinic | Belfast Health & Social Care Trust website \(hscni.net\)](https://www.belfasthscni.net/brackenburn-clinic).

purpose, including that it recognises and is reflective of the diversity of genders in NI.<sup>335</sup> The Commission is a member of the Co-Design group and has identified that relevant human rights standards and Windsor Framework Article 2 are pertinent to the strategy. In October 2024, the Minister for Communities, Gordon Lyons MLA, confirmed that the Department for Communities was moving “forward on development of the Social Inclusion Strategies on a phased basis”.<sup>336</sup> The details of the proposed timetable for the next steps in developing the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy is expected “in the coming months”.<sup>337</sup>

In April 2024, the report of the Independent Review of gender identity services for children and young people found that puberty-suppressing hormones “only have clearly defined benefits in quite narrow circumstances” and that there are “potential risks to neurocognitive development, psychosexual development and longer-term bone health”.<sup>338</sup> The Independent Review concluded that puberty-suppressing hormones “should only be offered under a research protocol”.<sup>339</sup> In August 2024, a temporary ban on the private sale and supply of puberty-suppressing hormones was introduced in NI. This was introduced “in light of the findings of the independent Cass Review, and to close potential loopholes that could be exploited by not having a UK-wide legislative approach”.<sup>340</sup> However, this decision led to protests in NI from individual and groups that believe that this development is denying transgender children and young people access to healthcare, with potentially life-threatening consequences.<sup>341</sup>

<sup>335</sup> Department for Communities, ‘Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations’ (DfC, 2021).

<sup>336</sup> Letter from Minister for Communities, Gordon Lyons MLA, to Gender Equality Co-design Group Members, 11 October 2024.

<sup>337</sup> Ibid.

<sup>338</sup> Hilary Cass, ‘The Cass Review: Independent Review of Gender Identity Services for Children and Young People’ (NHS England, 2024), at para 16.38.

<sup>339</sup> Ibid.

<sup>340</sup> Department of Health, ‘Press Release: Temporary ban on prescription and supply of puberty blockers extended to NI’, 23 August 2024.

<sup>341</sup> ‘Protests held as puberty blocker ban extended in NI’, *BBC News*, 27 August 2024.



## Recommendations

The Commission recommends that the Department for Communities promptly publishes and implements a robust and adequately resourced Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI that deals with gender recognition and takes a human rights based approach in line with international human rights standards and Windsor Framework Article 2. This strategy should be accompanied by a measurable plan of action and effective monitoring mechanisms.

The Commission recommends that the Department of Health ensures that the gender recognition process in NI is amended to reflect the self-declaration model. This process should be affordable, respectful and accessible, including effectively training staff and professionals across an individual's gender recognition journey.

The Commission recommends that the Department of Health, Department of Communities and Department of Education ensure that transgender children are supported effectively and that the best interests of the child are a primary consideration.

## Hate crime

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

take all measures necessary to prevent and firmly combat racist hate crimes and hate speech and in particular:

- a) adopt a comprehensive legal framework to combat racist hate crimes, take effective measures to ensure its implementation and provide continuous training to law enforcement officials, judges and prosecutors on addressing and investigating hate crimes;



- b) develop and adopt a media strategy addressing the responsibility of journalists and broadcasters to avoid the use of hate speech and stereotypes in describing minority communities, and closely and effectively scrutinise newspapers and broadcasters with respect to content that incites racial discrimination and hatred or strengthens xenophobic attitudes;
- c) encourage reporting of racist hate crimes, prosecute the perpetrators and punish them with sanctions commensurate with the gravity of the offence, and provide effective remedies to all victims and their families;
- d) investigate all reported racist hate crimes, prosecute the perpetrators and punish them with sanctions commensurate with the gravity of the offence, and provide effective remedies to the victims and their families;
- e) systematically collect disaggregated data on racist hate crimes, including cases involving intersectional motivations, ensure that measures to combat racist hate crimes are developed with the meaningful participation of groups affected, and undertake a thorough impact assessment of measures adopted;
- f) strengthen the measures to combat the proliferation of racist hate speech on the internet and social media, in close cooperation with internet service providers, social media platforms and the communities most affected by racist hate speech;
- g) adopt comprehensive measures to discourage and combat racist hate speech and xenophobic discourse by political and public figures, including on the internet, ensure that such cases are effectively investigated and sanctioned, and ensure also that public authorities, including high-level public officials, distance themselves from hate speech and xenophobic political discourse, and formally and publicly reject and condemn hate speech and the dissemination of racist ideas; [and]

- h) withdraw its interpretative definition of Article 4 of the [UN CERD]... and give full effect to all provisions of Article 4 [of the UN CERD].<sup>342</sup>

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive should:

- a) take steps to establish a clear and comprehensive legal framework to ensure that the prohibition of hate crimes applies to all protected groups ... by taking effective steps to promptly enhance hate crime legislation in Northern Ireland;
- b) encourage the reporting of hate crimes and provide effective training to law enforcement officials, judges and prosecutors on addressing and investigating hate crimes; [and]
- c) investigate hate crimes thoroughly, ensure that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and provide victims and their families with access to full reparations.<sup>343</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI “encourage the reporting of hate crimes against children; investigate and prosecute cases of racially, ethnically and religiously motivated crime; punish perpetrators with commensurate sanctions; and provide adequate compensation to the victims, as appropriate”.<sup>344</sup>

In April 2024, the then UN Independent Expert on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, recommended that the UK Government and NI Executive:

<sup>342</sup> 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, at paras 20(a)-20(h).

<sup>343</sup> CCRP/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 17.

<sup>344</sup> CRC/C/GBR/CO/6-7, ‘Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 20(d).

ensure, through all necessary means, that homophobic, biphobic and transphobic hate crimes are effectively investigated, accurately categorised and prosecuted, and that those found guilty are punished with sentences commensurate with the gravity of the offence, whereas victims are provided with effective remedies.<sup>345</sup>

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive ensure that:

public figures, such as high-level officials and politicians are strongly encouraged to take a prompt, firm and public stance against racist, and lesbian, gay, bisexual, transgender and intersex-phobic hate speech and react to any such expression with strong counter-hate speech messages and alternative speech, as well as promote understanding between communities, including by expressing solidarity with those targeted by hate speech.<sup>346</sup>

The CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive:

take further action to support and engage in a broad dialogue with organisations active in the area of monitoring and countering anti-Muslim racism and, in consultation with these organisations and representatives of the Muslim communities, take all necessary measures to ensure the safety of Muslim persons, in particular women and cultural, educational and religious buildings, in proportion to the size of the affected population.<sup>347</sup>

<sup>345</sup> A/HRC/56/49/Add.1, 'Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity: Visit to the UK of Great Britain and NI', 11 April 2024, at para 90(a).

<sup>346</sup> CoE European Commission Against Racism and Intolerance, 'Report on the UK (Sixth Monitoring Cycle)' (ECRI, 2024), at para 62.

<sup>347</sup> Ibid, at para 69.

The CoE European Commission against Racism and Intolerance further recommended that the UK Government and NI Executive ensure that “in particular, the police and other criminal justice actors, carry out effective investigations into any cases of attacks against persons with a migration background and their properties in NI and ensure that the perpetrators are held accountable”.<sup>348</sup>

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU.<sup>349</sup> In September 2024, the Court of Appeal in NI confirmed that the rights of victims of crime are given effect by civil rights and fall within the scope of the relevant chapter in the Belfast (Good Friday) Agreement and that specific rights in the EU Victims’ Directive<sup>350</sup> were encompassed in the notion of victims’ rights in that chapter.<sup>351</sup> The Court of Appeal in NI also confirmed that the EU Victims’ Directive is to be “interpreted in accordance with the EU Charter of Fundamental Rights and general principles of EU law”.<sup>352</sup> Other EU obligations underpinning the rights of victims include the EU Race Equality Directive,<sup>353</sup> as well as other relevant EU laws.<sup>354</sup> The EU Victims’ Directive recognises that victims of hate crime are at a high risk of secondary and repeat victimisation and, as such, there should be a strong presumption that victims will benefit from special protection measures during criminal proceedings.<sup>355</sup>

<sup>348</sup> Ibid, at para 73.

<sup>349</sup> Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights.

<sup>350</sup> Directive 2012/29/EU, ‘EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>351</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117.

<sup>352</sup> Ibid, at para 126. See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock et al, ‘The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework’ (NIHRC, 2024).

<sup>353</sup> Directive 2000/43/EC, ‘EU Council Directive Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000.

<sup>354</sup> Directive 2011/36/EU ‘EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011; Directive 2011/92/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011; Directive 2004/80/EC, ‘EU Council Directive Relating to the Compensation to Crime Victims’, 29 April 2004.

<sup>355</sup> Article 8 and Recitals 56-58, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

In 2023/2024, there were 3,070 recorded hate motivated incidents and 1,957 recorded hate motivated crimes, a decrease from 3,151 recorded hate motivated incidents and 2,265 recorded hate crimes in 2022/2023.<sup>356</sup> There was a decrease in all strands of hate motivation, except regarding race and faith or relegation related incidents, compared to 2022/2023.<sup>357</sup> There were increases in the number of faith or religion, transgender identity, race, sexual orientation, sectarian and disability related crimes, compared to 2022/2023.<sup>358</sup>

In 2024, reports of ‘organised’ hate crimes in NI, particularly racist hate crimes, continued.<sup>359</sup>

In 2021, the Marrinan Review on improving hate crime legislation in NI was published.<sup>360</sup> In 2022, the Department of Justice put in place a dedicated Hate Crime Branch to take forward the Independent Review’s recommendations in a two-stage consultation process.<sup>361</sup> Phase one of the consultation process has been completed. The Commission submitted a response highlighting the importance of carefully considering the provisions of the EU Victims’ Directive within the context of Windsor Framework Article 2 in the development of hate crime legislation.<sup>362</sup> Phase two of the consultation stage is due to take place in 2025, and will consider the inclusion of the

<sup>356</sup> Police Service of NI, ‘Incidents and Crimes with a Hate Motivation Recorded by the Police Service of NI’ (PSNI, 2024).

<sup>357</sup> Ibid.

<sup>358</sup> Ibid.

<sup>359</sup> ‘Man’s head “stamped on” during racist attack’, *BBC News*, 5 August 2024; Darren Marshall, ‘Belfast Violence: What happened at the weekend?’, *BBC News*, 5 August 2024; Linzi Lima, ‘Judge says Belfast violence had “racist elements”’, *BBC News*, 6 August 2024; ‘Why has there been a spike in racist attacks in south Belfast?’, *BBC News*, 17 October 2023; Meeting of refugee and ethnic minority business owners hosted by Participation and Practice of Rights, 31 August 2023; ‘Sandy Row: Belfast fire treated as racially motivated hate crime’, *BBC News*, 18 August 2023; ‘Belfast Multi-Cultural Association building for sale after arson attacks’, *BBC News*, 14 February 2023; ‘Belfast mosque leader’s worries after Nazi flags flown nearby’, *BBC News*, 23 August 2023; Sarah McKinley, ‘South Belfast businesses in emergency meeting over multiple racist attacks’, *UTV News*, 1 September 2023; Sara Girvan and Eimear Flanagan, ‘Syrian man to move shop after four racist attacks’, *BBC News*, 18 September 2023; Kevin Sharkey, ‘Belvoir: Anti-migrant signs treated as “hate incident”’, *BBC News*, 2 November 2023.

<sup>360</sup> Desmond Marrinan, ‘Hate Crime Legislation in NI: An Independent Review - Consultation Paper’ (IHCRT, 2020).

<sup>361</sup> Department of Justice, ‘Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views’ (DoJ, 2022).

<sup>362</sup> NI Human Rights Commission, ‘Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI’ (NIHRC, 2022), at para 5.18.

protected characteristics of “gender, age and variations of sex characteristics and the duty to remove hate expression from public space”.<sup>363</sup>

Due to the lack of a functioning NI Assembly between February 2022 and February 2024 and a general lack of resources, there is a reduced legislative programme from that first intended for the NI Executive’s 2022-2027 mandate.<sup>364</sup> Consequently, in 2024, the Department of Justice no longer intends to bring forward a stand-alone Hate Crime Bill for NI.<sup>365</sup> Instead, by 2027, the Department of Justice intends to bring forward provisions for the proposed statutory aggravation model in a Sentencing Bill and to include provisions that address the impact of hate crime on victims in a Victims Bill.<sup>366</sup>

## Recommendations

The Commission recommends that the Department of Justice promptly develops, implements and monitors robust hate crime legislation in NI, guided by the Marrinan Review’s recommendations and the Department of Justice’s consultations. The Department of Justice and the Executive Office should ensure that any new legislation complements existing and future strategies on race and community relations. It should also address that hate crimes can occur online and be the acts of individuals or part of an organised movement.

The Commission recommends that the Department of Justice, working with the NI Executive, takes effective steps to challenge hate incidents and crime in NI, including online. This includes ensuring, through meaningful engagement with individuals affected and their representative organisations, that the process for reporting hate crimes is accessible, with appropriate support available as required.

<sup>363</sup> Email correspondence from the Department of Justice to the NI Human Rights Commission, 10 July 2024.

<sup>364</sup> Ibid.

<sup>365</sup> Ibid.

<sup>366</sup> Ibid.

Also, that concrete steps are taken to investigate, prosecute and punish hate crimes in NI, with effective remedies for all victims and survivors of hate crime. Furthermore, that comprehensive disaggregated data on hate crimes in NI is gathered, monitored, evaluated and made publicly available.

The Commission advises the Department of Justice to consider carefully and ensure compliance with Windsor Framework Article 2, including the provisions of the EU Victims' Directive, in the development of hate crime legislation and ensure that a victim-centred approach is adopted when investigating, prosecuting and remedying hate crimes.

### ● **Intersectional multiple discrimination**

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

ensure the adoption of comprehensive anti-discrimination and equality legislation in all jurisdictions... particularly in NI... containing a clear definition of racial discrimination, which comprises... multiple and intersecting forms of discrimination, covering all fields of law in public and private domains, and all prohibited grounds of discrimination in accordance with Article 1 of the [UN CERD].<sup>367</sup>

In 2019, the UN CEDAW Committee recommended that the NI Executive “revise its legislation in NI to ensure that it affords protection to women on an equal footing with women in other administrations of the State party” and:

review and amend the public sector equality duty in order to address situations of intersectional forms of discrimination, such as discrimination faced by ‘Black, Asian and Minority Ethnic’ women, older women, women with disabilities,

<sup>367</sup> CERD/C/GBR/CO/24-26, ‘UN CERD Committee Concluding Observations on the Combined Twenty-fourth to Twenty-sixth Reports of the UK of Great Britain and NI’, 23 August 2024, at para 14(a).



asylum-seeking and refugee women, and lesbian, bisexual, transgender women and intersex persons.<sup>368</sup>

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive:

explicitly incorporate in its national legislation protection from, in particular multiple and intersectional discrimination on the basis of gender, age, race, disability, migrant, refugee and/or other status, and provide appropriate compensation, and redress for victims, and sanctions proportional with the severity of the violation.<sup>369</sup>

Windsor Framework Article 2 provides specific protection against discrimination in the six Annex 1 Equality Directives.<sup>370</sup> Pursuant to Articles 2 and 13 of the Windsor Framework, NI equality law must 'keep pace' with any changes made by the EU to six Annex 1 Equality Directives which improve the minimum levels of protection available, after 1 January 2021, including the EU directives setting minimum standards for equality bodies<sup>371</sup> and monitoring relevant current and future CJEU case law.<sup>372</sup>

<sup>368</sup> 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 paras 15(a) and 15(c).

<sup>369</sup> CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 3 October 2017, at para 19.

<sup>370</sup> Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment Between Men and Women in the Access To and Supply of Goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010; Directive 79/7/EEC, 'EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978.

<sup>371</sup> Directive 2024/1499/EU, 'Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC', 7 May 2024; Directive 2024/1500/EU, 'Directive of the European Parliament and of the Council on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Amending Directives 2006/54/EC and 2010/41/EU', 14 May 2024.

<sup>372</sup> Article 13, Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020.

In May 2023, the EU Pay Transparency Directive came into force.<sup>373</sup> Article 3 of the EU Directive clarifies that discrimination includes “intersectional discrimination”.<sup>374</sup> The Commission, and the Equality Commission for NI, take the view that NI equality law must keep pace with these changes, further to the UK Government’s dynamic alignment obligation in the Windsor Framework.<sup>375</sup> The definition of discrimination in NI equality law must be amended to include intersectional discrimination in line with the transposition deadline of 7 June 2026.<sup>376</sup>

NI legislation does not provide for cases of intersectional multiple discrimination. At present in NI, each ground for discrimination must form its own case, meaning it must be considered and ruled on separately.<sup>377</sup> The Equality Act 2010 which applies in England, Scotland and Wales, contains a dual discrimination provision, which has not been brought into force.<sup>378</sup>

In 2015, a commitment was made to review the Race Relations (NI) Order 1997, including considering intersectional multiple discrimination.<sup>379</sup> In March 2023, the Executive Office published a consultation on the Review of the Race Relations (NI) Order.<sup>380</sup> The consultation document does not mention intersectional

<sup>373</sup> Directive 2023/970/EU, ‘EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value, Between Men and Women Through Pay Transparency and Enforcement Mechanisms’, 10 May 2023.

<sup>374</sup> The Commission considers that, pursuant to Articles 2 and 13 of the Windsor Framework, the relevant provisions of the EU Pay Transparency Directive amend and/or replace provisions in Directive 2006/54/EC, ‘EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)’, 5 July 2006 which is listed in Annex 1 of the Windsor Framework. For further discussion of the EU Pay Transparency Directive see Section on ‘Right to Work and to Just and Favourable Conditions to Work – Gender Pay Gap’ below.

<sup>375</sup> Equality Commission for NI and NI Human Rights Commission, ‘Briefing Paper: The EU Pay Transparency Directive: The UK Government’s Dynamic Alignment Obligations Relating to Windsor Framework Article 2’ (ECNI and NIHRC, 2024). See also the ‘Right to Work and to Just and Favourable Conditions of Work – Gender Pay Gap’ section of this Annual Statement.

<sup>376</sup> Equality Commission for NI and NI Human Rights Commission, ‘Briefing Paper: The EU Pay Transparency Directive: The UK Government’s Dynamic Alignment Obligations Relating to Windsor Framework Article 2’ (ECNI and NIHRC, 2024).

<sup>377</sup> Equality Commission for NI, ‘Recommendations for Law Reform: Strengthening Protection Against Racial Discrimination’ (ECNI, 2014), at 38.

<sup>378</sup> House of Lords Select Committee on the Equality Act 2010 and Disability, ‘The Equality Act 2010: The Impact on Disabled People (Report of Session 2015-16)’ (HoL, 2016).

<sup>379</sup> Eoin Mullan et al, ‘Racial Equality Legislation Review’ (TEO, 2018).

<sup>380</sup> The Executive Office, ‘Review of the Race Relations (NI) Order 1997: Consultation Document’ (TEO, 2023).

multiple discrimination. The Commission responded to the Executive Office's consultation, recommending that NI legislation should provide for intersectional multiple discrimination.<sup>381</sup>

In 2020, the Marrinan Review published its report on improving hate crime legislation in NI.<sup>382</sup> In considering intersectionality, the Independent Review Team recommended that any new hate crime legislation should provide appropriate recognition of the importance of intersectionality.<sup>383</sup> It also recommended that intersectionality is reflected when considering statutory aggravations to existing offences.<sup>384</sup>

The Department of Justice committed to considering how to implement the Marrinan Review's recommendations in a two-stage consultation process.<sup>385</sup> In 2022, stage one of the process was completed, which confirmed that the Department of Justice accepted that hate crime legislation should address intersectionality. The Commission supported this approach in its consultation response.<sup>386</sup> However, in 2024, the Department of Justice no longer intends to bring forward a stand-alone Hate Crime Bill for NI.<sup>387</sup> Instead, by 2027, the Department of Justice intends to bring forward provisions for the proposed statutory aggravation model in a Sentencing Bill and to include provisions that address the impact of hate crime on victims in a Victims Bill.<sup>388</sup> It is unclear if these proposals will address intersectional multiple discrimination.

In 2024, the NI Assembly Committee for the Executive Office conducted an inquiry on the differences in equality legislation

<sup>381</sup> NI Human Rights Commission, 'Response to the Executive Office's Consultation on the Review of the Race Relations (NI) Order 1997' (NIHRC, 2023).

<sup>382</sup> Desmond Marrinan, 'Hate Crime Legislation in NI: An Independent Review - Consultation Paper' (IHCRT, 2020).

<sup>383</sup> Desmond Marrinan, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020), at Recommendation 11.

<sup>384</sup> Ibid.

<sup>385</sup> Department of Justice, 'Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views' (DoJ, 2022).

<sup>386</sup> NI Human Rights Commission, 'Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI' (NIHRC, 2022), at para 6.10.

<sup>387</sup> Email correspondence from the Department of Justice to the NI Human Rights Commission, 10 July 2024.

<sup>388</sup> Ibid.

between NI, rest of the UK and Ireland.<sup>389</sup> The Commission provided written evidence emphasising that intersectional multiple discrimination is not provided for within NI.<sup>390</sup> The outcome of the inquiry is awaited.

## Recommendations

The Commission recommends that the Executive Office ensures intersectional multiple discrimination claims in NI are effectively addressed, including providing for intersectionality within equality legislation as required by human rights law and the EU Pay Transparency Directive pursuant to Articles 2 and 13 of the Windsor Framework.

## Persons with disabilities

In March 2024, the UN CRPD Committee found that the UK Government and NI Executive had taken “some measures... to address” the recommendations within the UN CRPD Committee’s inquiry into the impact of social security reform on the rights of persons with disabilities in the UK.<sup>391</sup> However, the UN CRPD Committee also found that there were “signs of regression” in this regard.<sup>392</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

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

<sup>389</sup> NI Assembly Committee for the Executive Office, ‘Gaps in Equality Legislation Inquiry - Call for Evidence’. Available at: [Gaps in Equality Legislation Inquiry - Call for Evidence - Northern Ireland Assembly - Citizen Space \(nia-yourassembly.org.uk\)](https://nia-yourassembly.org.uk)

<sup>390</sup> NI Human Rights Commission, ‘Submission to the Committee for the Executive Office Inquiry into Gaps in Equality Legislation’ (NIHRC, 2024).

<sup>391</sup> CRPD/C/GBR/FUIR/1, ‘UN CRPD Committee Report on Follow-up to the Inquiry Concerning the UK of Great Britain and NI’, 22 March 2024, at para 88.

<sup>392</sup> Ibid.

- b) reduce waiting times and strengthen the system for early detection and intervention, including for children with autism and development disorders, in order to facilitate access for children with all types of disabilities to education, health care, social protection and support services;
- c) strengthen support for the social integration and individual development of children with disabilities, including by providing capacity-building to professionals working with and for children on the rights and specific needs for children with disabilities, and ensuring their access to personal assistance, rehabilitation and assistive devices; [and]
- d) ensure the right of children with disabilities to be heard in all decisions that affect them.<sup>393</sup>

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive “collect information and adopt a strategic and measurable plan of action for improving the living conditions of all persons with disabilities, including in close cooperation with authorities in NI”.<sup>394</sup> The UN CRPD Committee also recommended that the UK Government and NI Executive “recognise the right to living independently and being included in the community as a subjective right, recognise the enforceability of all its elements, and adopt rights-based policies, regulations and guidelines to ensure implementation”.<sup>395</sup>

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU, including the right to equality of opportunity in all social and economic activity, regardless of disability. The UK Government has recognised that EU law which protects

<sup>393</sup> CRC/C/GBR/CO/6-7, ‘UN CRPD Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 40(a)-40(d).

<sup>394</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017.

<sup>395</sup> Ibid.

the rights of disabled people also falls within scope of the non-diminution guarantee.<sup>396</sup>

Articles 2 and 13 of the Windsor Framework require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the EU Employment Equality (Framework) Directive which protects against discrimination on the grounds of disability in employment and vocational training.<sup>397</sup> NI equality law must keep pace with any changes made by the EU to these rights to improve the minimum levels of protection available, on or after 1 January 2021, including the EU directive setting minimum standards for equality bodies.<sup>398</sup> The obligation also requires compliance with relevant current and future CJEU case law.<sup>399</sup>

In 2023, the Commission published research<sup>400</sup> which highlighted developments in CJEU caselaw of relevance to the EU Employment Equality (Framework) Directive, including the *Szpital Kliniczny* case on the concept of disability<sup>401</sup> and that there must be close scrutiny of justifications for the exclusion of persons with a disability from certain professional roles.<sup>402</sup>

<sup>396</sup> NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" In NI: What Does It Mean and How Will It Be Implemented?' (NIO, 2020), at para 13.

<sup>397</sup> Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000.

<sup>398</sup> Directive 2024/1499, 'EU Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC', 7 May 2024.

<sup>399</sup> Article 13, Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020.

<sup>400</sup> Sarah Craig et al, 'EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 69.

<sup>401</sup> *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, Case C-16/19, 27 January 2021. The CJEU found that pursuant to Article 1 of the EU Employment Equality (Framework) Directive the definition of 'disability discrimination' should include discrimination between persons with disabilities. It also ruled under Article 2 of the EU Directive that any form of discrimination which is inextricably linked to a protected characteristic amounts to direct discrimination, rather than indirect discrimination.

<sup>402</sup> *TC and UB v Komisja Za Zashtita ot Diskriminatsia and VA* ('Jurors'), Case C-824/19, 21 October 2021; *XX v Tartu Vangla*, Case C-795/19, 15 July 2021.



In 2023, the Court of Appeal in NI considered Windsor Framework Article 2 and confirmed that, since UN CRPD was a part of the EU legal order prior to UK withdrawal, the NI Assembly was prohibited from legislating contrary to the UN CRPD as EU law where matters fell within the competence of the EU.<sup>403</sup> The UN CRPD is relevant to the interpretation of the Annex 1 Equality Directives and underpinning EU obligations for the rights, safeguards and equality of opportunity listed in the relevant part of the Belfast (Good) Friday Agreement 1998.<sup>404</sup>

## Disability Strategy

In 2020, the NI Executive committed to publishing a Disability Strategy. The Department for Communities appointed an Expert Advisory Panel and created a Co-Design Group for the Disability Strategy made up of key stakeholders, including the Commission. A cross-departmental working group was also created. In 2021, the Expert Advisory Panel for the Disability Strategy published its report, which called for a focus on the general principles of the UN CRPD as a guide to what should be included in a Disability Strategy.<sup>405</sup> The Commission identified, among other human rights considerations, the need to embed consideration of Windsor Framework Article 2 into the Disability Strategy.

In October 2024, the Minister for Communities, Gordon Lyons MLA, confirmed that the Department for Communities was moving “forward on development of the Social Inclusion Strategies on a phased basis”.<sup>406</sup> The Disability Strategy was identified as a priority, with “work commencing immediately”.<sup>407</sup> However, “final decisions on the timing of the implementation of the strategy will be subject to [NI] Executive agreement”.<sup>408</sup>

<sup>403</sup> *Society for the Protection of the Unborn Child Pro-Life Ltd v Secretary of State for NI* [2023] NICA 35, at paras 57 and 68.

<sup>404</sup> Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights.

<sup>405</sup> Disability Strategy Expert Advisory Panel, ‘Report and Recommendations’ (DfC, 2021), at 4.

<sup>406</sup> Letter from Minister for Communities, Gordon Lyons MLA, to Gender Equality Co-design Group Members, 11 October 2024.

<sup>407</sup> *Ibid.*

<sup>408</sup> NI Assembly Hansard, ‘UN Convention on the Rights of People with Disabilities – Gordon Lyons’, 20 May 2024.



## Independent living fund

In 2015, the UK-wide Independent Living Fund was closed and future responsibilities were transferred to the individual devolved administrations.<sup>409</sup> The Independent Living Fund Scotland was established by the Scottish Government to administer the fund in Scotland. An agreement was reached between the Department of Health and the Scottish Government for Independent Living Fund Scotland to also administer the fund on behalf of NI recipients. In 2022, the Expert Advisory Panel for the Disability Strategy recommended that the Department for Communities adopt any final recommendations from the Independent Living Fund Working Group.<sup>410</sup> This included agreed options and terms for reopening the Independent Living Fund to new applicants and, taking account of recipients' experiences, improvements to operating the Independent Living Fund. In May 2024, the then Minister of Health, Robin Swann MP, indicated that he was unable to commit to reopening the Independent Living Fund in NI due to budget constraints.<sup>411</sup>

## Central Regional Disability Forum

In 2016, the Executive Office made a commitment to set up a Central Regional Disability Forum.<sup>412</sup> In 2022, the Expert Advisory Panel for the Disability Strategy recommended that the Department for Communities implements this commitment.<sup>413</sup> In 2024, this remained unfulfilled.

## Employment

NI has the lowest employment rate for d/Deaf and disabled people and the largest gap between the employment rates of d/Deaf and disabled and non-disabled people within the UK.<sup>414</sup> In 2022, the Expert Advisory Panel for the Disability Strategy highlighted that the employment rate of working aged d/Deaf

<sup>409</sup> Independent Living Fund, 'Press Release: Decision on the Future of the Independent Living Fund', 6 March 2014.

<sup>410</sup> Disability Strategy Expert Advisory Panel, 'Report and Recommendations' (DfC, 2021).

<sup>411</sup> NI Assembly Hansard, 'Budget 2024-2025 - Robin Swann MLA', 2 May 2024.

<sup>412</sup> NI Executive, 'Draft Programme for Government Framework 2016-2021' (NIE, 2016).

<sup>413</sup> Disability Strategy Expert Advisory Panel, 'Report and Recommendations' (DfC, 2021), at 18.

<sup>414</sup> University of Ulster Economic Policy Centre, 'Disability and the Labour Market' (UUEPC, 2022).

and disabled people in NI is significantly lower than in the rest of the UK and the EU.<sup>415</sup> The Expert Advisory Panel recommended that the Department for Communities addressed this issue by developing a new Disability Employment Strategy and ensuring funding for the Supported Employment model for d/Deaf and disabled people in NI.<sup>416</sup> In 2024, disability and employment was confirmed as a priority for the Minister for Communities, Gordon Lyons MLA, with work ongoing for developing a new Disability Employment Strategy.<sup>417</sup>

## Autism Strategy

The Autism (Amendment) Act NI 2022 provides for a regional autism strategy, which includes training for staff, an autism information service, an early intervention service, adult support services, measurable targets, and an independent autism reviewer to oversee implementation. In 2023, the Department of Health published an autism strategy and associated delivery plan.<sup>418</sup>

In 2024, the actions set out in the autism strategy and delivery plan were being actively implemented.<sup>419</sup> In August 2024, the first independent Autism Reviewer for NI, Ema Cubitt, was appointed.<sup>420</sup>

## Recommendations

The Commission recommends that the UK Government and NI Executive implement the recommendations from the UN CRPD Committee's inquiry follow-up report to ensure that persons with disabilities in NI have an adequate standard of living and are able to live independently and be included in the community.

<sup>415</sup> Disability Strategy Expert Advisory Panel, 'Report and Recommendations' (DfC, 2021), at 82.

<sup>416</sup> Ibid, at 18.

<sup>417</sup> Email correspondence from Department of Communities to NI Human Rights Commission, 25 July 2024.

<sup>418</sup> Department of Health, 'Autism Strategy 2023-2028' (DoH, 2023); Department of Health, 'Autism Strategy Delivery plan 2023-2028' (DoH, 2023).

<sup>419</sup> Email correspondence from the Autism Strategy Delivery Team, Department of Health to the NI Human Rights Commission, 26 March 2024.

<sup>420</sup> Department of Health, 'Press Release: Independent Autism Reviewer appointed', 21 August 2024.

The Commission recommends that the Department for Communities promptly publishes and effectively implements a robust and adequately resourced Disability Strategy, which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. This strategy should be accompanied by a measurable plan of action and effective monitoring mechanisms.

The Commission recommends the Department for Communities promptly establishes a Central Regional Disability Forum, that is sufficiently resourced on a long-term basis and consists of persons with disabilities and their representative organisations.

The Commission recommends that the Department for Health reopens the Independent Living Fund for new claimants in NI and ensures the fund is resourced to meet demand on a long-term basis.

The Commission recommends that the Department for the Economy ensures provision of long-term funding arrangements for new and existing disability employment projects.

The Commission advises the NI Executive, and relevant NI departments, that the EU Framework Equality Directive and domestic law which gives effect to this Directive, should be interpreted in line with the CJEU decision in the *Szpital Kliniczny* case relating to disability discrimination.

## **Racial equality**

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive “ensure the delivery of a renewed Racial Equality Strategy in NI”.<sup>421</sup>

<sup>421</sup> 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, at para 18(c).

The UN CERD Committee also recommended that the UK Government and NI Executive “ensure meaningful consultations and engagement with civil society organisations in the development, implementation, monitoring and evaluation of the progress and final outcome of policy measures, plans and strategies”.<sup>422</sup>

The UN CERD Committee also recommended that the UK Government and NI Executive:

adopt legislative and other measures that explicitly prohibit racial profiling and take appropriate steps to end the practice of racial profiling by police officers, immigration officers and other public officials;

establish an independent complaint mechanism to carry out investigations into all allegations of racial profiling... facilitate the reporting by victims, and ensure that perpetrators are prosecuted and punished with appropriate penalties, and that victims have access to effective remedies and adequate reparation; [and]

create or strengthen effective mechanisms to regularly collect and qualitatively assess information on perpetrators and the victims, for all incidents, complaints and investigations of racial profiling... by law enforcement and other public officials.<sup>423</sup>

The UN CERD Committee further recommended that the UK Government and NI Executive “take effective steps to increase the representation of ethnic minorities in the police and military institutions, including at senior decision-making positions” and “provide adequate and continuous human rights training to law enforcement officials”.<sup>424</sup>

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive:

<sup>422</sup> Ibid, at para 18(d).

<sup>423</sup> Ibid, at paras 32(c), 32(e) and 32(f).

<sup>424</sup> Ibid, at paras 32(d) and 32(g).

redouble its efforts to prevent, combat and eradicate all forms of racial and ethnic discrimination, particularly systemic discrimination against Gypsies, Roma and Travellers and people of African descent in the criminal justice system, in the use of stop and search powers and in public services, including by monitoring and assessing legislative and policy measures on racism and non-discrimination, and by ensuring the allocation of sufficient resources for the full implementation of anti-discrimination plans and policies.<sup>425</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “address the overrepresentation of children belonging to minority groups in detention and develop measures, in consultation with affected children and their families, to prevent racial profiling by law enforcement authorities”.<sup>426</sup>

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive:

- i) review laws and policies aimed at countering terrorism and violent crime to ensure that these do not discriminate directly or indirectly against groups of concern to the CoE European Commission against Racism and Intolerance, in particular Muslims and Black persons/people of African descent, and take any necessary action at legislative and policy level as a result; [and]
- ii) enhance police accountability in cases of racist misconduct and racial profiling, including by appropriately funding actions such as research by the Independent Office for Police Conduct on the service user experience of Black and other ethnic minority complainants when accessing the police complaints mechanism.<sup>427</sup>

<sup>425</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 15(a).

<sup>426</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 22 June 2023, at para 54(g).

<sup>427</sup> CoE European Commission Against Racism and Intolerance, ‘Report on the UK (Sixth Monitoring Cycle)’ (ECRI, 2024), at para 113.

The CoE European Commission against Racism and Intolerance also recommended that the UK Government and NI Executive:

take further action, including through the development of guidance, aimed at facilitating the recruitment, retention and career development of members of Black communities and other groups of concern to the CoE European Commission against Racism and Intolerance in policy and prosecution services as well as, through appropriate channels, in the judiciary.<sup>428</sup>

In 2022, the CoE Advisory Committee to the Framework Convention for Protection of National Minorities recommended that “the NI authorities to complete the process allowing for the collection of disaggregated data on the ground of ‘race’, including for Roma and Irish Travellers, in order to design and implement targeted policies promoting their full and effective equality”.<sup>429</sup>

In 2018, the then UN Special Rapporteur on contemporary forms of racism, E Tendayi Achiume, visited NI and noted inconsistency in the data collected by government departments, and the limitations in its scope.<sup>430</sup> The then UN Special Rapporteur called on the UK Government and NI to adopt comprehensive legislation prohibiting racial discrimination in NI.<sup>431</sup>

Articles 2 and 13 of the Windsor Framework require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the EU Racial Equality Directive, which protects against discrimination on the grounds of race and ethnicity across a range of areas, including

<sup>428</sup> Ibid, at para 115.

<sup>429</sup> ACFC/OP/V(2022)003, ‘Advisory Committee on the Framework Convention for the Protection of National Minorities Fifth Opinion on the UK’, 8 December 2022, at para 65.

<sup>430</sup> Office of the High Commissioner for Human Rights, ‘Press Release: UN rights expert hails UK for anti-racism action but raises serious concerns over Immigration Policy, Prevent programme and Brexit’, 11 May 2018.

<sup>431</sup> A/HRC/41/54/Add.2, ‘Report of the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Visit to the UK of Great Britain and NI’, 27 May 2019, at para 74(f).

employment and vocational training, access to goods and services, education and social security.<sup>432</sup> This Directive was amended in 2024 by the EU directive on strengthening the role of equality bodies, requiring domestic legislation to keep pace.<sup>433</sup> The obligation also requires compliance with current and future CJEU case-law.<sup>434</sup>

In 2022, the EU Commission consulted on the EU Racial Equality Directive to assist in identifying potential gaps and suitable measures to address them.<sup>435</sup> The Commission responded to this consultation in 2022 highlighting the need to identify discrimination arising from algorithms and data-driven technology and address intersectional and multiple discrimination.<sup>436</sup> In 2024, the EU Commission has not published its next steps on review and reform of the EU Racial Equality Directive.

<sup>432</sup> Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment Between Men and Women in the Access To and Supply of Goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.; Directive 79/7/EEC, 'EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978.

<sup>433</sup> Directive 2024/1499, 'EU Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC, 7 May 2024. This is one of two EU directives aimed at strengthening equality bodies Council of EU, 'Press Release: Strengthening the role of equality bodies across the EU: Council adopts two directives', 7 May 2024. More detail on the Commission's advice and recommendations is available in NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024' (NIHRC and ECNI, 2024), at paras 3.59-3.69.

<sup>434</sup> More detail on the Commission's advice on Windsor Framework Article 2 can be found in NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024' (NIHRC and ECNI, 2024). See also the 'Equality and Non-Discrimination – Consolidating, Strengthening and Clarifying Equality Protections' section of this Annual Statement.

<sup>435</sup> EU Commission, 'Addressing Possible Gaps in the Racial Equality Directive – Public Consultation' (EU, 2022).

<sup>436</sup> NI Human Rights Commission, 'Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)' (NIHRC, 2022).



## Review of the Race Relations (NI) Order 1997

In 2015, the Executive Office committed to reviewing the Race Relations (NI) Order 1997.<sup>437</sup> In 2023, the Executive Office published a consultation on its review of the Race Relations (NI) Order 1997, with a view to bringing forward stronger legislation to protect minority ethnic communities from racism and discrimination.<sup>438</sup> The consultation included several proposals, including provision of goods and services, education and employment.<sup>439</sup> It also included a proposal to introduce a provision to enact Ethnic Equality Monitoring through secondary legislation, after it pushes forward with Public Sector Ethnic Equality Monitoring.<sup>440</sup> The Commission responded to the consultation, noting the importance of a human rights-based approach and compliance with Windsor Framework Article 2, including the obligation to keep pace with any changes to the EU Race Equality Directive.<sup>441</sup>

In 2024, it is planned that legislation relating to the review of the Race Relations (NI) Order 1997 will be considered during the NI Assembly's 2025/2026 session.<sup>442</sup>

## Racial Equality Strategy

In 2015, the Executive Office committed to an independent review of the progress of implementation of the Racial Equality Strategy 2015-2025.<sup>443</sup> In 2023, the Executive Office commissioned this independent review. The Commission met with the Independent Review team and raised several issues including ethnic equality monitoring, multiple intersectional discrimination, racial profiling and the UK Government and NI

<sup>437</sup> The Executive Office, 'Racial Equality Strategy 2015-2025' (TEO, 2015).

<sup>438</sup> The Executive Office, 'Review of the Race Relations (NI) Order 1997: Consultation Document' (TEO, 2023).

<sup>439</sup> Ibid.

<sup>440</sup> The Executive Office, 'Review of the Race Relations (NI) Order 1997: Consultation Document' (TEO, 2023); Directive 2000/43/EC, 'Council of the EU Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

<sup>441</sup> NI Human Rights Commission, 'Response to The Executive Office's Consultation on the Review of the Race Relations (NI) Order 1997' (NIHRC, 2023).

<sup>442</sup> Email correspondence from the Executive Office to the NI Human Rights Commission, 23 July 2024.

<sup>443</sup> The Executive Office, 'Racial Equality'. Available at: [Racial Equality | The Executive Office \(executiveoffice-ni.gov.uk\)](https://www.executiveoffice-ni.gov.uk/racial-equality)

Executive’s commitment under Windsor Framework Article 2, particularly in relation to the obligation to ‘keep pace’ with the EU Racial Equality Directive.<sup>444</sup> In 2024, the outcome of the independent review was under consideration by the NI Executive.<sup>445</sup>

### **Ethnic monitoring**

In 2015, the Executive Office acknowledged that ethnic monitoring is an important tool in tackling inequality and racism and committed to “examine where ethnic monitoring should be introduced and consult on proposals for implementation”.<sup>446</sup>

In 2023, the Executive Office’s review of the Race Relations (NI) Order 1997 proposed to introduce a provision to enact Ethnic Equality Monitoring through secondary legislation after it pushes forward with Public Sector Ethnic Equality Monitoring.<sup>447</sup> The Commission welcomed the proposal to introduce ethnic monitoring, recommending that it was introduced expeditiously.<sup>448</sup> In 2024, the Executive Office anticipated that new legislation on the Race Relations Order would be the legislative vehicle for ethnic equality monitoring, which is expected to be introduced to the NI Assembly in 2025/2026.<sup>449</sup>

### **Racial profiling**

The Nationality and Borders Act 2022 introduced Electronic Travel Authorisations, which will be required for all non-British citizens who require leave to enter the UK.<sup>450</sup> Irish citizens are

<sup>444</sup> Meeting between NI Human Rights Commission and the Independent Review of Progress on the Implementation of the Racial Equality Strategy 2015-2025, 3 November 2023; Directive 2000/43/EC, ‘Council of the EU Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000.

<sup>445</sup> Email correspondence from the Executive Office to the NI Human Rights Commission, 23 July 2024.

<sup>446</sup> The Executive Office, ‘Racial Equality Strategy 2015-2025’ (TEO, 2015), at 5.

<sup>447</sup> The Executive Office, ‘Review of the Race Relations (NI) Order 1997: Consultation Document’ (TEO, 2023), at 36.

<sup>448</sup> NI Human Rights Commission, ‘Response to The Executive Office’s Consultation on the Review of the Race Relations (NI) Order 1997’ (NIHRC, 2023), at 33.

<sup>449</sup> NI Assembly Hansard, ‘Written Question: Ethnic Equality Monitoring – Paula Bradshaw MLA – AQW 8742/22-27’, 4 April 2024; Email correspondence from the Executive Office to the NI Human Rights Commission, 23 July 2024.

<sup>450</sup> NI Human Rights Commission and Equality Commission for NI, ‘Joint Submission to House of Lords on the Nationality and Borders Bill’ (NIHRC and ECNI, 2022), at 11-12.

excluded as individuals not requiring leave to enter the UK.<sup>451</sup> The Commission expressed concern about associated checks, and the risk of increased racial profiling.<sup>452</sup> In 2023, the previous UK Government announced that individuals who are lawfully resident in Ireland and from a nationality that does not usually require a visa to visit the UK, would be exempt the requirement to obtain an Electronic Travel Authorisation to enter the UK, which partially addresses the Commission's concerns. However, such individuals not resident in Ireland still need to apply for an Electronic Travel Authorisation when travelling from Ireland to NI.<sup>453</sup>

In 2022, concerns were raised about racial profiling while travelling within the UK, for example, between NI and Scotland.<sup>454</sup> In 2024, further concerns that immigration checks based on racial profiling were continuing at ferry ports within NI were raised with the Commission.<sup>455</sup>

In 2024, up to 300 immigration checks were taking place per month of people travelling from NI to Ireland.<sup>456</sup> Civil society groups have raised concerns that Gardaí have engaged in racial profiling in identifying individuals for checks.<sup>457</sup> The Garda Síochána responded that it undertakes a “human rights-based approach to checks”.<sup>458</sup> There were also reports of Gardaí conducting immigration checks based on racial profiling at Dublin airport for public buses travelling to NI.<sup>459</sup> These matters were raised in the context of the Joint Committee of the Commission and the Irish Human Rights and Equality Commission.<sup>460</sup>

<sup>451</sup> Section 3ZA, Immigration Act 1971.

<sup>452</sup> See ‘Constitutional Protections - Common Travel Area’ above for further detail on Electronic Travel Authorisations.

<sup>453</sup> Home Office, ‘Statement of Changes to the Immigration Rules - HC 1160’, 9 March 2023.

<sup>454</sup> Luke Butterly, ‘Ethnic minorities fear being racially profiled during immigration checks’, *The Detail*, 24 October 2022.

<sup>455</sup> Meeting between Committee on the Administration of Justice NI and NI Human Rights Commission, 8 August 2024.

<sup>456</sup> David Thompson, ‘Allegations that NI travellers are being racially profiled during Irish immigration checks on the border’, *Newsletter*, 13 June 2024.

<sup>457</sup> *Ibid.*

<sup>458</sup> *Ibid.*

<sup>459</sup> Meeting between Committee on the Administration of Justice NI and NI Human Rights Commission, 8 August 2024.

<sup>460</sup> Meeting of the Joint Committee of the NI Human Rights Commission and the Irish Human Rights and Equality Commission, 6 November 2024.

In 2024, the Police Service of NI does not undertake immigration checks.<sup>461</sup> However, there were reports of Home Office Border Force undertaking immigration checks through racial profiling at bus stations in NI.<sup>462</sup>

## Recommendations

The Commission recommends that the Executive Office takes effective steps to ensure its data collection on racial equality is consistent, extensive and disaggregated. This includes working with the NI Executive and NI Assembly to promptly amend the Race Relations (NI) Order 1997 so that it imposes a duty on specified public authorities to collect data on racial equality and set racial equality objectives.

The Commission recommends that the Executive Office, monitor any proposed changes to the EU Racial Equality Directive, as well as relevant CJEU case law, in line with the ‘keeping pace’ obligations under Windsor Framework Article 2.

The Commission recommends that the Home Office takes effective steps to enforce the prohibition on racial profiling and ensure it does not occur in immigration checks, including at entry to NI at ports and airports and in the context of cross-border travel. This should include effective training and clear guidance as well as management oversight and disciplinary measures. It should also include the collection and monitoring of appropriate data, including disaggregated ethnic data, of people examined by enforcement officers.

<sup>461</sup> Meeting between Committee on the Administration of Justice NI and NI Human Rights Commission, 8 August 2024.

<sup>462</sup> Letter from NI Human Rights Commission and Equality Commission for NI to Home Office, 9 February 2022; Meeting between Committee on the Administration of Justice NI and NI Human Rights Commission, 8 August 2024.

## Refugee Integration Strategy

In May 2024, the UN Human Rights Committee recommended that the UK Government:

provide access to status determination mechanisms for asylum-seekers, refugees and stateless persons to help ensure that they have their claims processed expeditiously and that those granted protection are able to integrate effectively and are protected from discrimination, regardless of their national origin or status as refugees or stateless persons, in line with articles 2, 13 and 26 of the [UN ICCPR].<sup>463</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “strengthen measures to ensure that all asylum-seeking, refugee and migrant children have equal and prompt access to education, health services, housing, psychosocial support, and social protection including benefit entitlements”.<sup>464</sup>

In 2016, the CoE European Commission against Racial Intolerance recommended that a Refugee Integration Strategy was developed in NI “to assist newly-arrived refugees, in particular as concerns housing, employment, access to welfare and learning English, and that refugee integration is systematically evaluated”.<sup>465</sup>

In 2023, the Commission published research which examined the extent to which EU minimum standards for refugees and people seeking asylum fall within the scope of Windsor Framework Article 2 and illustrated the factors that must be taken into consideration when determining whether there has been a diminution of rights contrary to Windsor Framework Article 2.<sup>466</sup>

<sup>463</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 41.

<sup>464</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 50(d).

<sup>465</sup> ECRI(2016)38, ‘European Commission against Racial Intolerance Report on the UK (Fifth Monitoring Cycle)’, 4 October 2016, at para 116.

<sup>466</sup> Alison Harvey, ‘Article 2 of the Windsor Framework and the rights of refugees and persons seeking asylum’ (NIHRC, 2023); NI Human Rights Commission, ‘Windsor Framework Article 2 and the Rights of Refugees and Asylum Seekers – Briefing and Recommendations’ (NIHRC, 2023).

The UK Government recognises that Windsor Framework Article 2 applies to “everyone who is subject to NI law”.<sup>467</sup> In May 2024, the High Court of Justice in NI confirmed that “[w]hilst it is true to say that the [Belfast (Good Friday) Agreement 1998] did not expressly reference immigration or asylum, there is no basis to exclude such individuals from the wide compass of ‘everyone in the community’”.<sup>468</sup> The High Court of Justice in NI further found that the rights of people seeking asylum fall within the definition of ‘civil rights’ in the 1998 Agreement.<sup>469</sup> The High Court of Justice in NI confirmed an earlier decision<sup>470</sup> and found several EU measures were relevant to refugees and people seeking asylum,<sup>471</sup> including the EU Reception Directive which sets minimum standards for education, employment, material reception conditions and health care.<sup>472</sup> The High Court of Justice in NI also confirmed that the EU Charter of Fundamental Rights was within the ambit of Windsor Framework Article 2.<sup>473</sup> The EU Charter on Fundamental Rights also continues to apply in the application and interpretation of those provisions of EU law which are relevant to the application of Windsor Framework Article 2.<sup>474</sup> Article 18 of the EU Charter protects the right to asylum. These EU laws bound the UK before Brexit, and continue to set minimum standards for refugees and people seeking asylum in NI.

<sup>467</sup> NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Ni: What Does it Mean and How will it be Implemented?’ (NIO, 2020), at para 8.

<sup>468</sup> *In the Matter of an Application by the NI Human Rights Commission for Judicial Review* [2024] NIKB 35, at para 69.

<sup>469</sup> *Ibid*, at para 175.

<sup>470</sup> *In the Matter of an Application by Aman Angsom for Judicial Review* [2023] NIKB 102, at para 94.

<sup>471</sup> Directive 2005/85/EC, ‘EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005; Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004; Regulation 2013/604/EU, ‘EU Parliament and Council Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person’, 26 June 2013.

<sup>472</sup> Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’ 27 January 2003.

<sup>473</sup> *In the Matter of an Application by Aman Angsom for Judicial Review* [2023] NIKB 102, at para 94.

<sup>474</sup> Tobias Lock et al, ‘The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework’ (NIHRC, 2024); *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 126; See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92.



Despite a commitment within the Racial Equality Strategy 2015-2025,<sup>475</sup> NI remains the only part of the UK without a Refugee Integration Strategy. In 2021, the Executive Office consulted on a draft Refugee Integration Strategy,<sup>476</sup> which sought to address the pressure “exerted on the voluntary sector to backfill, what should be, essential services”.<sup>477</sup> The Commission responded to the consultation raising several concerns, particularly around the language used throughout the proposed draft strategy.<sup>478</sup> The Commission also highlighted relevant EU minimum standards within scope of Windsor Framework Article 2 of relevance to people seeking asylum and refugees, including the EU Reception Directive.<sup>479</sup>

In 2022, the House of Commons NI Affairs Committee highlighted particular issues facing refugees in NI.<sup>480</sup> This included housing provision, access to healthcare services and the Belfast-centred provision of services.<sup>481</sup> The NI Affairs Committee recommended that the final Refugee Integration Strategy addressed the issues cited and was delivered at pace.<sup>482</sup> Consequently, the Executive Office set up a Refugee and Asylum Support and Integration Division which is responsible for coordinating appropriate support and services to assist with resettlement and integration within communities.<sup>483</sup> The division works across departments and with a number of delivery partners to assist the payment of benefits, identification of appropriate housing, education, health and safeguarding interventions and wider support arrangements.<sup>484</sup>

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<sup>475</sup> The Executive Office, ‘Racial Equality Strategy 2015-2025’ (TEO, 2015).

<sup>476</sup> The Executive Office, ‘Refugee Integration Strategy Consultation Document’ (TEO, 2021).

<sup>477</sup> Fiona Murphy and Ulrike M Vieten, ‘Asylum Seekers and Refugees’ Experiences of Life in NI’ (QUB, 2017).

<sup>478</sup> NI Human Rights Commission, ‘Response to Public Consultation on Draft Refugee Integration Strategy’ (NIHRC, 2022).

<sup>479</sup> Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’ 27 January 2003.

<sup>480</sup> House of Commons NI Affairs Committee, ‘The Experiences of Minority Ethnic and Migrant People in NI’ (HoC, 2022).

<sup>481</sup> Ibid.

<sup>482</sup> Ibid, at para 28.

<sup>483</sup> The Executive Office, ‘Racial Equality Subgroup: Minutes of the Meeting on 29th November 2022’ (TEO, 2022).

<sup>484</sup> Ibid.



In 2024, the Refugee and Asylum Support and Integration Division continued to operate “under the auspices of the draft Refugee Integration Strategy”.<sup>485</sup>

In 2023, the Refugee and Asylum Forum convened by the Law Centre NI highlighted that the lack of a refugee integration strategy was hindering all aspects of refugee integration in NI.<sup>486</sup> The Refugee and Asylum Forum called on the NI Executive to improve transparency, including through the provision of data, budgets for asylum dispersal and refugee integration, and the workings of the new division.<sup>487</sup>

In 2024, agreement of the NI Executive was required for the draft Refugee Integration Strategy to be finalised.<sup>488</sup> As part of this process, the First Minister, Michelle O’Neill MLA, and Deputy First Minister, Emma Little-Pengelly MLA, were considering a revised draft Refugee Integration Strategy and associated thematic delivery plan.<sup>489</sup>

## Recommendations

The Commission recommends that the Executive Office promptly introduces a Refugee Integration Strategy that reflects the outcomes of the consultation process and the NI Affairs Committee’s inquiry, and takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. The final strategy should be accompanied by a comprehensive action plan and adequate, long-term resources.

<sup>485</sup> The Executive Office, ‘Refugee and Asylum Support and Integration Division’. Available at: [Refugee and Asylum Support and Integration Division | The Executive Office \(executiveoffice-ni.gov.uk\)](https://www.executiveoffice-ni.gov.uk)

<sup>486</sup> Law Centre NI, ‘Refugee and Asylum Forum: Priorities for Action 2023’ (LCNI, 2023).

<sup>487</sup> Ibid.

<sup>488</sup> Email Correspondence from the Executive Office to the NI Human Rights Commission, 18 July 2024.

<sup>489</sup> Ibid.

The Commission recommends that the Executive Office promptly develops, implements, monitors, and adequately funds public education and community integration initiatives across NI, which raise awareness about the issues facing refugees and people seeking asylum in order to tackle fear, stigma, and discrimination. This should be included as a commitment within the Refugee Integration Strategy.

## Sectarianism

In 2017, the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities recommended that:

the NI Executive should endeavour to implement the ‘good relations’ duty as provided under the NI Act 1998 in a manner that does not run counter to the equality duty and that does not prevent access to rights of persons belonging to all national and ethnic minorities.<sup>490</sup>

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity provisions set out in the relevant chapter of the Belfast (Good Friday) Agreement 1998, including the “the right to freedom from sectarian harassment”. In September 2024, the Court of Appeal in NI confirmed that the rights of victims of crime are given effect by civil rights and fall within the scope of the relevant chapter in the Belfast (Good Friday) Agreement and that specific rights in the EU Victims’ Directive<sup>491</sup> were encompassed in the notion of victims’ rights in that chapter.<sup>492</sup> The Court of Appeal in NI also confirmed that the EU Victims’ Directive is to be “interpreted in accordance with the EU Charter

<sup>490</sup> ACFC/OP/IV(2016)005, ‘CoE Advisory Committee on the Framework Convention for the Protection of National Minorities Fourth Opinion on the UK’, 27 February 2017, at 2.

<sup>491</sup> Directive 2012/29/EU, ‘EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>492</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117.

of Fundamental Rights and general principles of EU law”.<sup>493</sup> The EU Victims’ Directive recognises that victims of hate crime are at a high risk of secondary and repeat victimisation and that, as such, there should be a strong presumption that those victims will benefit from special protection measures during criminal proceedings.<sup>494</sup>

In 2022, in response to a public consultation on the EU Racial Equality Directive, the Commission highlighted the complex interplay between ethnicity, nationality and sectarianism in NI, recommending that sectarianism is recognised as a type of racial discrimination within the EU Directive.<sup>495</sup> To the extent that the EU makes amendments to this Directive to enhance protections, NI equality law must be amended to keep pace with this change.

In 2023/2024, 1,091 sectarian incidents were recorded, a decrease from 1,238 in 2022/2023.<sup>496</sup> In 2023/2024, 730 sectarian crimes were recorded, a decrease from 921 in 2022/2023.<sup>497</sup>

In 2021, following a recommendation from Judge Marrinan,<sup>498</sup> the Department of Justice agreed in principle that there should be a definition of sectarian offences provided in legislation and acknowledged the merit in considering the Scots law definition carefully in relation to its implementation in NI.<sup>499</sup> The Department of Justice also agreed in principle to include a new statutory aggravation for sectarian prejudice (subject to an agreed definition of sectarianism), which could be monitored by

<sup>493</sup> Ibid, at para 126. See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock et al, ‘The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework’ (NIHRC, 2024).

<sup>494</sup> Article 8 and Recitals 56-58, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>495</sup> NI Human Rights Commission, ‘Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)’ (NIHRC, 2022).

<sup>496</sup> Police Service of NI, ‘Incidents and Crimes with a Hate Motivation Recorded by the Police in NI: Update to 31st March 2024’ (PSNI, 2024), at 5.

<sup>497</sup> Ibid.

<sup>498</sup> Desmond Marrinan, ‘Hate Crime Legislation in NI: Independent Review’ (DoJ, 2020), at Recommendation 12.

<sup>499</sup> Department of Justice, ‘Review of Hate Crime Legislation in NI - Departmental Response’ (DoJ, 2021), at 6-7.

the Victims of Crime Commissioner.<sup>500</sup> By 2027, the Department of Justice intends to bring forward provisions for the proposed statutory aggravation model in a Sentencing Bill.<sup>501</sup> In 2024, it was unclear if this would include an agreed definition of sectarianism and reference to sectarian prejudice.

## Recommendations

The Commission recommends that the Department of Justice and Executive Office promptly and effectively implement the recommendations of the Marrinan Review, including introducing legislation that provides statutory definitions for ‘sectarianism’ and ‘good relations’.

The Commission recommends that the Department of Justice ensures compliance with Windsor Framework Article 2 in the context of the EU Victims’ Directive, when developing hate crime legislation, including sectarian hate crime.

The Commission recommends that the Department of Justice monitors any proposed changes to the EU Racial Equality Directive as well as relevant CJEU case law, in line with the ‘keeping pace’ obligations under Windsor Framework Article 2.

## Sport and human rights

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive “take effective measures to prevent and combat racism, racial discrimination, hatred and violence in sports, and to ensure that such acts are duly investigated and that those responsible are identified and punished”.<sup>502</sup>

<sup>500</sup> Ibid.

<sup>501</sup> Email correspondence from the Department of Justice to the NI Human Rights Commission, 10 July 2024.

<sup>502</sup> 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, at para 24.

In March 2024, the UN CRPD Committee recommended that the UK Government and NI Executive promote and support:

the right of persons with disabilities to retain the amount of personal assistance necessary to achieve their holistic potential and full enjoyment of the right to live independently and in the community and by providing support for recreational activities, including accessible transportation through public transport and 24-hour accessible taxis.<sup>503</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

- a) develop a strategy, with sufficient resources, aimed at ensuring children's right to rest, leisure and recreation, including free outdoor play;
- b) integrate children's right to play into school curricula and ensure that children have sufficient time to engage in play and recreational activities that are inclusive and age-appropriate;
- c) strengthen measures to ensure that all children, including children with disabilities, young children, children in rural areas and children in disadvantaged socioeconomic backgrounds, have access to accessible, safe, public outdoor play spaces; [and]
- d) involve children in decisions regarding urban-planning processes, including public transportation, and in the development of spaces for children to play.<sup>504</sup>

<sup>503</sup> CRPD/C/GBR/FUIR/1, 'UN CRPD Committee Report on Follow-up to the Inquiry Concerning the UK of Great Britain and NI', 22 March 2024.

<sup>504</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 48.

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive “adopt a concrete plan of action, with resources and measurable objectives, to implement legislation, regulation and standardisation to ensure that persons with disabilities have access to inclusive participation in all sports facilities”.<sup>505</sup>

In 2017, the Kazan Action Plan marked a commitment by the UK Government to link sport policy development to the 2030 Sustainable Development Goals.<sup>506</sup> Within this framework the CoE published guidelines for public authorities around sport and human rights themes contained within the 2017 action plan.<sup>507</sup>

### Participation in sport in NI

In 2020, the NI Executive published a children and young people’s strategy.<sup>508</sup> This includes commitments to address inequalities and barriers for persons with disabilities and individuals from disadvantaged and marginalised backgrounds to the right to rest and leisure.

In 2022, it was reported that in NI young persons with disabilities and young people entitled to free school were less likely to participate in sport and be a member of a team or club that involved taking part in physical activity.<sup>509</sup>

In 2023, the Commission and Equality Commission for NI, reported that “cuts to community transport for [d/Deaf and] disabled people will impact on independent living, including access to... sporting and cultural facilities”.<sup>510</sup>

<sup>505</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 63.

<sup>506</sup> UN Educational, Scientific and Cultural Organisation, ‘Ministers and Senior Officials Responsible for Physical Education and Sports VI -Kazan 2017’. Available at: <https://en.unesco.org/mineps6/kazan-action-plan>

<sup>507</sup> CoE, ‘Guidelines on Integrity in Sport -Kazan Action Plan – Online Database’. Available at: <https://www.coe.int/en/web/sport/kazan-action-plan-online-directory>

<sup>508</sup> Department of Education, ‘Children’s and Young People’s Strategy 2020-2030’ (DoE, 2020).

<sup>509</sup> Department for Communities, ‘Experience of Sport by Young People in NI in 2022’ (DfC, 2023).

<sup>510</sup> UK Independent Mechanism for the UN CRPD, ‘Seven Years On: Disabled People’s Rights to Independent Living, Employment and Standard of Living in the UK’ (UKIM, 2023), at 11.

## Sport and Human Rights Forums

In 2024, the Commission continues as Chair of the Commonwealth Sport and Human Rights Working Group, which supports building national human rights institutions' capacity in the area.<sup>511</sup>

In 2024, the NI Sport and Human Rights Forum meetings covered a range of topics in the context of sport including the UN Sustainable Development Goals,<sup>512</sup> climate change, cost of living,<sup>513</sup> and access to remedy, sport and inclusion.

## Declaration on Sport and Human Rights

In 2019, the Commission launched the Declaration on Sport and Human Rights.<sup>514</sup> Inspired by the UN Universal Declaration of Human Rights, the NI Declaration outlines a commitment by the signatory organisation to ensure that sport is used to advance the protection of all who are affected by sport, and to embed human rights into all aspects of their sport.

In November 2024, 20 organisations had signed up to the NI Declaration, including the Irish Football Association, Ulster GAA, Ulster Rugby, and Commonwealth Games NI.

## Recommendations

The Commission recommends that the Department for Communities resources and conducts research on sport and human rights in NI. This should include a baseline analysis of sport and human rights in NI. It should also consider progress made through sport in NI related to the Kazan Action Plan and UN Sustainable Development Goals.

<sup>511</sup> NI Human Rights Commission, 'Press Release: Unity the goal for first Commonwealth Sport and Human Rights Working Group', 11 August 2024.

<sup>512</sup> NI Human Rights Commission, 'Press Release: UN Sustainable Development Goals Discussed at Latest NI Sport and Human Rights Forum', 15 April 2024.

<sup>513</sup> NI Human Rights Commission, 'Press Release: Cost of living and access to remedy explored in latest NI Sport and Human Rights Forum', 9 August 2023.

<sup>514</sup> NI Sport and Human Rights Forum, 'Declaration on Sport and Human Rights' (NIHRC, 2019).



The Commission recommends that the UK Government and NI Executive adopts a concrete plan of action, with resources and measurable objectives, to implement recommendations made by the UN CRC Committee in relation to children's right to rest, leisure, and recreation.

The Commission recommends that the NI Executive adopts a concrete plan of action, with resources and measurable objectives, to implement legislation, regulation and standardisation to ensure that everyone has access to inclusive participation in all sports facilities and sufficient support for recreational activities, in line with promoting independent living. This includes accommodating and providing specific measures as required, for example, for persons with disabilities or members of racial or ethnic minority communities.

# Right to Life

## ● Conflict-related investigations

In June 2024, the CoE Committee of Ministers reiterated concerns about the compatibility of the NI Troubles (Legacy and Reconciliation) Act 2023 with the ECHR, “including in particular the proposed conditional immunity scheme which risks breaching obligations under Article 2 of the ECHR to prosecute and punish serious grave breaches of human rights”.<sup>515</sup>

In May 2024, the UN Human Rights Committee called on the UK Government and NI Executive:

to repeal or reform the NI Troubles (Legacy and Reconciliation) Act 2023 and to adopt proper mechanisms with guarantees of independence, transparency and genuine power of investigation that discharge the State party’s human rights obligations and deliver truth, justice and effective remedies, including reparations to victims of the NI conflict.<sup>516</sup>

<sup>515</sup> CM/Del/Dec(2024)1501/H46-40, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 14 June 2024, at para 5.

<sup>516</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 11.

Between 2021 and 2023, several UN and CoE institutions expressed “grave concern” at the then UK Government’s plans for Troubles-related offences, including the NI Troubles (Legacy and Reconciliation) Act 2023.<sup>517</sup> There were particular concerns “relating to independence disclosure”, “the initiation of reviews [by the Independent Commission on Reconciliation and Information Recovery]”, the conditional immunity scheme and the general lack of support for the 2023 Act in NI.<sup>518</sup>

In 2019, the UN CAT Committee recommended that the UK Government “take urgent measures to advance and implement the Stormont House Agreement and the mechanisms it contemplates for investigating conflict-related violations, particularly the Historical Investigations Unit”.<sup>519</sup> The UN CAT Committee also recommended that the UK Government “refrain from enacting amnesties or statutes of limitations for torture or ill-treatment”, which are inconsistent with UN CAT.<sup>520</sup>

The UN CAT Committee’s recommendations are supported by the UN Human Rights Committee,<sup>521</sup> the former UN Special

<sup>517</sup> Office of the UN High Commissioner for Human Rights, ‘Press Release: UN experts voice concern at proposed blanket immunity to address the legacy of “the Troubles” in NI’, 10 August 2021; Letter from CoE Commissioner for Human Rights, Dunja Mijatovic, to Secretary of State for NI, Brandon Lewis, 13 September 2021; CoE, ‘Submission by the CoE Commissioner for Human Rights Under Rule 9.4 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements in the Cases of McKerr v UK, Finucane v UK, Kelly and Others v UK, Shanaghan v UK, McCaughey and Others v UK’ (CoE, 2022), at para 28; CM/Notes/1443H46-32, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95) Supervision of the Execution of the ECtHR’s Judgments’, 22 September 2022, at para 8; CoE Parliamentary Assembly, ‘Resolution 2464(2002) – The Impact of Brexit on Human Rights on the Island of Ireland’, 31 October 2022, at paras 8 and 9; CommDH(2022)27, ‘CoE Commissioner for Human Rights, Dunja Mijatovic: Report Following Visit to UK From 27 June to 1 July 2022’, 18 November 2022, at 37-40; A/HRC/52/10, ‘Report of the UN Working Group on the Universal Periodic Review: UK of Great Britain and NI’, 9 January 2023, at paras 43.27, 43.106 and 43.112; CM/Del/Dec(2023)1459/H46-35, ‘McKerr Group v UK (Application No 28883/95) Supervision of the Execution of the European Court’s Judgments’, 9 March 2023, at para 5; CM/ResDH(2023)148, ‘CoE Committee of Ministers Interim Resolution: McKerr and Four Cases Against the UK’, 7 June 2023.

<sup>518</sup> CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023, at paras 9-12; CommDH(2022)27, ‘CoE Commissioner for Human Rights, Dunja Mijatovic: Report Following Visit to UK From 27 June to 1 July 2022’, 18 November 2022, at 37-40.

<sup>519</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019.

<sup>520</sup> Ibid.

<sup>521</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015.

Rapporteur on the Promotion of Truth, Justice, Reparation and guarantees of non-repetition, Pablo de Greiff,<sup>522</sup> and several recommendations by the UN Working Group on the Universal Periodic Review.<sup>523</sup>

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU.<sup>524</sup> In September 2024, the Court of Appeal in NI confirmed an earlier High Court of Justice in NI decision which found the rights of victims of crime are within the scope of the relevant chapter in the Belfast (Good Friday) Agreement,<sup>525</sup> noting that the rights set out in the EU Victims' Directive<sup>526</sup> were encompassed in the relevant chapter.<sup>527</sup> The Court of Appeal in NI further confirmed that the Victim Charter in NI is clearly underpinned by the EU Directive, which is to be interpreted in accordance with the EU Charter of Fundamental Rights and general principles of EU law.<sup>528</sup> The Court of Appeal in NI found that the trial judge was correct to identify that victims' rights are promoted and given effect by civil rights including Articles 2, 3, 6 and 14 of the ECHR, which are mirrored in the EU Charter.<sup>529</sup>

<sup>522</sup> A/HRC/34/62/Add.1, 'Report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff, on his Mission to the UK of Great Britain and NI', 17 November 2016, at para 39.

<sup>523</sup> A/HRC/52/10,'Report of the UN Working Group on the Universal Periodic Review: UK of Great Britain and NI', 9 January 2023, at paras 43.27, 43.106 and 43.112.

<sup>524</sup> Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights.

<sup>525</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 561 and 582.

<sup>526</sup> Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012. Other EU obligations underpinning the rights of victims include Directive 2011/36/EU 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2004/80/EC, 'EU Council Directive Relating to the Compensation to Crime Victims', 29 April 2004.

<sup>527</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117.

<sup>528</sup> *Ibid*, at para 126. See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock et al, 'The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework' (NIHRC, 2024).

<sup>529</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at paras 117 and 119.

The Court of Appeal in NI also found that the rights are particularised to some effect and enhanced by the EU Victims' Directive specifically by the right to challenge a decision not to prosecute.<sup>530</sup>

The NI Troubles (Legacy and Reconciliation) Act 2023 establishes an Independent Commission for Reconciliation and Information Recovery. The 2023 Act contains provisions providing for a conditional immunity scheme. The 2023 Act provides for the cessation of criminal investigations (other than those referred by the Independent Commission for Reconciliation and Information Recovery to the prosecutor), police complaints, civil proceedings and inquests/inquiries linked to Troubles-related offences is likely contrary to the right to an effective remedy.

The approach of the 2023 Act is contrary to the majority views expressed during a public consultation in 2018,<sup>531</sup> with a shift away from conducting human rights compliant Troubles-related investigations, towards seeking and receiving information about Troubles-related deaths and injuries.<sup>532</sup>

In February 2024, the High Court of Justice in NI considered the compatibility of the 2023 Act with the ECHR and Windsor Framework Article 2.<sup>533</sup> The Commission intervened in the case. The High Court of Justice in NI held that the conditional immunity scheme violates Articles 2 and 3 of the ECHR.<sup>534</sup> The High Court of Justice in NI also held that the removal of the possibility of prosecution was incompatible with the EU Victims' Directive and therefore breaches Windsor Framework Article 2.<sup>535</sup> It held that pursuant to Section 7A of the EU (Withdrawal) Act 2018, Windsor Framework Article 2 has primacy over the conflicting provisions of the 2023 Act and therefore those

<sup>530</sup> Ibid, at para 119.

<sup>531</sup> NI Office, 'Addressing the Legacy of NI's Past: Analysis of the Consultation Responses' (NIO, 2019).

<sup>532</sup> NI Office, 'Addressing the Legacy of NI's Past' (NIO, 2021), at para 34.

<sup>533</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11.

<sup>534</sup> Ibid, at paras 187 and 710(i).

<sup>535</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at paras 608 and 710.

provisions should be disapplied in respect of NI.<sup>536</sup> Additionally, the High Court of Justice in NI held that the retrospective limit imposed on civil proceedings already initiated (i.e. proceedings initiated before 18 November 2023) was a disproportionate interference with Article 6 and Article 1 of Protocol 1 of the ECHR.<sup>537</sup> Further, the High Court of Justice in NI held that the provision that renders certain Independent Commission for Reconciliation and Information Recovery evidence inadmissible in all civil proceedings was an interference with Article 6(1) of the ECHR, which cannot be justified.<sup>538</sup> The Commission welcomed these findings. However, the Commission was disappointed that the High Court of Justice in NI found that the Independent Commission for Reconciliation and Information Recovery was sufficiently independent and had sufficient scope to conduct an effective investigation to comply with the Article 2 of the ECHR procedural obligation.<sup>539</sup>

In January 2024, the Government of Ireland lodged an inter-State application against the UK with the ECtHR.<sup>540</sup> The Government of Ireland argues that certain provisions of the 2023 Act are incompatible Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 6 (right to a fair trial), 13 (right to an effective remedy), and 14 (prohibition of discrimination) of the ECHR.<sup>541</sup> In May 2024, the Commission applied to intervene in the case, with the ECtHR's decision awaited.<sup>542</sup> In July 2024, the new UK Government reiterated its commitment to “repeal and replace” the 2023 Act.<sup>543</sup>

<sup>536</sup> Ibid, at para 710.

<sup>537</sup> Ibid, at paras 698 and 710(iii).

<sup>538</sup> Ibid, at paras 461 and 710(v).

<sup>539</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 284.

<sup>540</sup> European Court of Human Rights, ‘Press Release: New inter-State application brought by Ireland against the UK’, 19 January 2024.

<sup>541</sup> European Court of Human Rights, ‘Press Release: New inter-State application brought by Ireland against the UK’, 19 January 2024.

<sup>542</sup> Letter from the NI Human Rights Commission to President Marko Bošnjak, ECtHR, 2 May 2024.

<sup>543</sup> UK Parliament Hansard, ‘House of Commons Written Statement: NI Troubles (Legacy and Reconciliation) Act 2023 - Hillary Benn MP - UIN HCWS30’, 29 July 2024; Lisa O’Carroll, ‘Starmer vows to repeal Troubles legacy act in first meeting with Irish PM’, *The Guardian*, 18 July 2024; UK Parliament Hansard, ‘House of Lords Oral Statement: The King’s Speech 2024 - His Majesty King Charles III’, 17 July 2024.

However, Taoiseach Simon Harris TD, advised that the Government of Ireland would not drop the inter-State challenge without further details on the proposed replacement legislation.<sup>544</sup>

Between February 2024 and May 2024, the Independent Commission for Reconciliation and Information Recovery conducted several public consultations into its operational design and approach to investigations.<sup>545</sup> The Independent Commission reiterated its commitment to upholding human rights and to obtaining the trust of victims and survivors of the NI conflict.<sup>546</sup> However, as the Independent Commission became operational on 1 May 2024, victims and survivors continued to raise their significant concerns.<sup>547</sup>

In July 2024, the Secretary of State for NI, Hilary Benn MP, underlined the UK Government’s “absolute commitment to the Human Rights Act, and to establishing legacy mechanisms that are capable of commanding the confidence of communities and of victims and survivors”.<sup>548</sup> This included repealing and replacing the 2023 Act, while returning to the principles set out in Stormont House Agreement 2014.<sup>549</sup> The Secretary of State for NI further confirmed that the UK Government was no longer appealing the declaration of incompatibility issued by the High Court of Justice in NI in respect of the conditional immunity provisions of the NI Troubles (Legacy and Reconciliation) Act

<sup>544</sup> Jonathan Cambridge, ‘Ireland will not immediately drop case against UK over Legacy Act – Taoiseach’, *The Irish News*, 7 July 2024.

<sup>545</sup> NI Office, ‘Consultation: Independent Commission for Reconciliation and Information Recovery information holding and handling’ (NIO, 2024); Independent Commission for Reconciliation and Information Recovery, ‘The Operational Design Framework’ (ICRIR, 2024); Independent Commission for Reconciliation and Information Recovery, ‘Operational Policy Enhanced Inquisitorial Proceedings’ (ICRIR, 2024).

<sup>546</sup> Independent Commission for Reconciliation and Information Recovery, ‘Press Release: Independent Commission for Reconciliation and Information Recovery Chief Commissioner commits to human rights laws’, 28 May 2024.

<sup>547</sup> Julian O’Neill, ‘The Troubles: ‘Legacy Act denies victims like me closure’’, *BBC News*, 1 May 2024; Connla Young, ‘Legacy commission set up by British government accused of ‘propaganda’’, *Irish News*, 17 June 2024; Ben Quinn, ‘NI legacy act will harm Britain’s reputation, rights panel warns’, *The Guardian*, 29 April 2024.

<sup>548</sup> UK Parliament Hansard, ‘House of Commons Written Statement: NI Troubles (Legacy and Reconciliation) Act 2023 – Hillary Benn MP – UIN HCWS30’, 29 July 2024.

<sup>549</sup> UK Parliament Hansard, ‘House of Commons Oral Answers to Questions: NI Troubles (Legacy and Reconciliation) Act 2023 – Hillary Benn MP – Volume 752’, 24 July 2024.



2023.<sup>550</sup> The Secretary of State for NI confirmed that a remedial order would be laid to remove the offending provisions from the 2023 Act as soon as parliamentary time allowed. However, the UK Government intended to retain the Independent Commission for Reconciliation and Information Recovery and planned to launch a consultation on “measures to strengthen the Independent Commission for Reconciliation and Information Recovery’s independence from Government and its powers”.<sup>551</sup> The Secretary of State for NI also confirmed that the UK Government’s would continue its appeal against the High Court of Justice in NI decision in respect of Windsor Framework Article 2, as the clarification by onward appeal will ensure legal certainty and maintain a clear human rights framework in NI.

In September 2024, the Court of Appeal in NI delivered its judgment on the appeal. The Court of Appeal in NI agreed with the High Court of Justice in NI’s finding that the conditional immunity scheme violated Articles 2 and 3 of the ECHR.<sup>552</sup> It also agreed that the “five-year time limit on requesting reviews cannot presently be said to violate” ECHR rights.<sup>553</sup> However, the Court of Appeal in NI reached a different conclusion to the High Court of Justice in NI regarding the independence and effectiveness, finding that:

although we do not doubt the Independent Commission for Reconciliation and Information Recovery’s determination to conduct its affairs in a [ECHR]-compliant manner, issues arise in relation to effective next of kin participation, and the role of the Secretary of State for NI in relation to disclosure in cases where, previously, an inquest would have been required to discharge the State’s Article 2 [of the ECHR] obligations.<sup>554</sup>

<sup>550</sup> UK Parliament Hansard, ‘House of Commons Written Statement: NI Troubles (Legacy and Reconciliation) Act 2023 - Hillary Benn MP - UIN HCWS30’, 29 July 2024.

<sup>551</sup> Ibid.

<sup>552</sup> *In the Matter of an Application by Martina Dillon and Others* [2024] NICA 59, at paras 10, 164 and 172.

<sup>553</sup> Ibid, at paras 183 and 311.

<sup>554</sup> Ibid, at para 311.

Regarding civil actions, the Court of Appeal in NI also went further than the High Court of Justice in NI, finding that the 2023 Act “provides a blanket prohibition on civil claims, which... is not proportionate or justifiable. This applies not only in relation to the retroactive element of the legislation... but also to the prospective prohibition on claims”.<sup>555</sup>

The Court of Appeal in NI also dismissed the Secretary of State’s appeal to the High Court of Justice in NI’s finding that the removal of the possibility of prosecution was incompatible with the EU Victims’ Directive and therefore breached Windsor Framework Article 2.<sup>556</sup> The Court of Appeal in NI confirmed that, pursuant to Section 7A of the EU (Withdrawal) Act 2018, Windsor Framework Article 2 has primacy over the conflicting provisions of the 2023 Act.<sup>557</sup> The Court of Appeal in NI therefore confirmed that certain provisions on immunity from prosecution in the 2023 Act were disapplied in NI.<sup>558</sup>

Following the Court of Appeal in NI’s decision, victims and survivors issued revised calls for the Independent Commission for Reconciliation and Information Recovery to be scrapped.<sup>559</sup> The Secretary of State for NI responded that the UK Government intends to avoid creating a “vacuum”, which includes retaining the Independent Commission for Reconciliation and Information Recovery.<sup>560</sup> The UK Government is appealing the Court of Appeal in NI’s decision.<sup>561</sup>

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<sup>555</sup> Ibid, at para 244.

<sup>556</sup> Ibid, at paras 161, 608 and 710. The Court of Appeal disagreed with the trial Judge that a breach of an ECHR right was equivalent to a breach of a EU Charter right and would therefore breach Windsor Framework Article 2 at para 137. The Court of Appeal found that the disapplication of Sections 8 and 43(1) of the NI Troubles (Legacy and Reconciliation) Act 2023 was based on EU Charter rights alone and could not stand at para 161.

<sup>557</sup> Ibid, paras 151-156; *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 710.

<sup>558</sup> *In the Matter of an Application by Martina Dillon and Others* [2024] NICA 59, paras 151-156, 161; *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 710.

<sup>559</sup> Enda McClafferty, ‘Troubles legacy body won’t be scrapped – NI secretary’, *BBC News*, 23 September 2024.

<sup>560</sup> Ibid.

<sup>561</sup> Julian O’Neill, ‘Government to challenge Legacy Act court ruling’, *BBC News*, 21 October 2024.

## Recommendations

The Commission recommends that the UK Government repeals the NI Troubles (Legacy and Reconciliation) Act 2023 and introduces legislation that is victim-centred, does not restrict the investigation and prosecution of alleged unlawful killings and serious injuries, is compatible with Articles 2 (right to life) and 3 (freedom from torture) of the ECHR and compliant with the EU Victims' Directive and Windsor Framework Article 2.

## Inquiries Act 2005

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive “develop and implement further measures to protect ethnic minorities based on the lessons learnt from the COVID-19 pandemic”.<sup>562</sup>

In 2015, the UN Human Rights Committee recommended that the UK “reconsider its position on the broad mandate of the executive to suppress the publication of Inquiry reports under the Inquiries Act 2005”.<sup>563</sup> In 2024, there has been no substantive progress on this issue to date.

In 2023, the Omagh Bombing Inquiry was established under the 2005 Act to investigate the preventability of the bombing in August 1998.<sup>564</sup> In February 2024, the terms of reference for the Omagh Bombing Inquiry were published.<sup>565</sup> In July 2024, the Omagh Bombing Inquiry held its first preliminary hearing.<sup>566</sup>

<sup>562</sup> 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, at para 44(b).

<sup>563</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015.

<sup>564</sup> UK Government, ‘Press Release: Secretary of State announces Chair of the Omagh Bombing Inquiry’, 12 June 2023.

<sup>565</sup> UK Government, ‘Press Release: UK Government publishes Terms of Reference for Omagh Bombing Inquiry’, 21 February 2024.

<sup>566</sup> Julian O’Neil, ‘Omagh bomb inquiry first hearing begins’, *BBC News*, 30 July 2024.

In September 2024, the Secretary of State for NI, Hilary Benn MP, announced that the UK Government was initiating an inquiry under the 2005 Act into Patrick Finucane’s murder.<sup>567</sup> Appointment of the inquiry’s chair and publication of the terms of reference are awaited.

Other NI inquiries that have been established under the 2005 Act include the Muckamore Abbey Hospital inquiry,<sup>568</sup> the Urology Services Inquiry,<sup>569</sup> and the Independent Neurology Inquiry.<sup>570</sup>

In 2022, a UK COVID-19 Inquiry commenced under the 2005 Act to examine, consider and report on preparations and the response to the COVID-19 pandemic in England, Wales, Scotland and NI.<sup>571</sup> The UK-wide inquiry will consider aspects related to NI, but an additional NI-specific COVID-19 inquiry has not been established.<sup>572</sup> In May 2024, the UK COVID-19 Inquiry heard oral evidence on the strategic and overarching issues from the perspective of NI.<sup>573</sup> At the inquiry’s request, the Commission provided a written statement on this and adult social care in NI.<sup>574</sup>

## Recommendations

The Commission continues to recommend that the UK Government reviews and introduces necessary legislative amendments to guarantee the independence of inquiries established under the Inquiries Act 2005.

<sup>567</sup> NI Office, ‘Press Release: Statement by the Secretary of State for NI on the murder of Patrick Finucane’, 11 September 2024.

<sup>568</sup> Muckamore Abbey Hospital Inquiry, ‘Press Release: Media Statement from Tom Kark KC, Chair of the Muckamore Abbey Hospital Inquiry’, 11 October 2021.

<sup>569</sup> Urology Services Inquiry, ‘Terms of Reference for the Statutory Independent Public Inquiry into Urology Services in the Southern Health and Social Care Trust’ (USI, 2021).

<sup>570</sup> Independent Neurology Inquiry, ‘Report’ (INI, 2022).

<sup>571</sup> UK COVID-19 Inquiry, ‘COVID-19 Inquiry Terms of Reference’ (UKCI, 2022).

<sup>572</sup> NI Human Rights Commission, ‘Submission to the UN Human Rights Committee Regarding the UK’s Eighth Periodic Report on Compliance with the UN ICCPR’ (NIHRC, 2020).

<sup>573</sup> Marie-Louise Connolly, ‘COVID Inquiry: What have we learned after three weeks in Belfast?’ *BBC News*, 18 May 2024.

<sup>574</sup> Letter from UK COVID-19 Inquiry to NI Human Rights Commission, 17 March 2024; Letter from UK COVID-19 Inquiry to NI Human Rights Commission, 13 June 2024.

The Commission recommends that the NI Executive ensures that there is a public inquiry into the handling of COVID-19 by the NI Executive that considers devolved issues not fully covered by the UK-wide inquiry.

The Commission recommends that the NI Executive ensures that lessons learned through public inquiries, such as the UK COVID-19 Inquiry, are effectively addressed and that there is effective human rights based plan and sufficient resources in place for any future emergency situation or pandemic that affects NI.

## ● Legacy inquests and inquiries

In June 2024, the CoE Committee of Ministers reiterated its “deep regret that the inquests in the cases of *Mc Kerr* and *Kelly and Others* did not complete before 1 May 2024, the cut-off date in the [NI Troubles (Legacy and Reconciliation) Act 2023]”.<sup>575</sup> The Committee of Ministers urged the UK Government “to provide further clarification as to what steps are now underway to ensure the necessary individual measures are taken and further delays are avoided”.<sup>576</sup>

Recalling previous decisions,<sup>577</sup> the CoE Committee of Ministers:

reiterated their increasingly profound concern that five years have passed since the Supreme Court judgment finding that there has still not been an Article 2-compliant inquiry into Mr Finucane’s death in 1989 and that, while the judgment in the Court of Appeal is yet to be handed down, there is still no clear indication of how the Secretary of State proposes to proceed.<sup>578</sup>

<sup>575</sup> CM/Del/Dec(2024)1501/H46-40, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 14 June 2024, at para 3.

<sup>576</sup> Ibid.

<sup>577</sup> CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023.

<sup>578</sup> CM/Del/Dec(2024)1501/H46-40, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 14 June 2024, at para 2.

Additionally, the Committee of Ministers:

strongly exhorted the authorities again to provide their full and clear response to the Supreme Court judgment, including information about the possible impact of the NI Troubles (Legacy and Reconciliation) Act 2023 and a decision on the measures they intend to take as soon as possible.<sup>579</sup>

Between 2015 and 2021, echoing the CoE Committee of Ministers' concerns, the UN Human Rights Committee<sup>580</sup> and the then UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff,<sup>581</sup> continued to call for prompt, adequate and effective resourcing of legacy inquests and inquiries in NI.<sup>582</sup> The UN CAT Committee<sup>583</sup> and UN Human Rights Committee also specifically called for an inquiry into the killing of Patrick Finucane.<sup>584</sup>

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU.<sup>585</sup> EU obligations underpinning the rights of victims include the EU Victims' Directive<sup>586</sup> as well as other

<sup>579</sup> Ibid.

<sup>580</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, at para 11(b).

<sup>581</sup> A/HRC/34/62/Add.1, 'Report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI', 17 November 2016, at para 39.

<sup>582</sup> CM/Del/Dec(2021)1398/H46-38, 'CoE Committee of Ministers Decision: McKerr Group v UK (Application No 28883/95)', 11 March 2021.

<sup>583</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 41(d).

<sup>584</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, at para 8.

<sup>585</sup> Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity - Human Rights.

<sup>586</sup> Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.



relevant EU laws.<sup>587</sup> In September 2024, Court of Appeal in NI confirmed that the rights of victims of crime are given effect by civil rights and fall within the scope of the relevant chapter in the Belfast (Good Friday) Agreement and that specific rights in the EU Victims' Directive<sup>588</sup> were encompassed in the notion of victims' rights in that chapter.<sup>589</sup> The Court of Appeal in NI also confirmed that the EU Victims' Directive is to be "interpreted in accordance with the EU Charter of Fundamental Rights and general principles of EU law".<sup>590</sup>

### Legacy inquests

In 2019, the Legacy Inquest Unit was established within the Coroner's Service, under the remit of the Lord Chief Justice. The Legacy Inquest Unit was due to complete its work within five years, but this was delayed due to COVID-19 restrictions delaying court business in general.<sup>591</sup>

In 2023, the NI Troubles (Legacy and Reconciliation) Act 2023 imposed a cessation of criminal investigations (other than those referred by the Independent Commission for Reconciliation and Information Recovery to the prosecutor), police complaints, civil proceedings and inquests/inquiries linked to Troubles-related offences by 1 May 2024. However, final determinations of existing inquests could be heard after the deadline where it was "the only part of the inquest that remains to be carried out".<sup>592</sup>

<sup>587</sup> Directive 2011/36/EU 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2004/80/EC, 'Council of the EU Directive Relating to the Compensation to Crime Victims', 29 April 2004.

<sup>588</sup> Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>589</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117.

<sup>590</sup> *Ibid*, at para 126. See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock et al, 'The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework' (NIHRC, 2024).

<sup>591</sup> Coroners Service for NI, 'Case Management Direction - CMD Legacy No 1' (CSNI, 2021).

<sup>592</sup> Section 44, The NI Troubles (Legacy and Reconciliation) Act 2023.



By 1 May 2024, the Legacy Inquest Unit had completed and delivered the findings of eight inquests.<sup>593</sup> However, in the weeks leading up to this deadline, a number of final hearings took place as part of an intensive court schedule to bring ongoing inquests to a close.<sup>594</sup> This included the Springhill Inquest, which considered the deaths of John Dougal, Patrick Butler, Father Noel Fitzpatrick, David McCafferty and Margaret Gargan in 1972.<sup>595</sup> Amid these efforts, there were allegations that State bodies appeared to be “running down the clock” to 1 May 2024.<sup>596</sup> Overall, there were a total of 36 inquests, involving the deaths of 74 people during the NI conflict, that could not conclude before the 1 May 2024 deadline.<sup>597</sup>

In February 2024, concerning the 2023 Act, the High Court of Justice in NI dismissed the challenge to the five-year limit for requesting reviews, noting that the provisions may be subject to amendment between now and the deadline of 1 May 2029.<sup>598</sup> The Commission continued to advise that this limitation is not compatible with the ECHR and is unlawful.<sup>599</sup> The High Court of Justice in NI did not give consideration to the cessation of other measures of accessing justice regarding Troubles-related cases.<sup>600</sup>

<sup>593</sup> *In the Matter of an Inquest into the Death of Leo Norney* [2023] NICoroner 11; *In the Matter of an Inquest into the Death of Patrick McElhone* [2021] NICoroner 1; *In the Matter of a Series of Deaths that Occurred in August 1971 at Ballymurphy, West Belfast* [2021] NICoroner 6; Coroners Court for NI, ‘In Matter of An Inquest into the Death of Neil John McConville’, 11 April 2022; Judicial Communications Office, ‘Coroner Finds Soldier Was Not Justified in Shooting Thomas Mills - Summary of Judgment’, 13 May 2022; *In the Matter of An Inquest Into the Death of Kathleen Thompson* [2022] NICoroner1; *In the Matter of An Inquest into the Death of Master Stephen Geddis* [2022] NICorner 2; Judicial Communications Office, ‘Press Release: Findings into the death of Thomas Friel’, 1 December 2021.

<sup>594</sup> Freya McClements, ‘NI inquests involving 74 deaths during Troubles will not go ahead after Legacy Act takes effect’, *The Irish Times*, 1 May 2024.

<sup>595</sup> ‘Springhill inquest: Hugs and applause as hearing ends before Legacy Act deadline’, *BBC News*, 30 April; Judicial Communications Office, ‘Press Release: Inquest touching upon the deaths of John Dougal, Patrick Butler, Fr Noel Fitzpatrick, David McCafferty and Margaret Gargan (Collectively Known as The Springhill Inquest)’, 17 February 2023.

<sup>596</sup> Abbie Llewelyn, ‘Troubles inquests delayed to run down clock until law kicks in – ex-NI Secretary’, *Irish News*, 14 February 2024.

<sup>597</sup> Freya McClements, ‘NI inquests involving 74 deaths during Troubles will not go ahead after Legacy Act takes effect’, *The Irish Times*, 1 May 2024.

<sup>598</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at paras 251 and 252.

<sup>599</sup> NI Human Rights Commission, ‘Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: NI Troubles (Legacy and Reconciliation) Act 2023’ (NIHRC, 2024), at paras 5.1–5.8.

<sup>600</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at paras 251 and 252.

In September 2024, the Court of Appeal in NI agreed with the High Court of Justice in NI, that the “five-year time limit on requesting reviews cannot presently be said to violate” the ECHR.<sup>601</sup> However, the Court of Appeal in NI noted that, where a concrete example is presented and the facts are sufficient, and if the structure of the Independent Commission on Reconciliation and Information Recovery remains the same, then a declaration could be made.<sup>602</sup>

In July and October 2024, the Secretary of State for NI, Hilary Benn MP, underlined the new UK Government’s intention “to reverse the current prohibition on bringing new civil proceedings, and to propose measures to allow inquests previously halted to proceed”.<sup>603</sup> The Secretary of State for NI advised that:

the [UK] Government is acutely aware of the distress that the cessation of live inquests in particular has caused those families, and will consider all possible options to ensure those cases can conclude satisfactorily. We will also consider the best way forward for those inquests involving a significant amount of sensitive information which were unable to conclude within the coronial system.<sup>604</sup>

Further information on the proposals and a formal public consultation process is awaited.

In October 2024, the inquest into the death of 20 year old Francis Bradley in 1986 delivered its findings.<sup>605</sup> Francis Bradley died on 18 February 1986 as a result of gunshot wounds sustained in County Londonderry. The Coroner found that the use of lethal force “was both reasonable and proportionate in the circumstances”.<sup>606</sup> Legal representatives for Francis Bradley’s family are considering options for judicial review.<sup>607</sup>

<sup>601</sup> *In the Matter of an Application by Martina Dillon and Others* [2024] NICA 59, at paras 183 and 311.

<sup>602</sup> *Ibid*, at para 183.

<sup>603</sup> UK Parliament Hansard, ‘House of Commons Written Statement: Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 – Hillary Benn MP – UIN HCWS30’, 29 July 2024; UK Parliament, ‘Written Ministerial Statement – Legacy – NI: Hilary Benn MP’, 7 October 2024.

<sup>604</sup> UK Parliament Hansard, ‘House of Commons Oral Answers to Questions: Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 – Hillary Benn MP – Volume 752’, 24 July 2024.

<sup>605</sup> Judicial Communications Office, ‘Press Release: Inquest into the death of Francis Bradley’, 24 October 2024.

<sup>606</sup> *Ibid*.

<sup>607</sup> Julian O’Neill, ‘Lethal force ‘justified’ in Francis Bradley shooting’, *BBC News NI*, 24 October 2024.

## Patrick Finucane inquiry

In 2019, the UK Supreme Court unanimously made a declaration that there had not been an inquiry into the death of Patrick Finucane that was compliant with Article 2 of the ECHR.<sup>608</sup> The UK Supreme Court identified the lack of ability of Sir Desmond de Silva to compel the attendance of witnesses or cross-examine witnesses on the veracity of their evidence as limitations of the De Silva review.<sup>609</sup> The UK Supreme Court did not order a public inquiry, noting that:

it is for the State to decide, in light of the incapacity of Sir Desmond de Silva’s review and the inquiries which preceded it to meet the procedural requirement of Article 2 [of the ECHR], what form of investigation, if indeed any is now feasible, is required in order to meet that requirement.<sup>610</sup>

In 2020, the then UK Government confirmed that it did not intend to hold a public inquiry into Patrick Finucane’s death, but that the possibility of a public inquiry was not “off the table”.<sup>611</sup> Furthermore, Patrick Finucane’s death was not being actively investigated by the Police Service of NI or the Police Ombudsman for NI. The Police Service of NI has stated that it is highly likely that any review of Pat Finucane’s death will need to be conducted independently of the Police Service of NI due to the “accepted position of State involvement in this matter”.<sup>612</sup>

In 2022, the High Court of Justice in NI found that the UK Government “remains in breach of Article 2 [of the ECHR] on the basis of the ongoing delay in completing an investigation which satisfies the requirements of that provision”.<sup>613</sup> The High Court of Justice in NI clarified that:

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<sup>608</sup> *In the Matter of an Application by Geraldine Finucane for Judicial Review (NI)* [2019] UKSC 7, at 4.

<sup>609</sup> *Ibid.*

<sup>610</sup> *Ibid.*, at para 153.

<sup>611</sup> ‘Pat Finucane: No public inquiry into Belfast lawyer’s murder’, *BBC News*, 30 November 2020.

<sup>612</sup> Police Service of NI, ‘Press Release: Statement from Chief Constable Simon Byrne following the announcement from the Secretary of State on the murder of Pat Finucane’, 30 November 2020; ‘UK Government to set out timetable for Pat Finucane inquiry decision’, *Irish Legal News*, 9 January 2023.

<sup>613</sup> *In the Matter of an Application by Geraldine Finucane for Judicial Review and In the Matter of a Decision of the Secretary of State for NI* [2022] NIKB37, at para 79.

even assuming that the Police Service of NI or Police Ombudsman for NI processes which the Secretary of State [for NI] determined should proceed first could remedy or ‘top-up’ deficiencies which existed in the investigative processes which went before, these could not be considered to do so within a timeframe which did anything other than give rise to delay which was a further breach of Article 2 [of the ECHR] requirements of reasonable expedition.<sup>614</sup>

In 2023, the High Court of Justice in NI awarded the Finucane family further damages due to the ongoing breach.<sup>615</sup> In response, the former Secretary of State for NI, Chris Heaton-Harris, appealed the High Court of Justice in NI judgment.<sup>616</sup>

In July 2024, the Court of Appeal in NI dismissed the former Secretary of State for NI’s case, finding that there still has not been an Article 2 of the ECHR compliant investigation into the death of Patrick Finucane.<sup>617</sup> The parties to the case were provided with a maximum of six weeks to agree or present two choices to the High Court of Justice in NI for a way forward for consideration.<sup>618</sup> However, the High Court of Justice in NI reserved the right to decide “what the appropriate course is for the Secretary of State [for NI] to take”.<sup>619</sup>

In September 2024, the Secretary of State for NI, Hilary Benn MP, announced that the UK Government was initiating a public inquiry into Patrick Finucane’s murder.<sup>620</sup> The Secretary of State for NI confirmed that the UK Government would seek to appoint a chair to the inquiry and establish its terms of reference as soon as possible.<sup>621</sup>

<sup>614</sup> Ibid.

<sup>615</sup> ‘Pat Finucane: Widow of murdered solicitor to receive £5,000 in additional damages from Secretary of State’, *Newsletter*, 30 March 2023.

<sup>616</sup> Email correspondence from NI Office to NI Human Rights Commission, 10 August 2023.

<sup>617</sup> Julian O’Neill, ‘Decision on Finucane public inquiry due in weeks’, *BBC News*, 11 July 2024.

<sup>618</sup> Ibid.

<sup>619</sup> Ibid.

<sup>620</sup> NI Office, ‘Press Release: Statement by the Secretary of State for NI on the murder of Patrick Finucane’, 11 September 2024.

<sup>621</sup> Ibid.

## Omagh bomb inquiry

In 1998, a bomb in the centre of Omagh injured at least 220 people and killed 29 people, including a woman who was pregnant with twins.<sup>622</sup>

In 2021, after several legal cases,<sup>623</sup> the High Court of Justice in NI ruled that there are “plausible arguments that there was a real prospect of preventing the Omagh bombing”.<sup>624</sup> The High Court of Justice in NI did not “order a public inquiry to look at arguable grounds of preventability”.<sup>625</sup> However, the High Court of Justice in NI stated that “there is a real advantage in an Article 2 [of the ECHR] compliant investigation proceeding in... Ireland simultaneously with one in NI”.<sup>626</sup> Thus, the High Court of Justice in NI ruled that “it is for the government(s) to hold an investigation that is Article 2 [of the ECHR] compliant and which can receive both open and closed materials”.<sup>627</sup>

In 2023, an independent statutory inquiry into the preventability of the Omagh bombing was established with Lord Turnbull announced as Chair of the inquiry.<sup>628</sup>

In February 2024, the Omagh Bombing Inquiry formally commenced.<sup>629</sup> The Terms of Reference stipulate that the inquiry “will report to the Secretary of State for NI as soon as practicable”.<sup>630</sup> The final report will contain recommendations, but the Chair can choose to produce both an open and a closed report given the sensitive nature of the material.

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<sup>622</sup> ‘Omagh bombing: Timeline of families’ search for justice’, *BBC News*, 11 August 2023.

<sup>623</sup> *Ibid.*

<sup>624</sup> *In the Matter of an Application by Michael Gallagher for Leave to Apply for Judicial Review and in the Matter of a Decision by the Secretary of State for NI Made On 12 September 2013* [2021] NIQB 85, at para 310.

<sup>625</sup> *Ibid.*, at para 311.

<sup>626</sup> *Ibid.*, at para 310.

<sup>627</sup> *Ibid.*, at para 311.

<sup>628</sup> NI Office, ‘Press Release: Omagh Bombing Inquiry – Statement to Parliament by Secretary of State Chris Heaton-Harris’, 2 February 2023; NI Office, ‘Press Release: Secretary of State announces Chair of the Omagh Bombing Inquiry’, 12 June 2023.

<sup>629</sup> Omagh Bombing Inquiry, ‘Press Release: Omagh Bombing Inquiry begins its work’, 12 February 2024.

<sup>630</sup> Omagh Bombing Inquiry, ‘Omagh Bombing Inquiry Terms of Reference’. Available at: [Omagh Bombing Inquiry Terms of Reference – Omagh Bombing Inquiry](#).

In July 2024, the Omagh Bombing Inquiry held its first hearing.<sup>631</sup> However, no witnesses will be called or evidence heard until 2025.<sup>632</sup>

### Robert Hamill inquiry

In 2004, a public inquiry into the death of Robert Hamill in 1997 was launched.<sup>633</sup> In 2010, the Public Prosecution Service:

confirmed that, following a review of all the available evidence including that given to the Hamill Tribunal, it concluded that the Test for Prosecution is met in respect of two persons for an offence of conspiracy to pervert the course of justice and one person for an offence of doing an act with intent to pervert the course of justice.<sup>634</sup>

Thus, in 2011, despite completion of the inquiry report, the then Secretary of State for NI, Owen Paterson, stated that:

I have decided not to publish the Inquiry's report until the legal proceedings have concluded; to do so would certainly jeopardise these individual's right to a fair trial. I understand from the Inquiry that it is also the family's wish that the legal proceedings are not prejudiced by the publication of the report. In the meantime, I am exploring ways of ensuring that the report is safely and securely stored between its completion and its publication.<sup>635</sup>

In June 2024, all legal proceedings concluded with three convictions.<sup>636</sup> Consequently, Robert Hamill's family called for a date to be set for the release of the findings of the public inquiry.<sup>637</sup> In October 2024, the Secretary of State for NI, Hilary Benn MP, appointed Sir John Evans as new Chair of the

<sup>631</sup> Julian O'Neill, 'Omagh bomb inquiry first hearing begins', *BBC News*, 30 July 2024.

<sup>632</sup> Ibid.

<sup>633</sup> Robert Hamill Inquiry, 'Terms of Reference'. Available at: [The Robert Hamill Inquiry](#)

<sup>634</sup> UK Parliament, 'Written Statement to Parliament – Robert Hamill Inquiry: Publication of Report – Owen Paterson MP', 31 January 2011.

<sup>635</sup> Ibid.

<sup>636</sup> Cormac Campbell and Catherine Moore, 'Ex-officer jailed for perverting justice over killing', *BBC News*, 14 June 2024.

<sup>637</sup> Ibid.



Robert Hamill Inquiry for the report to be formally submitted.<sup>638</sup> Publication of the report remained awaited. The Secretary of State for NI stated steps were being taken to:

arrange for the necessary legal and security checks to be completed. While I will do everything I can to ensure the report is published as soon as possible, due to the passage of time since the report was completed, it is imperative that these checks happen before publication.<sup>639</sup>

## Recommendations

The Commission recommends that the Department of Justice and NI Office reestablish and fully support the work of the Legacy Inquests Unit, to ensure that all its investigations are compliant with the right to life (Article 2 of the ECHR).

The Commission recommends that the UK Government repeals the NI Troubles (Legacy and Reconciliation) Act 2023 and introduces legislation that enables the pursuit of justice in compliance with Article 2 of the ECHR, EU Victims' Directive and Windsor Framework Article 2.

The Commission recommends that the UK Government ensures that a right to life (Article 2 of the ECHR) compliant inquiry into the death of Patrick Finucane is promptly commenced and completed with reasonable expedition, including that it is sufficiently resourced for its duration.

The Commission recommends that the UK Government ensures that the Omagh Bombing Inquiry is compliant with Articles 2 (right to life) and 3 (freedom from torture) of the ECHR.

The Commission recommends that the UK Government ensures that the Robert Hamill Inquiry is compliant with Articles 2 (right to life) and 3 (freedom from torture) of the ECHR, with the report promptly published and recommendations implemented.

<sup>638</sup> UK Parliament, 'Written Ministerial Statement - Legacy - NI - Hilary Benn MP', 7 October 2024.

<sup>639</sup> Ibid.



## ● Rule of law: non-State actors

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

adopt robust measures to prevent and combat paramilitary racist violence and intimidation against ethnic minorities and migrants in NI, systematically collect information of these acts of intimidation and ensure that cases of paramilitary racist violence and intimidation are promptly and effectively investigated, prosecuted and punished with appropriate sanctions, and that victims have access to effective protection and redress.<sup>640</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “strengthen measures to protect children from intimidation, racist attacks and other forms of violence committed by non-State actors, including so-called ‘paramilitary organisations’ in NI, and from recruitment by such actors into violent activities”.<sup>641</sup>

In 2015, the Fresh Start Agreement committed to tackling paramilitary and organised crime.<sup>642</sup> In 2016, the NI Executive established the Programme on Paramilitarism and Organised Crime.<sup>643</sup> Phase One of the programme ran until March 2021, with the majority of actions completed.<sup>644</sup> In April 2024, Phase Two was extended until the end of March 2025.<sup>645</sup>

<sup>640</sup> CERD/C/GBR/CO/24-26, ‘UN CERD Committee Concluding Observations on the Combined Twenty-fourth to Twenty-sixth Reports of the UK and Great Britain and NI’, 23 August 2024, at para 22.

<sup>641</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 34(b).

<sup>642</sup> A Fresh Start: The Stormont Agreement and Implementation Plan, 17 November 2015.

<sup>643</sup> NI Executive, ‘Executive Programme for Tackling Paramilitary Activity and Organised Crime’. Available at: [Executive programme for tackling paramilitary activity and organised crime | Northern Ireland Executive](#)

<sup>644</sup> Department of Justice, ‘Tackling Paramilitary Activity, Criminality and Organised Crime: An Interim Review and Proposed Next Steps for Delivery of the Executive Action Plan’ (DoJ, 2020).

<sup>645</sup> NI Assembly Hansard, ‘Oral Question: Update on the Communities in Transition Project – Connie Egan MLA - AQO 250/22-27’, 24 April 2024; Independent Reporting Commission, ‘Sixth Report’ (IRC, 2023), at 6; Independent Reporting Commission, ‘Sixth Report’ (IRC, 2023), at 6.

Since 2016, a Paramilitary Crime Task Force has been operating through the Police Service of NI, the National Crime Agency and HM Revenue and Customs, which focuses on tackling paramilitary groups criminality. In 2020, the NI Executive reaffirmed its commitment to “ending paramilitarism”.<sup>646</sup> There was also a continued commitment by the UK Government to ensure the Police Service of NI is “appropriately resourced to deal with terrorism and paramilitary activity”.<sup>647</sup> Furthermore, a commitment that funding will be “available for a range of projects aimed at supporting community and reconciliation initiatives... which could include areas such as additional funding for tackling paramilitarism”.<sup>648</sup>

In 2023/2024, it was reported that paramilitarism continues to affect up to 40 per cent of adults and 45 per cent of young people in NI.<sup>649</sup>

In 2023/2024, there was one security related death, the same as 2022/2023.<sup>650</sup> There were 25 casualties of paramilitary style assaults, a decrease from 32 in 2022/2023 and the lowest number since 1983/1984.<sup>651</sup> In 2023/2024, there were 25 shooting incidents (a decrease from 37 in 2022/2023), seven bombing incidents (an increase from six in 2022/2023) and 12 casualties from paramilitary style shootings (an increase from 11 in 2022/2023).<sup>652</sup>

In 2024, there were increasing reports of links between paramilitarism and racist or xenophobic incidents and crimes in NI.<sup>653</sup>

<sup>646</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020).

<sup>647</sup> Ibid.

<sup>648</sup> Ibid.

<sup>649</sup> Organised Crime Task Force, ‘Annual Report 2022/23: Threat and Assessment’ (OCTF, 2024), at Appendix 2.

<sup>650</sup> Police Service of NI, ‘Police Recorded Security Situation Statistics - 1 April 2023 to 31 March 2024’ (PSNI, 2024), at 1.

<sup>651</sup> Ibid.

<sup>652</sup> Ibid.

<sup>653</sup> Lyndsey Telford, ‘Who is behind the Belfast race violence?’, *BBC News*, 10 August 2024; Andrew Madden and Brett Campbell, ‘Fears nurses could flee NI due to paramilitary-linked disorder’, *Belfast Telegraph*, 6 August 2024; Rebecca Black, ‘Paramilitary element suspected in latest disorder in Belfast’, *Independent*, 6 August 2024; ‘Man’s head “stamped on” during racist attack’, *BBC News*, 5 August 2024; Sara Girvin, ‘Why has there been a spike in racist attacks in south Belfast?’, *BBC News*, 17 October 2023; Brett Campbell, ‘“Racist” anti-immigration posters erected in Newtownards in suspected co-ordinated UDA campaign’ *Belfast Telegraph*, 1 December 2023.

In 2023/2024, the Executive Programme on Paramilitarism and Organised Crime invested £16 million of its ring-fenced funding across its projects.<sup>654</sup> Of this £8 million was ring-fenced funding from the Executive Office’s budget and £8 million was provided by the UK Government.<sup>655</sup> In 2024/2025, the funding for extending the programme has been maintained at its current level.<sup>656</sup>

In 2023, the Independent Reporting Commission published its sixth annual report, which concluded that:

in our recent Reports, we have characterised each year as “mixed” in terms of the paramilitarism landscape. That description also applies to 2023. Statistics on the security situation and other data measuring the impact of paramilitarism showed levels broadly in line with the last few years and there is increasing evidence that the combined efforts of the Twin Tracks of tackling the issue are bearing real fruit. But that said, there were some shocking incidents during the year involving both Loyalist and Republican paramilitaries. The threat level for NI-related Terrorism was increased during the year to “severe”. Coercive control continues to be an unacceptable feature of life in many communities where the paramilitaries operate. Instability at political level has also not helped. For those reasons, we say there are no grounds for complacency. Rather, the need for a continued sustained focus on tackling and ending paramilitarism remains essential. There exists an opportunity to advance efforts to tackle paramilitarism, but this requires further risk-taking and additional measures to supplement current valuable efforts.<sup>657</sup>

<sup>654</sup> Organised Crime Task Force, ‘Annual Report 2022/23: Threat and Assessment’ (OCTF, 2024), at Appendix 2.

<sup>655</sup> NI Assembly Hansard, ‘Written Ministerial Statement: Public Expenditure Budget 2024-25 – Minister of Finance, Dr Caoimhe Archibald MLA’, 25 April 2024; Independent Reporting Commission, ‘Sixth Report’ (IRC, 2023), at 136.

<sup>656</sup> Ibid.

<sup>657</sup> Independent Reporting Commission, ‘Sixth Report’ (IRC, 2023), at para 1.36.

The Independent Reporting Commission recommended that “funding and commitment to tackling paramilitarism must be long-term, multi-year and sustainable, allowing progress and innovation to bed in and avoiding a stop-start approach that is constrained by short budget cycles and associated pressures”.<sup>658</sup> The Independent Reporting Commission encouraged that the UK Government and NI Executive give serious consideration to strengthening and deepening efforts to tackle paramilitarism beyond Phase Two of the Programme, noting that continuation could take many forms, including through a Phase Three or a greater focus on mainstreaming key elements.<sup>659</sup>

In February 2024, the NI Affairs Committee published its inquiry report into the effect of paramilitary activity and organised crime on society in NI.<sup>660</sup> It noted the enduring impact of paramilitarism through the physical or psychological harm to victims and survivors of violence, the harm to communities through coercive control and the perpetuation of societal trauma.<sup>661</sup> The NI Affairs Committee commended the progress of the Tackling Paramilitarism Programme, particularly for its trauma-informed and public health approach.<sup>662</sup> However, the NI Affairs Committee highlighted concerns that “funding for projects and programmes to tackle paramilitarism are often short-term, resulting in a focus on crisis interventions rather than systemic change”.<sup>663</sup> The NI Affairs Committee recommended that the UK Government and NI Executive:

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<sup>658</sup> Ibid, at para 1.65.

<sup>659</sup> Ibid, at para 1.66.

<sup>660</sup> UK Parliament, ‘House of Commons: NI Affairs Committee - The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023–2024’ (HC, 2024).

<sup>661</sup> Ibid, at 4; Aisling Swaine, “‘When You Know What They are Capable Of’: Paramilitary-related Gendered Coercive Control’ (Foyle Family Justice Centre and UCD, 2024).

<sup>662</sup> UK Parliament, ‘House of Commons: NI Affairs Committee - The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023–2024’ (HC, 2024), at 4.

<sup>663</sup> Ibid.

extend the multi-year funding period for Phase Three to five years rather than the three years for which each phase is currently funded. A longer period for Phase Three would provide a more sustainable base for investment in, and development of, projects to tackle paramilitary activity.<sup>664</sup>

In May 2024, the previous UK Government advised that the Executive Programme on Paramilitarism and Organised Crime was being reviewed “in order to shape considerations of the Programme moving beyond the current phase”.<sup>665</sup> In late 2024, recommendations were due to be brought to the Programme Sponsor Group and it was anticipated that any proposals for multi-year funding would be considered at that stage.<sup>666</sup>

In September 2024, the NI Executive identified “safer communities” as an immediate priority. As part of this, the NI Executive confirmed that it remained “committed to tackling paramilitarism and organised crime” and “will continue to support the cross-Executive efforts aimed at addressing them”.<sup>667</sup> This includes building “on work to date that has demonstrated the links from vulnerability to paramilitary harm and other types of harm and violence” and seeking to “address the root causes of violence”.<sup>668</sup>

## Recommendations

The Commission recommends that the NI Executive and UK Government allocate sufficient and sustained long-term resources to the programme to end paramilitarism, and that the Department of Justice establishes consistent monitoring to ensure the steps taken to end paramilitarism in NI are reflective of the Independent Reporting Commission’s recommendations.

<sup>664</sup> UK Parliament, ‘House of Commons: NI Affairs Committee - The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023-2024’ (HC, 2024), at para 77.

<sup>665</sup> Letter from the Secretary of State for NI, Chris Heaton-Harris, to the House of Commons NI Affairs Committee, 17 May 2024.

<sup>666</sup> Ibid.

<sup>667</sup> NI Executive, ‘Our Plan: Doing What Matters Most - Draft Programme for Government 2024-2027’ (NIE, 2024), at 45.

<sup>668</sup> Ibid.

The Commission recommends that the NI Executive and UK Government, working with the Police Service NI, take effective steps to address paramilitary links to racist, xenophobic and coercive control incidents and crimes in NI. This includes investigating, prosecuting and punishing such incidents and crimes and ensuring an effective remedy for victims and survivors. It also includes developing specific programmes aimed at challenging and neutralising racist, xenophobic and controlling views, perceptions or disinformation, and building sustainable good relations. It should also involve the Police Service of NI, and other relevant bodies, building enduring relationships and undertaking meaningful engagement with affected individuals and representative organisations.

# Freedom from Torture, Inhuman and Degrading Treatment

## ● Abuse in health and social care settings

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “investigate all cases of abuse and maltreatment of children in alternative care and health settings, particularly among children with disabilities, adequately sanction perpetrators and provide reparation to victims”.<sup>669</sup>

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive:

establish measures to ensure equal access to justice and to safeguard persons with disabilities, particularly women, children, intersex people and elderly persons with disabilities from abuse, ill-treatment, sexual violence and/or exploitation. [And] ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.<sup>670</sup>

<sup>669</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, at para 30(c).

<sup>670</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 29 August 2017.



EU obligations underpinning rights relevant to Windsor Framework Article 2 in this context include the EU Victims' Directive<sup>671</sup> and the EU Charter of Fundamental Rights,<sup>672</sup> as well as other relevant EU laws which support victims.<sup>673</sup> In September 2024, the Court of Appeal in NI confirmed that the rights of victims of crime are given effect by civil rights and fall within the scope of the relevant chapter in the Belfast (Good Friday) Agreement and that specific rights in the EU Victims' Directive<sup>674</sup> were encompassed in the notion of victims' rights in that chapter.<sup>675</sup>

Section 267 of the Mental Capacity (NI) Act 2016 makes it an offence to ill-treat, or wilfully neglect a person who lacks capacity. In addition, the 2016 Act includes a statutory definition of restraint. Unlike in England and Wales,<sup>676</sup> there is still no free-standing offence where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual.<sup>677</sup>

In 2021, the Department of Health published proposals for an Adult Protection Bill in NI.<sup>678</sup> In 2024, the Adult Protection Bill was identified as a year-one priority within the NI Executive's legislative programme.<sup>679</sup> In June 2024, the draft Bill was close

<sup>671</sup> Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>672</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 126. See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock et al, 'The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework' (NIHRC, 2024).

<sup>673</sup> Directive 2011/36/EU 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2004/80/EC, 'EU Council Directive Relating to the Compensation to Crime Victims', 29 April 2004.

<sup>674</sup> Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>675</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117.

<sup>676</sup> Sections 20-25, Criminal Justice and Courts Act 2015.

<sup>677</sup> NI Human Rights Commission, 'Submission to the Consultation on Proposals for New Mental Capacity Legislation for NI' (NIHRC, 2014).

<sup>678</sup> Department of Health, 'Adult Protection Bill - Draft Final Policy Proposals for Ministerial Consideration' (DoH, 2021).

<sup>679</sup> NI Assembly Committee for Health, 'Official Report: Adult Protection Bill - Department of Health - 16 May 2024' (CoH, 2024), at 1-2.

to completion and “subject to the progression of the necessary financial approvals”, was expected to be “brought to the [NI] Executive immediately”.<sup>680</sup>

In 2023, following a public consultation,<sup>681</sup> the Department of Health published a new regional policy on the use of restrictive practices in health and social care settings, and regional operational procedures for the use of seclusion.<sup>682</sup> The policy aims to eliminate the use of restrictive practices, starting by ensuring the use of restrictive practices is minimised and only used when absolutely necessary.<sup>683</sup>

Between 2020 and 2022, several reports were published following an independent review of the health and social care system’s response to care failings at Dunmurry Manor Care Home.<sup>684</sup> In 2022, a Care Homes Working Group was established to monitor and report on the implementation of recommendations made by the Independent Review Team.<sup>685</sup> In 2024, the Care Homes Working Group’s work continued. It was also confirmed that the Adult Protection Bill is the legislative vehicle to address several failings at Dunmurry Manor Care Home.<sup>686</sup> However, it has been raised that financial and human resources will be essential in ensuring implementation of resulting legislation is effective.<sup>687</sup>

<sup>680</sup> Ibid.

<sup>681</sup> Department of Health, ‘Regional Policy on the Use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion – Consultation Document’ (DoH, 2022); NI Human Rights Commission, ‘Submission to Department of Health on the Regional Policy on the use of Restrictive Practices in Health and Social Care Settings’ (NIHRC, 2021); Department of Health, ‘Regional Policy on the Use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion – Consultation Report’ (DoH, 2023).

<sup>682</sup> Department of Health, ‘Regional Policy on the Use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion’ (DoH, 2023).

<sup>683</sup> Department of Health, ‘Press Release: Policy to minimise restrictive practices in health and social care published’, 20 March 2023.

<sup>684</sup> Department of Health, ‘Press Release: Minister announces plans for Adult Safeguarding Bill for NI’, 10 September 2020.

<sup>685</sup> Department of Health, ‘Press Release: Care home review reports published’, 27 October 2022.

<sup>686</sup> NI Assembly Executive Committee Business, ‘Executive Legislation Programme 2024 – 11 June 2024’ (NIA, 2024).

<sup>687</sup> NI Assembly Executive Committee Business, ‘Executive Legislation Programme 2024 – 11 June 2024 – Colin McGrath’ (NIA, 2024).

In 2022, the Muckamore Abbey Hospital Inquiry commenced.<sup>688</sup> In 2024, inquiry hearings continued and 15 people had been prosecuted in relation to alleged ill-treatment of patients at Muckamore Abbey Hospital.<sup>689</sup> In June 2024, Muckamore Abbey Hospital was due to close, but this was further delayed to “enable [remaining patients]... to successfully transition to their new homes”.<sup>690</sup> A revised deadline for closure has not been published. The Minister for Health, Mike Nesbitt MLA, has stated that “planning will continue at pace in relation to establishing resettlement timelines for the remaining patients, and the work being progressed by the Belfast Trust to close the hospital will continue”.<sup>691</sup>

The UK COVID-19 Inquiry is looking at resilience and preparedness, core UK decision-making and political governance, the impact of the COVID-19 pandemic on healthcare, and vaccines and therapeutics.<sup>692</sup> Each module is investigating issues within health and social care settings across the UK, including in NI. In 2024, the work of the UK COVID-19 Inquiry continued, which included the Commission providing a written statement on adult social care in NI.

## Recommendations

The Commission recommends that the Department of Health promptly introduces a freestanding offence where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual, as is the case elsewhere in the UK.

<sup>688</sup> Muckamore Abbey Hospital Inquiry, ‘Hearings’. Available at: <https://www.mahinquiry.org.uk/hearings>

<sup>689</sup> Muckamore Abbey Hospital Inquiry, ‘Press Release: Hearings due to return week commencing 9 September 2024’, 25 June 2024; Public Prosecution Service NI, ‘Press Release: Public Prosecution Service issues further decisions on Muckamore Abbey Hospital files’, 25 October 2024.

<sup>690</sup> Department of Health, ‘Press Release: Written Statement to the NI Assembly by Health Minister Mike Nesbitt – Closure of Muckamore Abbey’, 5 June 2024.

<sup>691</sup> Ibid.

<sup>692</sup> UK Covid-19 Inquiry, ‘Structure of the Inquiry’. Available at: <https://covid19.public-inquiry.uk/structure-of-the-inquiry/>

The Commission recommends that the Department of Health ensures that findings from investigations into human rights abuses at Dunmurry Manor and Muckamore Abbey Hospital are addressed immediately and fully remedied. The Commission further recommends that the Department of Health ensures that effective complaints mechanisms are in place, accessible and monitored to ensure that such breaches do not recur in the future.

The Commission recommends that the Department of Health adopts the recommendations from the COVID-19 Inquiry in relation to the management of the pandemic in care homes, ensuring that learning is disseminated across the sector and that a human rights based plan is in place for any future outbreak.

The Commission recommends that, when developing or implementing any laws or policies in relation to abuse in health and social care settings, the Department of Health, and other relevant NI departments, consider the extent to which Windsor Framework Article 2 is engaged and ensures that there is no diminution of the rights and safeguards which fall within its scope.

### **Allegations of torture and cruel, inhuman or degrading treatment or punishment overseas**

In March 2024, the UN Human Rights Committee expressed regret "that no prosecutions or further investigations have been carried out on the allegations of war crimes committed by British soldiers in Iraq".<sup>693</sup> The UN Human Rights Committee also highlighted its concern regarding the "adoption of the Overseas Operations (Service Personnel and Veterans) Act 2021 establishing a presumption against prosecution in favour of military personnel deployed outside the territory of the State party after five years and requiring approval by the Attorney

<sup>693</sup> CCPR/C/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of UK of Great Britain and NI', 28 March 2024, at para 12.

General for decisions to prosecute”.<sup>694</sup> The UN Human Rights Committee recommended that the UK Government:

should take legislative and other steps to ensure all violations committed by British officials and members of the armed forces, including overseas, are investigated, prosecuted as appropriate, and duly sanctioned without a time limitation, including by repealing or amending the Overseas Operations (Service Personnel and Veterans) Act 2021.<sup>695</sup>

This reflects the recommendation of the UN Working Group on the Universal Periodic Review.<sup>696</sup>

In 2019, the UN CAT Committee also raised concerns about the closure of cases transferred for investigation under the Iraq Historic Allegations team framework and recommended that the UK Government:

takes all necessary measures to establish responsibility and ensure accountability for any torture and ill-treatment committed by UK personnel in Iraq from 2003 to 2009, specifically by establishing a single, independent, public inquiry to investigate allegations of such conduct. The State Party should refrain from enacting legislation that would grant amnesty or pardon where torture is concerned. It should also ensure that all victims of such torture and ill-treatment obtain redress.<sup>697</sup>

The UN CAT Committee also recommended that the UK Government “reviews the consolidated guidance in light of its obligations under the [UN CAT]”, and should consider:

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<sup>694</sup> Ibid.

<sup>695</sup> Ibid, at para 13.

<sup>696</sup> UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review on UK of Great Britain and NI’, 27 February–31 March 2023, at para 43.107.

<sup>697</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at paras 32 and 33.

- a) eliminating the possibility of making recourse to assurances when there is a serious risk of torture or ill-treatment, and requiring intelligence agencies and armed forces to cease interviewing or seeking intelligence from detainees in the custody of foreign intelligence services in all cases where there is a risk of torture or ill-treatment; [and]
- b) monitoring the application of the consolidated guidance in practice. The State party should also ensure that military and intelligence personnel are trained on the provisions of the [UN CAT], including on the absolute prohibition of torture and ill-treatment.<sup>698</sup>

Furthermore, the UN CAT Committee expressed regret about the UK Government's position that the UN CAT is "primarily territorial" and does not have "extraterritorial effect".<sup>699</sup> The UN CAT Committee recommended that the UK Government "takes effective measures to prevent acts of torture, not only in its sovereign territory, but also 'in any territory under its jurisdiction', as required under Article 2(1) of the [UN CAT]".<sup>700</sup>

The Overseas Operations (Service Personnel and Veterans) Act 2021 exempts members of the armed forces and the UK Government from the legal consequences of events that occur in the course of military operations overseas, by derogation from the ECHR. It imposes a six-year statutory limitation on initiating cases against UK service personnel and veterans involved in overseas operations. The 2021 Act excludes alleged crimes by UK military personnel within NI, but raises concerns as to the UK Government's commitment to adhering to human rights standards in the broader context. In 2023, the previous UK Government did not have any plans to review the 2021 Act.<sup>701</sup>

<sup>698</sup> Ibid, at para 30.

<sup>699</sup> Ibid, at para 31.

<sup>700</sup> Ibid.

<sup>701</sup> UK Government, 'The Seventh Periodic Report Submitted by the UK of Great Britain and NI Under Article 19 of the UN CAT Pursuant to the Optional Reporting Procedure' (UK Gov, 2023), at para 175.

In July 2024, the new UK Government indicated its proposal for an Armed Forces Commissioner Bill.<sup>702</sup> It is unclear if the proposed Armed Forces Commissioner’s mandate will extend to allegations of torture and cruel, inhuman or degrading treatment or punishment overseas.

## Recommendations

The Commission continues to recommend that the UK Government establishes a full, independent, judge-led inquiry in relation to allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas and rendition.

## Child, early and forced marriage

In 2023, the UN CRC Committee specifically stated that it was “concerned that children who are 16 and 17 years of age do not always receive protection as children, and that marriage under 18 years of age remains permissible in... NI”.<sup>703</sup> The UN CRC Committee recommended that the UK Government and the NI Executive “prohibit all marriages under 18 years of age, without exception, in... NI”.<sup>704</sup> The UN CRC Committee also recommended that the UK Government and NI Executive:

develop national strategies aimed at eliminating and preventing harmful practices affecting children, including child marriage... and ensure that it includes effective measures for raising public awareness, training relevant professional groups, identifying victims and addressing data gaps and low rates of reporting and prosecution.<sup>705</sup>

In 2019, the UN CEDAW Committee<sup>706</sup> and UN CAT Committee emphasised the need for the UK Government and the NI

<sup>702</sup> Prime Minister’s Office, ‘Press Release: King’s Speech 2024’, 17 July 2024.

<sup>703</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 18.

<sup>704</sup> Ibid, at para 18(b).

<sup>705</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 35(a).

<sup>706</sup> CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 59(b).



Executive to strengthen efforts and effectiveness in combating forced marriage, including preventative and protection measures.<sup>707</sup>

The Marriage (NI) Order 2003 permits the marriage of a child aged 16 or 17 years old with the consent of their parents or legal guardians or the courts.

In 2022, 36 girls and 9 boys were married in NI.<sup>708</sup> This is a decrease compared to 2021, when 39 girls and 15 boys married in NI.<sup>709</sup> Further, civil society organisations have raised concerns with the Commission that some young people from the Roma community have been taken out of NI to be married and then returned.<sup>710</sup>

In England and Wales, the Marriage and Civil Partnership (Minimum Age) Act 2022 raised the legal age of marriage and civil partnerships to 18 years old.<sup>711</sup> Under the 2022 Act, children will not face penalties, but adults who facilitate underage marriages could face imprisonment for up to seven years and a fine. The 2022 Act applies to children taken abroad from England and Wales to marry.<sup>712</sup>

In 2022, the Commission advised the Department of Finance that international human rights standards consider child marriage to be a form of forced marriage.<sup>713</sup> The EU Victims' Directive recognises forced marriage as a form of gender-based violence and therefore, the Commission also advised that it considers that certain provisions on marriage law engage Windsor Framework Article 2.<sup>714</sup>

<sup>707</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 57(f).

<sup>708</sup> Email correspondence from NI Statistics and Research Agency to NI Human Rights Commission, 30 July 2024.

<sup>709</sup> Ibid.

<sup>710</sup> NI Human Rights Commission roundtable with civil society organisations on CoE Istanbul Convention, 20 September 2023.

<sup>711</sup> Marriage and Civil Partnership (Minimum Age) Act 2022.

<sup>712</sup> Section 2, Marriage and Civil Partnership (Minimum Age) Act 2022.

<sup>713</sup> Recital 17, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012; NI Human Rights Commission, 'Submission to Department of Finance Consultation on Marriage Law' (NIHRC, 2022).

<sup>714</sup> Ibid.

In 2022, the Department of Finance published its consultation analysis report, revealing near unanimous support among respondents for increasing the minimum age for marriage and civil partnerships to 18 years.<sup>715</sup> In 2024, the Minister of Finance, Caoimhe Archibald MLA, intended to introduce legislation as soon as possible to increase the minimum age for marriage and civil partnership to 18 years of age in NI.<sup>716</sup>

## Recommendations

The Commission recommends that the Department of Finance expeditiously introduces legislation to repeal all legal provisions permitting the marriage of children in NI and increase the minimum age for marriage to 18 years for all children.

The Commission recommends that the NI Executive ensures that cross-Departmental efforts to combat forced marriages are strengthened, including by sensitising parents, community and religious leaders, and wider society on the need for full and free consent to marry.

The Commission recommends that the Department of Finance consider and comply with Windsor Framework Article 2, including the EU Victims' Directive, in the development of legislation to repeal all legal provisions permitting the marriage of children in NI.

## Children missing from care

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “ensure the systematic collection and analysis of data on child protection issues and violence against children to inform the implementation of national strategies on violence and child sexual abuse, including by... creating a national database for missing children”.<sup>717</sup>

<sup>715</sup> Department of Finance, 'Marriage Law Consultation: Results and Analysis' (DoF, 2022).

<sup>716</sup> Email correspondence from Department of Finance to NI Human Rights Commission, 29 July 2024.

<sup>717</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 33(k).

In September 2024, the Court of Appeal in NI confirmed that the rights of victims of crime are within the scope of the relevant chapter in the Belfast (Good Friday) Agreement.<sup>718</sup> EU obligations underpinning rights relevant to Windsor Framework Article 2 in this context include the EU Child Sexual Exploitation Directive;<sup>719</sup> the EU Victims' Directive<sup>720</sup> and EU Trafficking Directive (2011).<sup>721</sup> These EU directives require that the best interests of the child are a primary consideration, in line with the EU Charter of Fundamental Rights and UN CRC.<sup>722</sup>

In 2023/2024, the Police Service of NI received 3,529 reports of children going missing from care, which involved 1,113 individual children.<sup>723</sup> Of these occurrences, 1,728 reports were from residential children's homes, relating to 151 individual children.<sup>724</sup> It has been noted that there is a "particular link" between children going missing from care and exploitation, particularly child sexual exploitation.<sup>725</sup>

Between 1 April 2018 and 31 March 2023, 371 children and young people were reported missing from care for over 24 hours.<sup>726</sup> In March 2024, in response to these statistics, the Department of Health stated that:

<sup>718</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117.

<sup>719</sup> Directive 2011/92/EU, 'EU Parliament and EU Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011.

<sup>720</sup> Articles 1 and 24, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>721</sup> Directive 2011/36/EU, 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

<sup>722</sup> Recital 6, Directive 2011/93/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011. See also *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 126; *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock et al, 'The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework' (NIHRC, 2024).

<sup>723</sup> Email correspondence from Police Service of NI to NI Human Rights Commission, 31 July 2024.

<sup>724</sup> Ibid.

<sup>725</sup> Safeguarding Board for NI, 'Getting Focused and Staying Focused, Looked After Children, Going Missing, and Child Sexual Exploitation – A Thematic Review' (QUB, 2015), at 25; NI Human Rights Commission, 'Submission to the UN Committee on the Rights of the Child 88th Session on the Sixth Periodic Report of the UK of Great Britain and NI on Compliance with the UN CRC (List of Issues)' (NIHRC, 2020).

<sup>726</sup> Andrew Madden, 'Watchdog's 'alarm' at number of NI children in care who go missing', *Belfast Telegraph*, 29 March 2024.

through the proactive efforts of social services and police, the vast majority are returned quickly to their placements... Every effort is made to always ensure the safety and wellbeing of young people in care. [Health and Social Care] Trusts and police work together to monitor and manage the response by sharing information and developing tailored interventions to safeguard young people who go missing.<sup>727</sup>

In 2023, the Police Service of NI and the Health and Social Care Trusts launched a new interface protocol on children missing from care.<sup>728</sup> The new protocol formalises a governance structure between the Police Service of NI and the Trusts, which includes joint working relationships and monitoring arrangements.<sup>729</sup> This forum considers issues in relation to the safeguarding of young people who go missing from care, with an emphasis on sharing information and analysing data/trends to support the development of disruptive strategies to support and safeguard young people at particular risk.<sup>730</sup>

## Recommendations

The Commission recommends that the Department of Health and the Police Service of NI reviews, after 12 months of implementation, the effectiveness of the new Interface Protocol for when a child is reported missing and other police interactions. This analysis should consider steps taken to identify patterns and risks, reduce harm, improve support, and prevent missing occurrences.

<sup>727</sup> Ibid.

<sup>728</sup> Police Service of NI and Department of Health, 'Interface Protocol between Health and Social Care Trusts and Police Service of NI: Where a Child is Reported Missing and Other Police Interactions with Residential Children's Homes' (PSNI and DoH, 2023).

<sup>729</sup> NI Assembly Hansard, 'Written Question: Children Who Go Missing from Residential or Foster Care - Michelle McIlveen MLA - AQW 7545/22-27', 15 March 2024.

<sup>730</sup> Ibid.

## ● Conversion practices

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive:

continue its efforts and adopt the measures necessary to prohibit the practice of so-called conversion therapy against lesbian, bisexual and transgender persons, including in NI. Furthermore, it should take legislative and other measures to eliminate intrusive requirements for legal gender recognition, including psychiatric diagnosis, and provide for and effectively implement a quick, transparent and accessible procedure for legal gender recognition that is compatible with the provisions of the [UN ICCPR].<sup>731</sup>

In April 2024, the then Independent Expert on sexual orientation and gender identity, Victor Madrigal-Borloz, recommended that the UK Government and NI Executive “finalise consultations and adopt legislative bans on conversion practices”.<sup>732</sup> The Independent Expert also recommended that the UK Government and NI Executive should “proceed with the proactive roll-out of effective support services for survivors, without waiting for legislative bans to adopt the necessary protection measures and effective remedies”.<sup>733</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

prohibit the promotion, facilitation and delivery of so-called ‘conversion therapies’ aimed at changing the sexual orientation and gender identity of children, in line with its commitment made in 2018, with particular attention paid to the vulnerabilities of children who may be subject to such harm.<sup>734</sup>

<sup>731</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 19.

<sup>732</sup> A/HRC/56/49/Add.1, ‘Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity: Visit to the UK of Great Britain and NI’, 11 April 2024, at para 97(a).

<sup>733</sup> Ibid, at para 97(c).

<sup>734</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023.

In 2023, the then CoE Commissioner for Human Rights, Dunja Mijatović, stated that conversion practices “conflict with an overwhelming consensus of international human rights and scientific bodies”.<sup>735</sup> The Commissioner for Human Rights clarified that “it is important to underscore that properly drafted conversion practice bans should not interfere with the right to hold a belief or express an opinion on lesbian, gay, bisexual, transgender and intersex issues”.<sup>736</sup> The Commissioner for Human Rights further called for “a comprehensive, human rights based approach to eliminating” conversion therapies, which includes mapping the problem, ensuring accountability, delegitimising conversion therapies in society, and ensuring participation, support and rehabilitation of victims”.<sup>737</sup>

Internationally, conversion practices are defined as:

an umbrella term to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person’s sexual orientation and gender identity, including gender expression, can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm, in particular when the person is lesbian, gay, bisexual, trans or gender diverse. Such practices are therefore consistently aimed at effecting a change from non-heterosexual to heterosexual and from trans or gender diverse to cisgender. Depending on the context, the term is used for a multitude of practices and methods, some of which are clandestine and therefore poorly documented.<sup>738</sup>

<sup>735</sup> CoE Commission for Human Rights, ‘Press Release: Nothing to cure – putting an end to so-called “conversion therapies” for Lesbian, Gay, Bisexual, Transgender and Intersex people’, 16 February 2023.

<sup>736</sup> Ibid.

<sup>737</sup> Ibid.

<sup>738</sup> A/HRC/44/53, ‘Report of the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity: Practices of So-called “Conversion Therapy”’, 1 May 2020, at para 17.

In a NI context, conversion practices are defined as:

any practice designed to change a person’s sexual orientation or gender identity. It can be distinguished from other practices designed to provide guidance and support to [lesbian, gay, bisexual, transgender, queer (or questioning), intersex +]... people provided by psychotherapists, counsellors or faith leaders because it operates under the premise that a specific sexual orientation, gender identity, or gender expression is pathological and/or evidence of a mental illness that can be cured. Unlike therapies that facilitate a person’s open and autonomous exploration of their sexual and gender futures, these therapies are discriminatory from the outset because [conversion practices]... designates identities into normal and abnormal categories. As such, it is proscriptive because it attempts to modify identity into traditional heterosexual and cis-gendered models. It includes both pseudo-psychological treatments and physical interventions. In its ‘therapeutic’ forms it is a scientifically discredited, unprofessional and dangerous practice.<sup>739</sup>

In May 2024, research found:

evidence that conversion practices have been offered to lesbian, gay, bisexual, transgender, queer (or questioning), intersex + people and practiced in NI over the last 10 years. Study participants identified conversion practices offered to or conducted on young adults and children in spiritual, health and educational settings. The study participants provided insight into why they became participants in conversion practices. Practices were promoted or conducted by qualified and unqualified individuals. These practices were advertised publicly, or conversely, performed in a clandestine way. Participants identified a range of harm caused by participation in conversion practices.<sup>740</sup>

<sup>739</sup> Department for Communities, ‘Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations’ (DfC, 2021), at Section 6.2.

<sup>740</sup> Fidelma Ashe and Danielle Mackle, ‘A Study of Conversion Practices in NI’ (2024), at 1.



In 2021, the Expert Advisory Panel on a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI concluded that conversion practices should be made illegal in NI.<sup>741</sup> The Expert Advisory Panel also recommended that steps are taken to ensure such practices are not commissioned or funded and that appropriate medical services are created to provide free access to support for victims.<sup>742</sup>

In June 2024, the NI Assembly passed a motion calling on the Minister for Communities, Gordon Lyons MLA, to commit to bringing forward legislation to ban conversion practices in all its forms.<sup>743</sup> This follows the NI Assembly's vote to pass another motion to ban these practices in 2021.<sup>744</sup> The Commission wrote to the then Minister for Communities in support of the motion.<sup>745</sup> The Minister for Communities confirmed that work was ongoing to inform policy proposals in order to bring forward legislation on conversion practices, "if that is required".<sup>746</sup>

In July 2024, it was announced that the new UK Government would be introducing a Bill to ban conversion practices.<sup>747</sup> It is unclear whether it is intended that this Bill would extend to NI. A draft Private Members Bill that proposes to ban conversion practices in NI was also under development for introduction to the NI Assembly.<sup>748</sup>

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<sup>741</sup> Department for Communities, 'Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations' (DfC, 2021), at para 33.

<sup>742</sup> Ibid.

<sup>743</sup> NI Assembly Hansard, 'NI Assembly: Conversion Practices – Gordon Lyons MLA', 4 June 2024.

<sup>744</sup> Department for Communities, 'Press Release: Conversion Therapy must end – Hargey', 20 April 2021.

<sup>745</sup> Letter from NI Human Rights Commission to the Minister for Communities, Deirdre Hargey MLA, 5 May 2021.

<sup>746</sup> NI Assembly Hansard, 'NI Assembly: Conversion Practices – Gordon Lyons MLA', 4 June 2024.

<sup>747</sup> Prime Minister's Office, 'Press Release: The King's Speech 2024', 17 July 2024.

<sup>748</sup> Letter from Eóin Tennyson MLA to NI Human Rights Commission, 22 July 2024.

## Recommendations

The Commission recommends that the Department for Communities, with the support of the NI Executive, promptly introduces legislation in NI to ban all conversion practices aimed at changing or suppressing a person’s sexual orientation or gender identity, by any person or group of persons. The Department for Communities should be guided by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Expert Advisory Panel on a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI’s definitions of conversion practices in developing this legislation and its broader work related to this issue.

The Commission recommends that the Department for Communities, with the support of the NI Executive, promptly introduces specialised support services for victims and survivors of conversion practices in NI. This support should not be reliant on there being a legislative ban in place.

## Deprivation of citizenship

In May 2024, the UN Human Rights Committee recommended that the UK Government “should provide full and effective protection of stateless persons residing in the jurisdictions of the [UK]... in line with international standards, including the Convention relating to the Status of Refugees and the Convention on the Reduction of Statelessness”.<sup>749</sup> The UN Human Rights Committee further recommended that the UK Government:

intensify its efforts to ensure that no person becomes or remains stateless, by granting citizenship or by issuing identity documents to stateless persons where appropriate;

to guarantee the right of every child to acquire a nationality;

<sup>749</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 45.

to develop effective mechanisms to address the situation of stateless persons in the [UK]... ensuring that any detention of individuals claiming statelessness is reasonable, necessary and proportionate... and that alternatives to detention are found in practice, and that legal assistance is provided to them;

review the legislative framework to ensure that the denial of citizenship, on terrorism grounds, includes appropriate procedural safeguards and is consistent with the principles of legality, necessity and proportionality;

ensure that, in law and practice the necessary safeguards are in place to guarantee decisions of deprivation of citizenship do not render individuals stateless, and that all decisions are subject to judicial review and fully respect the right to fair legal proceedings, ensuring that all individuals, whether located in the [UK]... or abroad, have adequate access to an independent appeals procedure; [and]

intensify efforts to swiftly repatriate all its nationals who are currently in armed conflict zones and their families and children by means of a clear and fair procedure that respects the principle of the best interests of the child and provides adequate access to rehabilitation services and care upon repatriation.<sup>750</sup>

In 2023, the UN CRC Committee recommended that the UK Government:

amend the Nationality and Borders Act of 2022 to ensure that the best interests of the child are taken as a primary consideration in all proceedings related to deprivation of nationality, that the [2022] Act is not applied to any children who would be put at risk of statelessness or would otherwise be stateless, and that citizens are not deprived of their citizenship as a result of actions they allegedly committed as children.<sup>751</sup>

<sup>750</sup> Ibid, at paras 45 and 47.

<sup>751</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 24(b).

The British Nationality Act 1981 empowers the Home Secretary to deprive a naturalised British citizen of their citizenship if they have engaged in conduct “seriously prejudicial” to the UK’s vital interests, and the Home Secretary has reasonable grounds to believe the person is able, under the law of a country or territory outside the UK, to become a national of such a country or territory, even if the individual is abroad.<sup>752</sup> Section 10 of the Nationality and Borders Act 2022 exempts the UK Government from having to give notice of a decision to deprive a person of British citizenship if it is not reasonably practicable to do so, or in the interests of national security, diplomatic relations or otherwise in the public interest.<sup>753</sup>

In 2022, three people were deprived of British citizenship on the basis that to do so was “conducive to the public good”, this was a decrease from eight people in 2021.<sup>754</sup> In 2022, the Institute for Race Relations found that deprivation of citizenship particularly affected individuals with a Muslim background.<sup>755</sup>

The Counter Terrorism and Security Act 2015 makes provision for Temporary Exclusion Orders, which prohibit the return of an individual to the UK without a permit to return. An individual subject to a Temporary Exclusion Order can apply to the court for a statutory review of the Order on their return to the UK.<sup>756</sup> In 2022, two Temporary Exclusion Orders were imposed, with one individual returned to the UK in the same year.<sup>757</sup> This was a decrease from five imposed Temporary Exclusion Orders and returned individuals in 2021.<sup>758</sup>

<sup>752</sup> Section 40, British Nationality and Citizenship Act 1981.

<sup>753</sup> Section 10, Nationality and Borders Act 2022.

<sup>754</sup> HM Government, ‘HM Government Transparency Report: Disruptive Powers 2021’ (HO, 2023), at 25; HM Government, ‘HM Government Transparency Report: Disruptive Powers 2022’ (HO, 2024), at 3.10.

<sup>755</sup> Institute For Race Relations, ‘Citizenship: From Right to Privilege – A Background Paper on the History of Citizenship-stripping Powers’ (IFRR, 2022).

<sup>756</sup> Section 10, Counter Terrorism and Security Act 2015.

<sup>757</sup> HM Government, ‘HM Government Transparency Report: Disruptive Powers 2022’ (HO, 2024), at 3.9.

<sup>758</sup> HM Government, ‘HM Government Transparency Report: Disruptive Powers 2021’ (HO, 2023), at 23.

In 2020, the Independent Reviewer of Terrorism Legislation, Jonathan Hall KC, noted that “the power to deprive a dual national of their British citizenship was used 104 times in 2017, but there does not appear to be any sufficient form of independent review of its use for suspected terrorists”.<sup>759</sup> He recommended that the “Independent Reviewer be given statutory authority to review any immigration power used by the Home Secretary to the extent that it is used in counter-terrorism”.<sup>760</sup> In 2024, following the previous UK Government’s rejection of this recommendation,<sup>761</sup> it remained unaddressed.

In 2023, following a dismissed appeal at the UK Supreme Court,<sup>762</sup> the UK Special Immigration Appeals Commission upheld the UK Government’s decision to strip Shamima Begum of British citizenship.<sup>763</sup> Ms Begum travelled to Syria to join the Islamic State in Iraq and the Levant when she was 15 years old.<sup>764</sup> In dismissing her appeal, the Special Immigration Appeals Commission stated that there was reasonable suspicion that Ms Begum had been trafficked and there were arguable failures in the positive duty to protect the applicant by allowing her to travel to Syria.<sup>765</sup> In August 2024, the UK Supreme Court rejected a further appeal from Ms Begum regarding revocation of her UK citizenship.<sup>766</sup> Ms Begum is pursuing a case before the ECtHR.<sup>767</sup>

## Recommendations

The Commission recommends that the UK Home Office, as a minimum, introduces a requirement to ensure judicial scrutiny before exercising the power to deprive an individual of their UK citizenship.

<sup>759</sup> Jonathan Hall KC, ‘The Terrorism Acts in 2018 - Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006’ (IRTL, 2020), at para 1.15.

<sup>760</sup> Ibid, at para 1.16.

<sup>761</sup> Ibid.

<sup>762</sup> *R (On the application of Begum) v Secretary of State for the Home Department* [2021] UKSC 7.

<sup>763</sup> *Special Immigration Appeals Commission Shamima Begum v Secretary of State for the Home Department* [2023] Appeal No SC/163/2019.

<sup>764</sup> Ibid.

<sup>765</sup> Ibid.

<sup>766</sup> Aleks Phillips, ‘Shamima Begum loses final UK court bid over citizenship’, *BBC News*, 7 August 2024.

<sup>767</sup> Ibid.

The Commission recommends that the UK Government only utilises the power to withhold notice of a decision to deprive a person of British citizenship when it is absolutely necessary.

## ● Domestic and sexual violence and abuse

In May 2024, the UN Human Rights Committee recommended that the UK Government “withdraw its reservation to Article 59 of the Istanbul Convention”.<sup>768</sup> The UN Human Rights Committee further recommended that the UK Government and NI Executive:

ensure equal protection for migrant women, including by providing equal access to social and economic support and a safe mechanism for reporting violence without fear of reprisals or being reported to immigration enforcement authorities;

encourage the reporting of cases of violence against women and ensure that all victims, including migrant women and girls, have adequate access to effective remedies and means of protection, including shelters and medical, psychosocial, legal and rehabilitative support services.<sup>769</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

promptly and effectively investigate and intervene in all cases of violence against children, including domestic violence... abuse of children, in and outside the home, in the digital environment... and ensure expert support to child victims and that perpetrators are brought to justice.<sup>770</sup>

<sup>768</sup> CCRP/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 21(a).

<sup>769</sup> Ibid, at paras 21(a) and (b).

<sup>770</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 33(c).

The UN CRC Committee also recommended that the UK Government and NI Executive “strengthen measures aimed at tackling violence against children, including implementing the recommendations of... the Gillen Review in NI... and other relevant inquiries and investigations conducted by independent bodies”.<sup>771</sup>

In 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive:

- a) ratify the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention);
- b) adopt legislative and comprehensive policy measures to protect women from all forms of gender-based violence throughout the State party’s jurisdiction, including NI;
- c) ensure that asylum-seeking women, migrants and women with insecure immigration status are able to seek effective protection and support services without fear of having their immigration status reported to authorities. This includes ensuring domestic violence concessions for non-EU women are accessed promptly;
- d) ensure that its laws and policies effectively protect women with disabilities from all forms of gender-based violence, and in particular violence perpetrated by their caregivers; [and]
- e) ensure that the policy of commissioning services does not undermine the provision of specialised services for women who are victims of gender-based violence.<sup>772</sup>

In 2019, the UN CAT Committee recommended the UK Government and NI Executive:

<sup>771</sup> Ibid, at para 33(d).

<sup>772</sup> 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 30.



- a) take effective measures to address low prosecution and conviction rates for domestic abuse and sexual violence in the State party, and to ensure that all cases of gender-based violence, especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately, and that the victims or their families receive redress, including adequate compensation;
- b) consider revising police practices that deter migrant women from seeking protection from the authorities in cases where they have been subjected to or are at risk of gender-based violence;
- c) provide mandatory training on the prosecution of gender-based violence to all justice officials and law enforcement personnel and continue awareness-raising campaigns on all forms of violence against women;
- d) carry out a review of the availability of refuges, specialist domestic abuse services and rape support centres, throughout the State party, to ensure that the provision of increased funding results in all women who are victims of gender-based violence in the State party having access to necessary support and services; [and]
- e) compile and provide to the [UN CAT] Committee statistical data, disaggregated by the age and ethnicity or nationality of the victim, on the number of complaints, investigations, prosecutions, convictions and sentences recorded in cases of gender-based violence, as well as on the measures adopted to ensure that victims have access to effective remedies and reparation.<sup>773</sup>

<sup>773</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 57.

EU obligations underpinning rights relevant to Windsor Framework Article 2 in this context include the EU Victims' Directive<sup>774</sup> as well as other relevant EU laws which support victims.<sup>775</sup> In September 2024, the Court of Appeal in NI confirmed that the rights of victims of crime are given effect by civil rights and fall within the scope of the relevant chapter in the Belfast (Good Friday) Agreement and that specific rights in the EU Victims' Directive were encompassed in the notion of victims' rights in that chapter.<sup>776</sup> The Court of Appeal in NI also confirmed that the EU Victims' Directive is to be "interpreted in accordance with the EU Charter of Fundamental Rights and general principles of EU law".<sup>777</sup> The EU Victims' Directive recognises that where physical, sexual, psychological or economic violence is committed in a close relationship, this can cause psychological and physical trauma and such victims are therefore in need of special protection measures. The EU Directive further recognises that women are disproportionately affected by this harm.<sup>778</sup>

In May 2024, the EU Directive on combating violence against women and domestic violence was adopted.<sup>779</sup> The purpose of the EU Directive is to strengthen and introduce measures on the definition of relevant criminal offences and penalties, the protection of victims and access to justice, victim support, enhanced data collection, prevention, coordination and cooperation.<sup>780</sup> The EU Directive sets minimum EU standards

<sup>774</sup> Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>775</sup> Directive 2011/36/EU 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2004/80/EC, 'EU Council Directive Relating to the Compensation to Crime Victims', 29 April 2004.

<sup>776</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117.

<sup>777</sup> *Ibid*, at para 126. See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock et al, 'The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework' (NIHRC, 2024).

<sup>778</sup> Recital 18, Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>779</sup> Directive 2024/1385/EU, 'EU Parliament and Council Directive on Combating Violence Against Women and Domestic Violence', 14 May 2024.

<sup>780</sup> Recital 1, Directive 2024/1385/EU, 'EU Parliament and Council Directive on Combating Violence Against Women and Domestic Violence', 14 May 2024.

for specialist provision for victims of sexual harassment at work.<sup>781</sup> The Commission is currently examining the extent to which the EU Directive on Combating Violence against Women and Domestic Violence amends and/or replaces provisions of the EU Gender Equality (Employment) Directive, pursuant to Articles 2 and 13 of the Windsor Framework.<sup>782</sup> While there is no requirement under the Windsor Framework for NI law to keep pace with EU developments beyond those relating to the EU Equality Directives listed in Annex 1, the Executive Office and other relevant departments can consider aligning with those developments which strengthen protections and ensure equivalence of rights on the island of Ireland.<sup>783</sup>

## Statistics

In 2023/2024, there were 32,763 domestic abuse incidents and 19,954 domestic abuse crimes recorded in NI, a decrease from 32,876 incidents and 22,312 crimes in 2022/2023.<sup>784</sup> Due to lack of reporting, these figures are only indicative of the extent of the issue, particularly regarding violence against women and girls.<sup>785</sup>

In 2023/2024, there were three homicides (one woman and two men) with a domestic abuse motivation recorded by the police, this was a decrease from eight homicides in 2022/2023.<sup>786</sup> Since 2020, 24 women have been murdered by men, or where a man has been charged in connection with the death, in NI.<sup>787</sup>

<sup>781</sup> Articles 28 and 36 and Recital 65, Directive 2024/1385/EU, 'EU Parliament and Council Directive on Combating Violence Against Women and Domestic Violence', 14 May 2024.

<sup>782</sup> Directive 2006/54/EC, 'EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.

<sup>783</sup> NI Human Rights Commission and Equality Commission NI, 'Policy Recommendations: EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (NIHRC and ECNI, 2023). See also Island of Ireland Dimension of the Windsor Framework in the 'Constitutional Protections - Human Rights after UK exit for the EU' section in this Annual Statement.

<sup>784</sup> Police Service of NI, 'Domestic Abuse Incidents and Crimes Recorded by the Police in NI Update to 31 March 2024' (PSNI, 2024), at 1.

<sup>785</sup> Women's Policy Group NI, 'Violence against Women and Girls in NI: Primary Research Findings' (WPGNI, 2022).

<sup>786</sup> Police Service of NI, 'Domestic Abuse Incidents and Crimes Recorded by the Police in NI Update to 31 March 2024' (PSNI, 2024), at 1.

<sup>787</sup> Ita Dungan, 'A picture of violence: The 24 women killed in four years', *BBC News*, 16 October 2024.

In 2022/2023, 518 women and 342 children stayed in refuges run by Women's Aid NI.<sup>788</sup> Women's Aid NI recorded 7,543 women who received support while staying in their own homes and 5,948 children who had mothers supported in Women's Aid services.<sup>789</sup>

In 2023, research found that 98 per cent of surveyed women in NI and 73 per cent of surveyed girls aged 12 to 17 years old in NI reported having experienced at least one form of violence in their lifetime.<sup>790</sup>

In 2024, there was increasing acknowledgement of paramilitary-related coercive control, particularly against women.<sup>791</sup>

## Law and policy developments

In 2023, the Department of Health and Department of Justice consulted on a draft domestic and sexual abuse strategy.<sup>792</sup> In its consultation response, the Commission recommended that human rights standards are embedded into the strategy's priorities, including the EU Victims' Directive<sup>793</sup> and highlighted compliance with Windsor Framework Article 2.<sup>794</sup> The Commission further recommended that the final strategy explicitly adopts a gender-sensitive approach, including providing for specialised, gender-sensitive, accessible support for victims of domestic and sexual abuse.<sup>795</sup> The Commission also recommended that the necessary resources are ring-fenced for the development and effective implementation of the strategy.<sup>796</sup>

<sup>788</sup> Women's Aid Federation NI, 'Time Is Ticking: Annual Report 2022-2023' (WAFNI, 2023), at 3.

<sup>789</sup> Ibid.

<sup>790</sup> Susan Lagdon et al, 'Every Voice Matters: Violence Against Women in NI' (UU, 2023), at 1; Siobhán McAlister et al, 'It's Just What Happens: Girls' and Young Women's Views and Experiences of Violence in NI' (QUB, 2023), at 50.

<sup>791</sup> Aisling Swaine, "'When You Know What They are Capable Of": Paramilitary-related Gendered Coercive Control' (Foyle Family Justice Centre and UCD, 2024).

<sup>792</sup> Department of Health and Department of Justice, 'Draft Domestic and Sexual Abuse Strategy: 2023-2030' (DoH and DoJ, 2023).

<sup>793</sup> Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>794</sup> NI Human Rights Commission, 'Consultation Response to the Draft Domestic and Sexual Abuse Strategy' (NIHRC, 2023), at 11.

<sup>795</sup> Ibid, at 13.

<sup>796</sup> Ibid, at 15.

In 2023, the Executive Office consulted on a strategic framework and action plan for ending violence against women and girls.<sup>797</sup> The Commission provided a response welcoming the proposed framework and action plan. The Commission highlighted the need to adopt the Barnahus model and for there to be greater consideration of specific needs, disaggregated data and adequate funding.<sup>798</sup> The Commission indicated that the EU Victims' Directive recognises gender-based violence as a form of discrimination and underpins relevant ECHR rights and is therefore relevant in the context of the draft Strategic Framework.<sup>799</sup> The Commission also welcomed the inclusion of a Windsor Framework Impact Assessment, but advised that it should consider all relevant provisions of EU law engaged under the Windsor Framework Article 2, including measures focused on child sexual exploitation<sup>800</sup> and trafficking.<sup>801</sup> In August 2024, the Ending Violence Against Women and Girls Strategy was published.<sup>802</sup>

In September 2024, the Domestic and Sexual Abuse Strategy was published, which considers human rights standards, prioritises specialised support for victims and wider families, and acknowledges that domestic and sexual abuse disproportionately affects women and children.<sup>803</sup> However, the Domestic and Sexual Abuse Strategy has been criticised for not including measures to deal with 'spiking'.<sup>804</sup> It is intended that the Domestic and Sexual Abuse Strategy and Ending Violence Against Women and Girls Strategy "will support and complement each other".<sup>805</sup>

<sup>797</sup> The Executive Office, 'Strategic Framework to End Violence Against Women and Girls' (TEO, 2023).

<sup>798</sup> NI Human Rights Commission, 'Consultation Response to the Strategic Framework to End Violence Against Women and Girls' (NIHRC, 2023).

<sup>799</sup> Ibid, at 29-31.

<sup>800</sup> Directive 2011/92/EU, 'Directive of the European Parliament and of the Council of the EU on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography and Replacing Council Framework Decision 2004/68/JHA', 13 December 2011.

<sup>801</sup> Directive 2011/36/EU, 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims', 5 April 2011.

<sup>802</sup> NI Executive, 'Ending Violence Against Women and Girls Strategic Framework 2024-2031' (NIE, 2024).

<sup>803</sup> Department of Justice and Department of Health, 'Domestic and Sexual Abuse Strategy 2024-2031' (DoJ and DoH, 2024).

<sup>804</sup> 'Spiking not in NI strategy a "missed opportunity"', *BBC News*, 26 September 2024.

<sup>805</sup> Department of Justice and Department of Health, 'Domestic and Sexual Abuse Strategy 2024-2031' (DoJ and DoH, 2024), at 1.

In 2024, the Department for the Economy consulted on proposed regulations to operationalise the Domestic Abuse (Safe Leave) Act (NI) Act 2022.<sup>806</sup> The outcome of the consultation is awaited.

In September 2024, the NI Executive identified “safer communities” and ending violence against women and girls as immediate priorities, acknowledging that it “requires a whole-of-government and whole-of-society approach”.<sup>807</sup> The NI Executive identified that its “long-term focus is on early intervention and prevention of violence against women and girls”, with a commitment to raise awareness, provide challenge funding and to adopt a joined-up approach.<sup>808</sup>

## Anonymity

In 2023, anonymity laws came into force under the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.<sup>809</sup> The laws exclude the public from court in serious sexual offence cases and extend anonymity for victims of sexual offending for a period of 25 years after the victim has died.<sup>810</sup> The anonymity of suspects in sexual offence cases is also protected up to the point of charge.<sup>811</sup> Individuals not subsequently charged will have anonymity for their lifetime and for 25 years after their death.<sup>812</sup> The laws further prohibit the publication of information which leads to the identification of a victim or suspect in a sexual offence case.<sup>813</sup>

In June 2024, the High Court of Justice in NI considered a challenge regarding the compliance of section 12 of the 2022 Act, which provides anonymity laws for persons suspected of

<sup>806</sup> Department for the Economy, ‘Domestic Abuse Safe Leave: Public Consultation’ (DfE, 2024), at 9.

<sup>807</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 30 and 42.

<sup>808</sup> Ibid, at 31.

<sup>809</sup> Sections 8-19, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022; Department of Justice, ‘Press Release: New non-fatal strangulation offence comes into force’, 26 June 2023.

<sup>810</sup> Sections 8-19, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.

<sup>811</sup> Ibid.

<sup>812</sup> Ibid.

<sup>813</sup> Ibid.



sexual offences, with Articles 8 (right to respect for private and family life) and 10 of the ECHR (right to freedom of expression).<sup>814</sup> The High Court of Justice in NI found that the law violated Articles 8 and 10 of the ECHR by failing to strike an appropriate balance between the right to privacy of suspects and freedom of expression of the media.<sup>815</sup> Consequently, section 12 of the 2022 Act has been struck down and is no longer enforceable.

In July 2024, the Minister of Justice, Naomi Long MLA, confirmed that the Department of Justice would not be appealing the High Court of Justice in NI's decision.<sup>816</sup>

### Immigration status

In 2022, the Istanbul Convention came into force in the UK. However, the UK Government has placed a reservation against Article 59, which allows the State to be a party to the Istanbul Convention, while excluding the legal effect of that specific provision. Article 59 of the Istanbul Convention requires States to grant residence to victims of domestic abuse whose immigration status depends on an abusive partner. Consequently, the reservation excludes many migrant women from the protections contained within the Istanbul Convention.

In 2024, the No Recourse to Public Funds Rule continued to operate, preventing affected individuals with visas from accessing safe refuge accommodation or other support.

### Recommendations

The Commission recommends that the UK Government withdraws its reservations against the Istanbul Convention.

<sup>814</sup> *In the Matter of an Application by Mediahuis Ireland Ltd and The Irish News* [2024] NIKB 45.

<sup>815</sup> *Ibid*, at para 131.

<sup>816</sup> John Breslin, 'Justice Minister Naomi Long won't appeal ruling striking down "Jimmy Savile" provisions of sexual offences law', *Irish News*, 3 July 2024.



The Commission recommends that the Department of Health and Department of Justice ensure that there are specialised, accessible, gender-sensitive support and services for victims and survivors of domestic and sexual violence and abuse with guaranteed sustainable funding. This includes support to assist victims and survivors to navigate and exit from paramilitary linked coercive control. Such support should be available regardless of immigration status. Steps taken should be guided by disaggregated data and meaningful engagement with victims, survivors and representative organisations. This includes ensuring that there are sufficient refuge places available in NI for individuals that are accessible at the point of need.

The Commission recommends that the NI Executive and UK Government, working with the Police Service NI, take effective steps to address paramilitary links to coercive control, particularly against women. This includes ensuring adequate funding and sufficient specialised, gender-sensitive services.

The Commission recommends that the Department of Justice amend the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022 in line with the High Court of Justice in NI judgment and repeal the provisions extending anonymity to individuals suspected of sexual offences.

The Commission recommends that the Department of Justice and the Department of Health, in respect of the Domestic and Sexual Abuse Strategy, and the Executive Office in respect of the Ending Violence against Women and Girls Strategy, consider and take into account the EU Victims' Directive and compliance with Windsor Framework Article 2 during the development and implementation of both Strategies.

The Commission recommends that the Executive Office analyses the EU Directive on Combating Violence Against Women and consider whether and if so, to what extent, it amends or replaces provisions the EU Gender Equality (Employment) Directive.

The Commission recommends that, in addition to making any changes required by the keeping pace obligation under the Windsor Framework, the Executive Office considers aligning on a voluntary basis with any enhancement to equality and human rights pursuant to the EU Directive on Combating Violence against Women and Domestic Violence.

## Female genital mutilation

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “develop national strategies aimed at eliminating and preventing harmful practices affecting children, including... female genital mutilation”.<sup>817</sup>

In 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive:

ensure the full implementation of its legislation on female genital mutilation and take further measures to effectively prosecute perpetrators of this offence. It also recommends that the State party step up its efforts to raise awareness that female genital mutilation is a form of child abuse and gender-based violence against women and girls.<sup>818</sup>

The UN CEDAW Committee further 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 policy-making and assess the impact of measures taken”.<sup>819</sup>

In 2019, the UN CAT Committee recommended that the UK Government and NI Executive “review the effectiveness of preventive and protection measures in place for children at risk of female genital mutilation”.<sup>820</sup>

<sup>817</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 35(a).

<sup>818</sup> 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 32.

<sup>819</sup> Ibid, at para 26(d).

<sup>820</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019.

EU obligations underpinning rights relevant to Windsor Framework Article 2 in this context include the EU Victims' Directive<sup>821</sup> as well as other relevant EU laws which support victims.<sup>822</sup> In September 2024, the Court of Appeal in NI confirmed that the rights of victims of crime are within the scope of the relevant chapter in the Belfast (Good Friday) Agreement.<sup>823</sup> The EU Victims' Directive recognises that victims of gender-based violence, including female genital mutilation, and their children, often require special support and protection against secondary and repeat victimisation, intimidation and retaliation.<sup>824</sup> The Court of Appeal in NI also confirmed that the EU Victims' Directive is to be "interpreted in accordance with the EU Charter of Fundamental Rights and general principles of EU law".<sup>825</sup>

Female genital mutilation is illegal under the Female Genital Mutilation Act 2003. The Serious Crime Act 2015 provides for Female Genital Mutilation Protection Orders. The Female Genital Mutilation Protection Order (Relevant Third Party) Order (NI) 2021 enables health and social care trusts in NI to obtain a third-party protection order without the need to seek the leave of a court. It is intended to speed up the process of obtaining a protection order should a Health and Social Care Trust in NI have concerns about the safety of any girl or woman under its care.<sup>826</sup>

<sup>821</sup> Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>822</sup> Directive 2011/36/EU 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2004/80/EC, 'EU Council Directive Relating to the Compensation to Crime Victims', 29 April 2004.

<sup>823</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117.

<sup>824</sup> Recitals 17 and 21, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>825</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 126. See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock et al, 'The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework' (NIHRC, 2024).

<sup>826</sup> Email correspondence from the Department of Finance to the NI Human Rights Commission, 7 July 2023.

In April 2024, section 116 of the Adoption and Children (NI) Act 2022 was commenced, which amended Article 8(4) of the Children (NI) Order 1995, so that proceedings for Female Genital Mutilation Protection Orders are classified as family proceedings.<sup>827</sup>

Initially maternity appointments were the only time when routine steps were taken to identify and record cases of female genital mutilation in NI.<sup>828</sup> However, in 2023, the introduction of Encompass enabled female genital mutilation to be recorded in broader settings. This system is due to be operating in all health and social care settings by the end of 2025.<sup>829</sup>

It remains the understanding that the act of female genital mutilation affecting women and girls in NI most commonly takes place outside of NI.<sup>830</sup> In 2024, there were a small number of cases identified at maternity appointments in NI that related to adults who were subjected to female genital mutilation earlier in their lives.<sup>831</sup> There also continued to be no prosecutions for female genital mutilation in NI.

In 2014, the NI Executive published the Multi-Agency Practice Guidelines on female genital mutilation.<sup>832</sup> In 2024, revised multi-agency guidelines on female genital mutilation from the Department of Health continued to be awaited.<sup>833</sup> It is intended that the revised guidance will consider Female Genital Mutilation Protection Orders, new care pathways and a risk assessment tool.<sup>834</sup>

<sup>827</sup> Email correspondence from the Department of Health to the NI Human Rights Commission, 10 September 2024.

<sup>828</sup> Ibid.

<sup>829</sup> Department of Health, 'Press Release: Date set for patient record revolution', 9 February 2023; Digital Health and Care NI, 'Encompass'. Available at: [encompass - DHCNI \(hscni.net\)](https://hscni.net/encompass)

<sup>830</sup> Email correspondence from the Department of Health to the NI Human Rights Commission, 10 September 2024.

<sup>831</sup> Ibid.

<sup>832</sup> NI Executive, 'Multi-Agency Practice Guidelines: Female Genital Mutilation' (NIE, 2014).

<sup>833</sup> Email correspondence from the Department of Health to the NI Human Rights Commission, 10 September 2024.

<sup>834</sup> Email correspondence from the Department of Justice to the NI Human Rights Commission, July 2021.

In 2024, the Ending Violence Against Women and Girls Strategic Framework was published.<sup>835</sup> The Strategic Framework acknowledges that female genital mutilation is a form of violence against women and girls and sets out a framework aimed at addressing such violence more broadly.<sup>836</sup> The Domestic and Sexual Abuse Strategy recognises the overlap of domestic and sexual abuse with female genital mutilation, however this strategy “does not make specific provision to address [it]”.<sup>837</sup>

## Recommendations

The Commission recommends measures are taken by the Department of Health and the Department of Justice to investigate and prosecute perpetrators of female genital mutilation. This requires implementing a prevention strategy and action plan, which includes increasing efforts to raise awareness, particularly within affected communities, that female genital mutilation is a form of both child abuse and gender-based violence against women and girls. It also requires ensuring specialised support is available and accessible to victims of female genital mutilation.

The Commission recommends that the Department of Health improves the way in which it gathers and monitors data on the prevalence of female genital mutilation within NI to ensure that every case can be captured and addressed, including that it is comprehensively disaggregated.

The Commission recommends that the Executive Office consider and take into account the EU Victims’ Directive and Windsor Framework Article 2 during the development and implementation of the Ending Violence Against Women and Girls Strategic Framework.

<sup>835</sup> NI Executive, ‘Ending Violence Against Women and Girls Strategic Framework 2024-2031’ (NIE, 2024).

<sup>836</sup> Ibid, at 13.

<sup>837</sup> Department of Health and Department of Justice, ‘Domestic and Sexual Abuse Strategy 2024-2031’ (DoJ and DoH, 2024), at para 1.11.

## ● Historical abuse of children and adults

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive:

should ensure the prompt establishment of a transitional justice mechanism to address abuses in institutions such as the Magdalene laundries and mother and baby homes in NI, ensuring that perpetrators are prosecuted and punished with penalties proportionate to the gravity of the offence and that all victims obtain an effective remedy.<sup>838</sup>

In 2019, the UN CAT Committee recommended that the UK Government and NI Executive:

- a) as a matter of urgency, adopt measures to provide victims of ill-treatment in NI identified by the Historical Institution Abuse Inquiry with redress, including compensation and the means for as full a rehabilitation as possible; [and]
- b) expedite the process of carrying out an impartial and effective investigation into the practices of the Magdalene Laundries and Mother and Baby Homes in NI that is capable of resulting in the prompt identification of victims of ill-treatment inflicted at those institutions and the provision of redress to them.<sup>839</sup>

EU obligations underpinning the rights relevant to Windsor Framework Article 2 in this context include the EU Victims' Directive<sup>840</sup> and the EU Charter of Fundamental Rights,<sup>841</sup> as well

<sup>838</sup> CCPR/C/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 3 May 2024, at para 11.

<sup>839</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 45.

<sup>840</sup> Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>841</sup> See *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 126; *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock et al, 'The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework' (NIHRC, 2024).



as other relevant EU laws which support victims.<sup>842</sup> In September 2024, the Court of Appeal in NI confirmed that the rights of victims of crime are given effect by civil rights and fall within the scope of the relevant chapter in the Belfast (Good Friday) Agreement and that specific rights in the EU Victims' Directive<sup>843</sup> were encompassed in the notion of victims' rights in that chapter.<sup>844</sup>

In 2017, the Historical Institutional Abuse Inquiry report on abuse in residential institutions in NI between 1922 and 1995 was published.<sup>845</sup> In 2020, the establishment of a Historical Institutional Abuse Redress Board followed for the purposes of receiving and processing applications for compensation from individuals who experienced abuse covered by the Historical Institutional Abuse Inquiry.<sup>846</sup> These initiatives did not extend to adult residents of Magdalene laundry type institutions or individuals abused in private settings.

In 2021, following a research report,<sup>847</sup> the Department of Health committed to conducting an independent investigation into Mother and Baby and Magdalene Laundry Institutions.<sup>848</sup> A Truth Recovery Design Panel worked with victims and survivors to recommend the most appropriate form of investigation. It recommended that a non-statutory independent panel of experts was appointed, which included individuals with personal experience.<sup>849</sup> The purpose of the independent panel was to

<sup>842</sup> Directive 2011/36/EU 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2004/80/EC, 'EU Council Directive Relating to the Compensation to Crime Victims', 29 April 2004.

<sup>843</sup> Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>844</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117.

<sup>845</sup> Anthony Hart, 'Historical Institutional Abuse Inquiry Report' (HIAI, 2017).

<sup>846</sup> Historical Institutional Abuse Redress Board, 'Annual Report 2021-2022' (HIARB, 2023).

<sup>847</sup> The Executive Office, 'Press Release: Executive announces independent investigation into mother and baby homes', 26 January 2021.

<sup>848</sup> Leanne McCormick and Sean O'Connell et al, 'Mother and Baby Homes and Magdalene Laundries in NI: 1922-1990' (UU and QUB, 2021).

<sup>849</sup> Deirdre Mahon et al, 'Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI Truth, Acknowledgement and Accountability' (DoH, 2021).



gather information, support victims, survivors and relatives to receive information previously denied, investigate human rights violations, and inform the terms of reference for a statutory public inquiry.<sup>850</sup> The NI Executive agreed to implement the Design Panel’s recommendations in full.<sup>851</sup>

In 2023, the Truth Recovery Independent Panel was appointed.<sup>852</sup> The Independent Panel, consisting of experts and victim-survivor representatives, aims to investigate and publish findings regarding human rights violations experienced by individuals and families in Mother and Baby Institutions, Magdalene Laundries, Workhouses and their pathways and practices.<sup>853</sup> In 2024, the Independent Panel gathered testimonies, assisted the Public Records Office of NI in identifying relevant records, and in developing information guides to assist individuals with accessing personal records.<sup>854</sup> The Independent Panel is expected to complete its work in 2025.<sup>855</sup>

In 2024, the Executive Office consulted on proposals to establish a statutory public inquiry and financial redress scheme for individuals “affected by Mother and Baby institutions, Magdalene Laundries, Workhouses and their pathways and practices”.<sup>856</sup> The Commission provided a response to the consultation, which included an overview of the importance of a human rights based approach to a public inquiry and advice on what this means in practice.<sup>857</sup>

<sup>850</sup> Ibid.

<sup>851</sup> The Executive Office, ‘Press Release: Appointment of Truth Recovery Independent Panel’, 27 April 2023.

<sup>852</sup> Truth Recovery Independent Panel, ‘Terms of Reference’ (TRIP, 2023).

<sup>853</sup> The Executive Office, ‘Press Release: Appointment of Truth Recovery Independent Panel’, 27 April 2023.

<sup>854</sup> Truth Recovery Independent Panel, ‘Interim Report’ (TRIP, 2024).

<sup>855</sup> Truth Recovery Independent Panel, ‘Press Release: Truth Recovery Independent Panel Publishes Interim Report on Mother and Baby Institutions, Magdalene Laundries and Workhouses in NI’, 22 May 2024.

<sup>856</sup> The Executive Office, ‘Truth Recovery: Mother and Baby Institutions, Magdalene Laundries and their Pathways and Practices’ (TEO, 2024); NI Assembly Hansard, ‘Oral Statement: Mother and Baby Institutions, Magdalene Laundries and Workhouses – Public Consultation on Statutory Inquiry and Redress Scheme Proposals – Michelle O’Neill MLA’, 25 June 2024.

<sup>857</sup> NI Human Rights Commission, ‘Submission to the Executive Office’s Consultation on Truth Recovery – Mother and Baby Institutions, Magdalene Laundries and Workhouses, and their Pathways and Practices’ (NIHRC, 2024).

The First Minister, Michelle O’Neill MLA, and Deputy First Minister, Emma Little-Pengelly MLA have stated that “for both the [Truth Recovery] Independent Panel and the Statutory Inquiry to carry out meaningful investigations, it is vital that they have access to records which they can assess; and make evidence-based recommendations”. Consequently, following the Preservation of Documents Act 2022, the Public Records Office of NI “has been able to engage with Institutions and begin the process of accessing, preserving, digitising and cataloguing... private records”.<sup>858</sup> Specialised support for victims and survivors is also available through the Victims Survivors Service, in partnership with WAVE Trauma Centre and Adopt NI.<sup>859</sup> In October 2024, the Commission provided evidence to the NI Assembly Committee on the Executive Office regarding access to information and the public inquiry into Mother and Baby institutions, Magdalene Laundries, Workhouses and their pathways and practices.<sup>860</sup>

## Recommendations

The Commission recommends that the NI Executive ensures victims of historical abuse outside the remit of the Historical Institutional Abuse Inquiry have an effective remedy, including ensuring expedient access to thorough and effective independent, human rights compliant investigations that offer effective redress (including compensation) and are subject to public scrutiny and meaningful victim participation. This includes ensuring that the findings and recommendations of the Truth Recovery Independent Panel are used to inform the prompt establishment of an effective and appropriately mandated public inquiry and financial redress scheme.

<sup>858</sup> NI Assembly Hansard, ‘Oral Statement: Mother and Baby Institutions, Magdalene Laundries and Workhouses – Public Consultation on Statutory Inquiry and Redress Scheme Proposals – Michelle O’Neill MLA’, 25 June 2024.

<sup>859</sup> Ibid.

<sup>860</sup> NI Assembly Hansard, ‘Committee for the Executive Office: Mother and Baby Institutions – Records and Access to Data – Oral Briefing of the Public Records Office NI and NI Human Rights Commission’, 9 October 2024.

## Intersex genital mutilation

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

legally prohibit non-urgent and non-essential (including feminising or masculinising) medical or surgical treatment of intersex children before they are of sufficient age or maturity to make their own decisions; ensure that such incidents are investigated and provide redress and psychosocial support to victims; and establish a mechanism to independently monitor implementation of the legal prohibition.<sup>861</sup>

In 2019, the UN CAT Committee recommended that the UK Government and NI Executive ensure:

- a) the parents or guardians of intersex children receive impartial counselling services and psychological and social support, including information on the possibility of deferring any decision on unnecessary treatment until they can be carried out with the full, free and informed consent of the person concerned; [and]
- b) persons who have been subjected to such procedures without their consent and resulting in severe pain and suffering obtain redress, including the means for rehabilitation.<sup>862</sup>

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive:

introduce specific legislation to ban medically unnecessary sex-‘normalising’ surgery and other non-therapeutic treatments until such time as an intersex child is able to participate in the decision, based on the right to self-

<sup>861</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Report of the UK of Great Britain and NI’, 2 June 2023, at para 35(d).

<sup>862</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 65.

determination and the principle of free and informed consent, and ensure that, where intersex people have been subjected to non-consensual medical interventions, they have access to all their medical records and appropriate supports, including follow-up care and counselling.<sup>863</sup>

In 2015, the then CoE High Commissioner for Human Rights, Nils Muižnieks, published several recommendations on the rights of intersex persons, including that:

Member States should facilitate the recognition of intersex individuals before the law through the expeditious provision of birth certificates, civil registration documents, identity papers, passports and other official personal documentation while respecting intersex persons' right to self-determination. Flexible procedures should be observed in assigning and reassigning sex/gender in official documents while also providing for the possibility of not choosing a specified male or female gender marker. Member States should consider the proportionality of requiring gender markers in official documents.<sup>864</sup>

The law in NI does not provide for the recognition of intersex persons. In 2003, the then Department of Health, Social Services and Public Safety issued guidance for medical practitioners in relation to consent for examination, treatment or care, including providing guidance on the parameters of children's capacity to consent.<sup>865</sup> However, there is no NI policy specific to medical treatment for intersex persons, including children.

In 2020, the Department for Communities commenced work on a Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy for NI. As part of this process an Expert Advisory Panel was appointed and undertaking ongoing engagement with a Co-Design Group made up of key

<sup>863</sup> CoE European Commission Against Racism and Intolerance, 'Report on the UK (Sixth Monitoring Cycle)' (ECRI, 2024), at para 51.

<sup>864</sup> CoE High Commissioner for Human Rights, 'Human Rights and Intersex People' (CoE, 2015).

<sup>865</sup> Department of Health, Social Services and Public Safety, 'Reference Guide to Consent for Examination, Treatment or Care' (DHSSP, 2003), at para 64.

stakeholders, including the Commission, and cross-departmental working group was established. In 2021, the Expert Panel recommended that the Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy addresses issues faced by intersex persons in NI, including the healthcare needs of intersex persons, commitment to and guidance around informed consent of intersex children and a commitment to ending intersex genital mutilation in NI.<sup>866</sup> A detailed timetable for implementing the Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy is awaited.<sup>867</sup>

### Recommendations

The Commission calls for the Department of Finance and the Home Office, to facilitate the recognition of intersex individuals before the law through the expeditious provision of birth certificates, civil registration documents, identity papers, passports and other official personal documentation while respecting intersex persons' right to self-determination.

The Commission recommends that the Department of Health takes all steps necessary to legally prohibit non-urgent and non-essential medical or surgical treatment of intersex children before they are of sufficient maturity to make their own decisions. This includes establishing an effective investigation and monitoring mechanisms and ensuring that victims are provided with redress and access to appropriate support services.

<sup>866</sup> Department for Communities, 'Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel - Themes and Recommendations' (DfC, 2021).

<sup>867</sup> Letter from Minister for Communities, Gordon Lyons MLA, to Gender Equality Co-design Group Members, 11 October 2024.

## ● Mechanisms to identify victims of torture detained in immigration facilities

In 2019, the UN CAT Committee recommended that the UK Government should:

ensure that health professional expert statements about torture victims and other persons at particular risk of suffering harm as a consequence of detention, are given due consideration by non-health professional caseworkers, and ensure that individuals identified as at risk of future harm in detention receive necessary care and protection.<sup>868</sup>

The UN CAT Committee also recommended that the UK Government further develop mandatory training programmes to ensure that all public officials are specifically trained to identify cases of torture and ill-treatment. The UN CAT Committee also recommended that the UK “develop a methodology for assessing the effectiveness of training programmes in reducing the number of cases of torture and ill-treatment and in ensuring the identification, documentation, investigation and prosecution of these acts”.<sup>869</sup>

The EU Reception Directive falls within scope of the no diminution commitment in Windsor Framework Article 2.<sup>870</sup>

Article 17 of the EU Directive sets out a duty to “take into account the specific situation of vulnerable persons such as ... persons who have been subjected to torture...”. Article 20 of the EU Directive requires that victims of torture receive the necessary treatment of damages caused by such acts.

<sup>868</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019.

<sup>869</sup> Ibid.

<sup>870</sup> Directive 2003/9/EC, ‘Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

Larne House short-term holding facility is the only immigration facility in NI, where immigration detainees can be held for seven days.<sup>871</sup> In 2023/2024, there were 330 immigration detainees held at Larne House.<sup>872</sup> This was an increase from 294 immigration detainees in 2022/2023.<sup>873</sup>

Rule 35(3) of the Detention Centre Rules places an obligation on a medical practitioner to report to the manager of the Centre any detained person who they are concerned may have been the victim of torture. The Detention Centre Rules do not apply to Larne House, due to its classification as a short-term holding facility.

In 2021, the HM Chief Inspector of Prisons, Charlie Taylor, reported improvements to staff training within Larne House on keeping residents safe and on mental health awareness.<sup>874</sup> The Chief Inspector of Prisons also found that good quality safeguarding adult policies were observed.<sup>875</sup> This includes a Vulnerable Adult Care Plan for anyone who was at risk and Assessment, Care in Detention and Teamwork forms for detainees at risk of suicide or self-harm. Staff were also reportedly aware of the National Referral Mechanism and their role as first responders.<sup>876</sup>

However, concerns have been raised by civil society that the private company that manages the facility employs the nurse in Larne House, which may be inhibiting the independence of health assessments within the facility.<sup>877</sup>

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<sup>871</sup> Rule 35, Short-term Holding Facility Rules 2018.

<sup>872</sup> Home Office, 'National Statistics: How Many People Are Detained or Returned' (HO, 2024), at Table Det\_02a.

<sup>873</sup> Ibid.

<sup>874</sup> HM Inspectorate of Prisons, 'Report on an Unannounced Inspection of the Residential Short-term Holding Facilities at Larne House, Manchester Airport and Yarl's Wood by HM Chief Inspector of Prisons' (HMIP, 2021), at paras 2.6-2.11.

<sup>875</sup> Ibid, at para 2.6.

<sup>876</sup> Ibid, at para 2.8.

<sup>877</sup> Meeting between NI Human Rights Commission and civil society representatives, November 2018.



In 2023, the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation continued to raise concerns that the Commission is not able to enter places of detention, such as Larne House, without providing advance notice.<sup>878</sup>

### Recommendations

The Commission recommends that the Home Office ensures effective, consistent implementation of the Short-term Holding Facility Rules 2018, including comprehensive training of all staff in Larne House on identifying and reporting torture, and the local services and safeguarding services available.

The Commission recommends that the Home Office ensures the independence of health care professionals dealing with people seeking asylum detained in Larne House.

The Commission recommends that the NI Office takes prompt steps to amend the NI Act 1998 to allow the Commission to enter Larne House without having to provide advance notice.



### Physical punishment of children

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive:

enact legislation that explicitly and clearly prohibits corporal punishment of children in all settings, removing the common law defence of “reasonable chastisement”, throughout the UK, the Crown dependencies and overseas territories, and strengthen its efforts to encourage non-violent forms of discipline as alternatives to corporal punishment.<sup>879</sup>

<sup>878</sup> Global Alliance of National Human Rights Institutions, ‘Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation – March 2023’ (GANHRI, 2023).

<sup>879</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 55(a).

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

- a) explicitly prohibit, as a matter of priority, corporal punishment in all settings, including in the home, throughout the [UK]... and repeal legal defences of ‘reasonable punishment’ in ...NI;
- b) monitor the implementation and impact of legislation prohibiting corporal punishment... with a view to informing measures aimed at promoting attitudinal change concerning corporal punishment in all settings; [and]
- c) strengthen awareness-raising campaigns for parents, teachers and other professionals working with and for children, to promote positive, non-violent and participatory forms of child-rearing.<sup>880</sup>

In 2023, the UN Working Group on the Universal Periodic Review recommended that the UK Government and NI Executive “take further measures to protect children from physical punishment... in accordance with the UN CRC”<sup>881</sup> and “ban corporal punishment of children in all settings, including in the family, to ensure the full protection and freedom from violence for all children, as required by the UN CRC”.<sup>882</sup>

EU obligations underpinning the rights relevant to Windsor Framework Article 2 in this context include the EU Victims’ Directive<sup>883</sup> and the EU Charter of Fundamental Rights, as well as other relevant EU laws which support victims.<sup>884</sup>

<sup>880</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 31(a)-31(c).

<sup>881</sup> A/HRC/52/10, ‘Report of the UN Working Group on the Universal Periodic Review UK of Great Britain and NI’, 9 January 2023, at para 43.222.

<sup>882</sup> Ibid, at para 43.239.

<sup>883</sup> Directive 2012/29/EU, ‘EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>884</sup> Directive 2011/36/EU ‘Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011; Directive 2011/92/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011; Directive 2004/80/EC, ‘Council of the EU Directive Relating to the Compensation to Crime Victims’, 29 April 2004.

In September 2024, the Court of Appeal in NI confirmed that the rights of victims of crime are within the scope of the relevant chapter in the Belfast (Good Friday) Agreement.<sup>885</sup> The EU Victims' Directive recognises that the best interests of the child is a primary consideration for child victims, in line with the EU Charter of Fundamental Rights and the UN CRC.<sup>886</sup> In addition, the EU Directive recognises that violence within close relationships can result in physical, mental or emotional harm and can cause systematic psychological and physical trauma and therefore may need special protection measures.<sup>887</sup> A person is considered a victim whether an offender is identified, apprehended, prosecuted or convicted and regardless of familial relationship between them.<sup>888</sup>

The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable punishment of a child. This reflects the situation in England.<sup>889</sup> However, Scotland, Wales and Ireland have prohibited the physical punishment of children by parents and others caring for them.<sup>890</sup>

In 2021, the Minister of Justice, Naomi Long MLA, announced her intention to take legislative steps to remove the defence of reasonable chastisement in NI.<sup>891</sup> However, the proposed legislative provision failed to secure majority cross-party support and could not be brought forward.<sup>892</sup>

<sup>885</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117.

<sup>886</sup> Recital 14 and Article 1, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>887</sup> Recital 18 and Articles 9 and 23, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>888</sup> Recitals 14, 17 and 18, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>889</sup> Section 58, Children's Act 2004.

<sup>890</sup> Children (Equal Protection from Assault) (Scotland) Act 2019; Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020; Children Act 2011 and Children First Act 2015.

<sup>891</sup> NI Assembly Hansard, 'Committee for Justice: Report on the Justice (Sexual Offences and Trafficking Victims) Bill - NIA 165/17-22' (NIA, 2022).

<sup>892</sup> Ibid.

In 2024, the Minister of Justice, Naomi Long MLA, remained “fully supportive of taking steps to remove the defence of reasonable chastisement in NI and [is] of the view that the current law creates uncertainty and can, in effect, provide shelter to abusive parents and fail to provide equal protection to children”.<sup>893</sup> However, the introduction of the necessary provisions requires NI Executive support.<sup>894</sup>

## Recommendations

The Commission recommends that the Department of Justice, working with the NI Executive and NI Assembly, expeditiously repeals the defence of reasonable chastisement of a child and devise and implement a strategy to effectively promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to eliminating the use of physical punishment in child-rearing.

The Commission recommends that, when developing or implementing any laws or policies on the physical punishment of children, the Department of Justice considers the extent to which Windsor Framework Article 2, including the EU Victims’ Directive, is engaged and ensures that there is no diminution to the rights and safeguards which fall within its scope.

## Prison conditions

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive “should intensify its efforts to ensure that conditions of detention fully comply with relevant international human rights standards, including the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)”.<sup>895</sup> The UN Human Rights Committee recommended that, in particular, the UK Government and NI Executive should:

<sup>893</sup> NI Assembly Hansard, ‘Written Question: Ban on Smacking Children – Sinéad McLaughlin MLA - AQW 10400/22-27’, 26 April 2024.

<sup>894</sup> Ibid.

<sup>895</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 33.

- a) continue its efforts to reduce prison overcrowding, particularly through wider application of non-custodial measures, as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), as an alternative to imprisonment, and provide for a community service order as an alternative to imprisonment for the non-payment of fines;
- b) effectively limit the use of solitary confinement and administrative or disciplinary segregation as a measure of last resort and for as short a time as possible, and ensure that the use of such measures is subject to judicial review;
- c) ensure that body search procedures are strictly supervised and that invasive searches are conducted only in exceptional cases and in the least intrusive manner possible, with full respect for the dignity and gender identity of the individual concerned; [and]
- d) increase its efforts to prevent self-inflicted deaths, including by suicide, and self-harm in custody and ensure that cases of self-inflicted death, including by suicide, and self-harm are independently and thoroughly investigated.<sup>896</sup>

In 2019, the UN CEDAW Committee recommended that the NI Executive “take further measures to improve the provision of mental health care in all prisons, taking into account the particular needs of women”.<sup>897</sup> The UN CAT Committee also recommended that the NI Executive:

- a) continue its efforts to improve conditions of detention and alleviate overcrowding of penitentiary institutions and other detention facilities, including through the application of non-custodial measures. In that connection, the [UN CAT] Committee draws the State party’s attention to the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

<sup>896</sup> Ibid, at paras 34(a)-34(d).

<sup>897</sup> 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.

- b) recruit and train sufficient number of prison personnel to improve security, reduce violence and ensure the adequate treatment of detainees;
- c) continue to implement preventive strategies related to prisoner violence, including measures to monitor and document incidents; [and]
- d) investigate all incidents of violence in places of detention and ensure that prison officials are held accountable in cases where they fail to take reasonable measures to prevent and respond to such violence.<sup>898</sup>

The UN CAT Committee further recommended that the NI Executive:

- a) provide the [UN CAT] Committee with detailed information on cases of deaths in custody and the causes of those deaths;
- b) take measures to ensure that all instances of death in custody are promptly and impartially investigated by an independent entity; [and]
- c) compile detailed data on suicides among persons deprived of their liberty and assess the effectiveness of prevention and risk identification strategies and programmes.<sup>899</sup>

In 2023, the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation reiterated its concerns that the Commission is not able to enter places of detention, such as prisons, without providing advance notice.<sup>900</sup>

<sup>898</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019.

<sup>899</sup> Ibid.

<sup>900</sup> Global Alliance of National Human Rights Institutions, 'Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation – March 2023' (GANHRI, 2023).

## Statistics

In 2023/2024, the overall daily average prison population increased to 1,877 from 1,685 in 2022/2023.<sup>901</sup> The number of men in NI prisons increased to 1,877 from 1,607 in 2022/2023.<sup>902</sup> The number of women in NI prisons increased to 90 from 78 in 2022/2023.<sup>903</sup> In 2023/2024, the number of prisoners on remand in NI increased to 686 from 607 in 2022/2023.<sup>904</sup>

Violence against the person offences continues to account for the largest proportion of all principal offence categories.<sup>905</sup> In 2023/2024, there were 154 prisoner-on-prisoner assaults, and 54 prisoner assaults on prison staff across all NI prisons.<sup>906</sup>

## Overcrowding

In 2024, concerns regarding overcrowding in NI prisons continued.<sup>907</sup> In 2024, the Minister of Justice, Naomi Long MLA, reiterated concerns about the pressures of an increasing prisoner population in NI.<sup>908</sup> This is, in part, being managed by the reopening of older accommodation within the prison estate, which are “much less suitable environments for prisoners and are more staff-intensive to operate”.<sup>909</sup> The Minister of Justice advised that the recruitment of staff continues across all operational areas of the NI Prison Service, stating:

it is important that [the NI Prison Service] seeks to maintain living conditions, with out-of-cell time and the delivery of a predictable and stable regime. However, if [the NI Prison Service] does not have sufficient staff available each day,

<sup>901</sup> NI Statistics and Research Agency, ‘NI Prison Population 2023/2024’ (DoJ, 2024), at 3.

<sup>902</sup> Ibid.

<sup>903</sup> Ibid.

<sup>904</sup> Ibid.

<sup>905</sup> Ibid.

<sup>906</sup> Email correspondence from the Department of Justice to the NI Human Rights Commission, 16 July 2024.

<sup>907</sup> Meeting between NI Human Rights Commission and NI Prison Service, 24 February 2023; Meeting between Department of Justice and NI Prison Service, 4 August 2023; Julian O’Neill, ‘Old cell block to re-open due to rising prisoner numbers’, *BBC News*, 24 July 2024; Department of Justice, ‘Press Release: Long announces prison staff increase in response to rising prisoner numbers’, 23 July 2024.

<sup>908</sup> NI Assembly Hansard, ‘Oral Question: Prison Population – Nick Mathison MLA – AQO 301/22-27’, 22 April 2024.

<sup>909</sup> Ibid.



it is not possible to offer a predictable regime. The restrictions will increase, out-of-cell time will be reduced, relationships with staff will deteriorate and, ultimately, the opportunity to engage in purposeful activity and rehabilitation will be curtailed, and that, in turn, may lead to increasing levels of reoffending.<sup>910</sup>

A key contributor to the rise in the NI prison population is the high number of prisoners on remand.<sup>911</sup> In 2023, the Criminal Justice Inspection NI recommended changes to bail laws to assist with tackling the level and impact of remand across the criminal justice system.<sup>912</sup> However, in 2024, the Minister of Justice advised that there are no plans to take forward a Bail Bill. The Minister of Justice stated that:

the loss of two years of the [NI Assembly] mandate has necessitated prioritising... legislative requirements for the remainder of the mandate, which has resulted in a significant reduction in... original planned legislative programme for the 2022-2027 period. It is highly unlikely that a Bail Act would have any demonstrable effect in terms of reducing the level of remand in order to counteract the increasing prison population in NI.<sup>913</sup>

In September 2024, as part of identifying “safer communities” as an immediate priority, the NI Executive committed to “ensure adequate resources within... [NI’s] justice agencies to respond to and deal with crime”.<sup>914</sup> This included “actively seeking to achieve... capacity in prisons [in NI] to hold people safely and securely and support their rehabilitation”.<sup>915</sup> The NI Executive

<sup>910</sup> Ibid.

<sup>911</sup> Meeting between NI Human Rights Commission and NI Prison Service, 24 February 2023; Meeting between Department of Justice and NI Prison Service, 4 August 2023; NI Commission for Human Rights Visit to Maghaberry Care and Supervision Unit, 19 January 2024; Department of Justice, ‘Press Release: Long announces prison staff increase in response to rising prisoner numbers’, 23 July 2024.

<sup>912</sup> Criminal Justice Inspection NI, ‘The Operation of Bail and Remand in NI’ (CJI, 2023).

<sup>913</sup> NI Assembly Question, ‘Written Question: Proposals for a Bail Act – Michelle McIlveen MLA - AQW 10810/22-27’, 26 April 2024.

<sup>914</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 45.

<sup>915</sup> Ibid.

also committed to working “collectively to develop a cross-governmental strategy to reduce offending and reoffending” through “the development and implementation of initiatives to tackle some of the wider societal issues that contribute to offending behaviour”.<sup>916</sup> The NI Executive is also committed to focusing on “preventing people from entering the justice system, where possible, through early intervention, diversion and the use of community sentencing”.<sup>917</sup>

## Recent inspections

In 2022, Criminal Justice Inspection NI raised significant concerns regarding the treatment of prisoners and patients in Care and Supervision Units within NI prisons.<sup>918</sup> The Criminal Justice Inspection NI found that prisoners experienced regimes amounting to solitary confinement and their treatment did not meet the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>919</sup> In 2023, the Criminal Justice Inspection NI found that the challenging findings of its review of Care and Supervision Units prompted substantial action.<sup>920</sup> The Criminal Justice Inspection NI highlighted improvements in governance and oversight arrangements, leading to better access to purposeful activity for individuals held in the units.<sup>921</sup> However, there are continuing concerns that measures are needed to support the increasing number of people with complex mental health needs in NI prisons.<sup>922</sup> For instance, personality disorders are not recognised in legislation under the Mental Health (NI) Order 1986, leading to a lack of services in prison custody.<sup>923</sup> In 2024, the UK National Preventative Mechanism noted, “while steps have been made to improve this, funding is a constraint”.<sup>924</sup>

<sup>916</sup> Ibid.

<sup>917</sup> Ibid.

<sup>918</sup> Criminal Justice Inspection NI, ‘A Review into the Operation of Care and Supervision Units in the NI Prison Service’ (CJINI, 2022), at 4.

<sup>919</sup> Ibid.

<sup>920</sup> Criminal Justice Inspection NI, ‘A Review into the Operation of Care and Supervision Units in the NI Prison Service’ (CJINI, 2023).

<sup>921</sup> Ibid.

<sup>922</sup> Ibid.

<sup>923</sup> UK National Preventative Mechanism, ‘UK NPM Submission: Human Rights Committee 140th Session’ (NPM, 2024), at 15.

<sup>924</sup> Ibid.

In February 2024, the Criminal Justice Inspection NI published a follow up report on its previous inspection of Maghaberry Prison.<sup>925</sup> Despite reporting reasonably good progress against its 2022 inspection, the Criminal Justice Inspection NI reiterated concerns with the approach to adult safeguarding due to ineffective collaboration between prison and health leaders.<sup>926</sup> A lack of leadership and co-ordination regarding tackling the availability of drugs and other contraband in Maghaberry also remains a concern.<sup>927</sup> Much also remained to be done to support prisoner rehabilitation and planning for their release.<sup>928</sup> In addition, the Criminal Justice Inspection NI published a follow up report of its previous inspection on Magilligan Prison.<sup>929</sup> The Criminal Justice Inspection NI advised that progress in addressing the key concern related to illicit substances has been too slow.<sup>930</sup> The Criminal Justice Inspection NI also reported that progress had been made against recommendations related to the delivery of education provision, but more needed to be done.<sup>931</sup>

In February 2024, the Criminal Justice Inspection NI concluded its inspections of Maghaberry and Magilligan by recognising the challenges faced by the NI Prison Service due to the current population numbers and resource constraints.<sup>932</sup> However, the Criminal Justice Inspection NI highlighted that, “ambition and action are needed to support prisoners leaving custody healthier, more employable, making better choices and less likely to return to prison”.<sup>933</sup>

<sup>925</sup> Criminal Justice Inspection NI, ‘Report of an Independent Review of Progress at Maghaberry Prison: 31 October – 2 November 2023’ (CJI, 2024).

<sup>926</sup> Ibid, at 14-15.

<sup>927</sup> Ibid, at 11-12.

<sup>928</sup> Ibid, at 15-16. See also Criminal Justice Inspection NI, ‘A Review of Probation Approved Premises in NI’ (CJINI, 2023).

<sup>929</sup> Criminal Justice Inspection NI, ‘Report of an Independent Review of Progress at Magilligan Prison: 31 October – 2 November 2023’ (CJI, 2024).

<sup>930</sup> Ibid, at 9-11.

<sup>931</sup> Ibid, at 16.

<sup>932</sup> Ibid; Criminal Justice Inspection NI, ‘Report of an Independent Review of Progress at Maghaberry Prison: 31 October – 2 November 2023’ (CJI, 2024).

<sup>933</sup> Criminal Justice Inspection NI, ‘Press Release: Report of an Independent Review of Progress (IRP) at Magilligan Prison’, 8 February 2024; Criminal Justice Inspection NI, ‘Press Release: Report of an Independent Review of Progress (IRP) at Maghaberry Prison’, 8 February 2024.

## Deaths in custody

In 2023, following the death of a prisoner at Maghaberry Prison, the Criminal Justice Inspection NI found that prison governors waited for the Prisoner Ombudsman for NI's and Coroner's report to be delivered before taking action, rather than conducting their own immediate investigation.<sup>934</sup> In February 2024, the Criminal Justice Inspection NI found reasonable progress had been made to address this, with leaders taking immediate action following a death in custody, due to the introduction of a corporate Quick Time Learning process in mid-2023.<sup>935</sup>

In 2023/2024, there were four deaths in custody.<sup>936</sup> The NI Prison Service was also notified of three deaths that occurred within 14 days of release during 2023/2024.<sup>937</sup> Two of these deaths were suspected drugs overdoses following release from Maghaberry Prison.<sup>938</sup> In 2024, inquests and reports of the Prisoner Ombudsman for NI were awaited on deaths of prisoners in NI that occurred in 2023/2024.<sup>939</sup>

In 2024, the Prisoner Ombudsman for NI published its investigation reports into two deaths of prisoners that occurred in 2020 and one death of a prisoner that occurred in 2018.<sup>940</sup> Following its investigations the Prisoner Ombudsman made several recommendations for improving the promptness of the NI Prison Service's response to medical emergencies.<sup>941</sup> The Prisoner Ombudsman for NI also updated its terms of reference for investigations into deaths in custody.<sup>942</sup>

<sup>934</sup> NI Prison Service, 'Annual Report and Accounts 2022-23' (NIPS, 2023).

<sup>935</sup> Criminal Justice Inspection NI, 'Report of an Independent Review of Progress at Maghaberry Prison: 31 October - 2 November 2023' (CJI, 2024), at 10-11.

<sup>936</sup> Email correspondence from the Department of Justice to the NI Human Rights Commission, 16 July 2024.

<sup>937</sup> Ibid.

<sup>938</sup> Ibid.

<sup>939</sup> Ibid.

<sup>940</sup> Prisoner Ombudsman for NI, 'Investigation Report into the Circumstances Surrounding the Death of Mr T' (PONI, 2024); Prisoner Ombudsman for NI, 'Investigation Report into the Circumstances Surrounding the Death of Kenneth Ramage' (PONI, 2024); Prisoner Ombudsman for NI, 'Investigation Report into the Circumstances Surrounding the Death of Mr O' (PONI, 2024).

<sup>941</sup> Ibid.

<sup>942</sup> Prisoner Ombudsman for NI, 'Annual Report 2022-2023' (PONI, 2024), at 13.

## Recommendations

The Commission recommends that the Department of Justice and the NI Prison Service urgently implement the Prisoner Ombudsman for NI and Criminal Justice Inspection NI's recommendations, particularly in relation to the use of Care and Supervision Units in NI and deaths in custody. Immediate steps should be taken to have measures in place to ensure solitary confinement can be avoided, while also maintaining public safety, particularly during future pandemics or emergencies. Disaggregated data on cases of deaths in custody and the causes of those deaths, particularly related to suicides among persons deprived of their liberty should also be compiled.

The Commission recommends that the Department of Justice and NI Prison Service take immediate steps to reduce the number of prisoners on remand within the NI prison population. Additionally, effective measures should be in place to ensure prisoners held on long-term remand in NI have access to and are encouraged to commit to education and rehabilitation programmes.

The Commission recommends that the Department of Justice and the NI Prison Service effectively monitors and develops measures in NI prisons aimed at reducing prisoner violence. Furthermore, that the Department of Justice ensures that prison officers and prisoners that are victims of violence in prisons are effectively supported.

The Commission recommends that the NI Office takes steps to amend the NI Act 1998 to allow the Commission to enter places of detention, such as prisons, without having to provide advance notice.

## ● Reform of UK asylum system

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

review and repeal any legislative provision that discriminate against migrant groups and that limits access to rights for asylum-seekers, refugees and migrants, with a view to ensuring that its legal framework fully complies with the [UN CERD]... and relevant international standards.<sup>943</sup>

The UN CERD Committee also recommended that the UK Government and NI Executive “facilitate access to asylum procedures and to legal aid without discrimination, ensure individual assessment of asylum applications and sufficient procedural guarantees, and access to effective remedies, including against refoulement”.<sup>944</sup> The UN CERD Committee further recommended that the UK Government and NI Executive “adopt all measures necessary to ensure that all unaccompanied asylum-seeking children who have gone missing are accommodated only in places covered by [the UK’s]... child protection system and effectively protect them against trafficking”.<sup>945</sup>

In May 2024, the UN Human Rights Committee recommended that the UK Government:

- a) swiftly repeal the legislative provisions, including those within the Illegal Migration Act 2023, that discriminate against migrants and that seek to limit access to rights for asylum-seekers, refugees and migrants on account of their “illegal entry or presence”, with a view to ensuring that its legislation fully complies with the Covenant and relevant international standards;

<sup>943</sup> 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, at para 48.

<sup>944</sup> Ibid.

<sup>945</sup> Ibid.

- b) provide access to status determination mechanisms for asylum-seekers, refugees and stateless persons to help ensure that they have their claims processed expeditiously and that those granted protection are able to integrate effectively and are protected from discrimination, regardless of their national origin or status as refugees or stateless persons, in line with Articles 2, 13 and 26 of the [UN ICCPR]; [and]
- c) withdraw the Safety of Rwanda (Asylum and Immigration) Bill, or repeal the Bill if passed, with a view to strictly upholding the principle of non-refoulement in both law and practice.<sup>946</sup>

In 2023, the UN CRC Committee recommended that the UK Government:

- a) urgently amend the Illegal Migration Bill to repeal all draft provisions that would have the effect of violating children’s rights under the Convention and the 1951 Refugee Convention[...];
- b) amend the Nationality and Borders Act to abolish the designation of “Group 2” status to certain groups of refugee children, and ensure that all asylum-seeking and refugee children, including unaccompanied children, are not criminalized and have access to necessary support and services; [and]
- c) review and strengthen the asylum process to ensure that children receive age-appropriate information and legal advice [...]; that their best interests are given primary consideration in all asylum processes; that their views are heard, taken into account and given due weight; and that they have access to child-friendly justice mechanisms and remedies.<sup>947</sup>

<sup>946</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 41.

<sup>947</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 50(a)-50(c).



In respect of unaccompanied children seeking asylum, the UN CRC Committee recommended that the UK Government ends the use of “unreliable and invasive procedures for determining a child’s age”.<sup>948</sup> The UN CRC Committee also reiterated its recommendation that the UK Government “review its system of family reunification involving unaccompanied children, with a view to ensuring that children have an unqualified right to apply for family reunification”.<sup>949</sup>

In April 2024, the UN High Commissioner for Refugees, Filippo Grandi, and the UN High Commissioner for Human Rights, Volker Türk, called on the UK Government “to reconsider its plan to transfer people seeking asylum to Rwanda and instead to take practical measures to address irregular flows of refugees and migrants, based on international cooperation and respect for international human rights law”.<sup>950</sup> The UN Refugee Agency published a legal opinion advising that the UK-Rwanda asylum partnership:

shifts responsibility for identifying and meeting international protection needs from the UK to Rwanda, and is an example of “externalisation” of international protection. By entrenching responsibility-shifting, the treaty remains at variance with the spirit and letter of the [UN Refugee Convention 1951].<sup>951</sup>

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

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

<sup>948</sup> Ibid, at para 50(e).

<sup>949</sup> Ibid, at para 50(h).

<sup>950</sup> UN Office of the High Commissioner for Human Rights, ‘Press Release: UK-Rwanda asylum law: UN leaders warn of harmful consequences’, 23 April 2024.

<sup>951</sup> UN Refugee Agency, ‘Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers Under the UK-Rwanda Arrangement: An Update’ (UNHCR, 2024).

In addition to raising very serious legal concerns from the international perspective, this Bill sets a worrying precedent for dismantling asylum-related obligations that other countries, including in Europe, may be tempted to follow, with a potentially adverse effect on the international refugee and human rights protection system as a whole.<sup>952</sup>

The UK Government recognises that Windsor Framework Article 2 applies to “everyone who is subject to [NI]... law”.<sup>953</sup> In May 2024, the High Court of Justice in NI confirmed that “[w]hilst it is true to say that the [Belfast (Good Friday) Agreement] did not expressly reference immigration or asylum, there is no basis to exclude such individuals from the wide compass of ‘everyone in the community’”.<sup>954</sup> The High Court of Justice in NI further found that the rights of people seeking asylum fall within the definition of ‘civil rights’ in the 1998 Agreement.<sup>955</sup> The High Court of Justice in NI confirmed an earlier decision<sup>956</sup> and found a number of EU measures including the EU Procedures Directive,<sup>957</sup> EU Reception Directive,<sup>958</sup> EU Qualification Directive<sup>959</sup> and the Dublin III Regulation<sup>960</sup> as relevant to refugees and people seeking asylum.<sup>961</sup>

<sup>952</sup> UN Refugee Agency, ‘Press Release: UK Illegal Migration Bill: UN Refugee Agency and UN Human Rights Office warn of profound impact on human rights and international refugee protection system’, 18 July 2023.

<sup>953</sup> NI Office, ‘UK Government Commitment To “No Diminution of Rights, Safeguards and Equality of Opportunity” In NI: What Does It Mean and How Will It Be Implemented?’ (NIO, 2020), at para 8.

<sup>954</sup> *In the Matter of an Application by the NIHRC for Judicial Review* [2024] NIKB 35, at para 69.

<sup>955</sup> *Ibid*, at para 70.

<sup>956</sup> *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, at para 94.

<sup>957</sup> Directive 2005/85/EC, ‘Council of the EU Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005.

<sup>958</sup> Directive 2003/9/EC, ‘Council of the EU Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

<sup>959</sup> Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004.

<sup>960</sup> Regulation 2013/604/EU, ‘EU Parliament and Council Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person’, 26 June 2013.

<sup>961</sup> *In the Matter of an Application by the NI Human Rights Commission for Judicial Review* [2024] NIKB 35, at para 175.

The Court of Appeal in NI also confirmed that the EU Charter of Fundamental Rights is within the ambit of Windsor Framework Article 2<sup>962</sup> and Article 18 of the EU Charter protects the right to asylum.

### UK-Rwanda Asylum Partnership

In 2022, the previous UK Government entered into a 'Migration and Economic Development Partnership' (later renamed the UK-Rwanda Asylum Partnership) with the Government of Rwanda, recorded in a Memorandum of Understanding.<sup>963</sup>

Under these arrangements, people seeking asylum in the UK would be transferred to Rwanda before their claims for asylum were heard.<sup>964</sup> It would be the responsibility of the Government of Rwanda to consider claims for international protection.<sup>965</sup> Anyone transferred to Rwanda, even if granted refugee or humanitarian status, would then remain in Rwanda.<sup>966</sup>

In 2022, formal directions were issued to the first group of people to be relocated to Rwanda.<sup>967</sup> However, the initial flight was stopped due to an ECtHR interim measure issued to prevent irreversible harm to an applicant challenging the legality of their deportation.<sup>968</sup>

Legal actions against the policy were also commenced by civil society organisations.<sup>969</sup> In 2023, the UK Supreme Court unanimously held that Rwanda was not a safe third country for

<sup>962</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 126. See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock et al, 'The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework' (NIHRC, 2024).

<sup>963</sup> Memorandum of Understanding Between the Government of the UK of Great Britain and NI and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement, 13 April 2022.

<sup>964</sup> Ibid.

<sup>965</sup> Ibid.

<sup>966</sup> Ibid.

<sup>967</sup> Home Office, 'Press Release: First migrants set for Rwanda to be given final notice', 1 June 2022.

<sup>968</sup> European Court of Human Rights, 'Press Release: The European Court grants urgent interim measure in case concerning asylum-seeker's imminent removal from the UK to Rwanda', 14 June 2022.

<sup>969</sup> *AAA and others v Secretary of State for the Home Department* [2022] EWHC 3230; *AAA v Secretary of State for the Home Department* [2023] EWCA Civ 745; *AAA (Syria) and Others v Secretary of State for the Home Department* (2023) UKSC 42.

the transfer and processing of people seeking asylum.<sup>970</sup> The previous UK Government responded to the UK Supreme Court judgment by announcing a new UK-Rwanda Asylum Partnership Treaty.<sup>971</sup> The Safety of Rwanda (Asylum and Immigration) Act 2024 followed, which required courts and tribunals, to “conclusively treat the Republic of Rwanda as a safe country”, while disappling sections of the Human Rights Act 1998 and “any interpretation of international law” by a court or tribunal, including the principle of non-refoulement.<sup>972</sup> In January 2024, the Commission raised concerns about compliance of the then Bill with the UK’s international human rights obligations and Windsor Framework Article 2.<sup>973</sup>

In March 2024, the previous UK Government announced a separate voluntary removals scheme with the Government of Rwanda.<sup>974</sup> Under this scheme, migrants who had an asylum or other international protection claim refused or withdrawn were offered up to £3,000 to move to Rwanda.<sup>975</sup> In May 2024, the first individual was removed from the UK to Rwanda under the voluntary scheme.<sup>976</sup> There were concerns that high risk individuals were being offered the package, despite the findings of the UK Supreme Court in respect of Rwanda’s poor human rights record.<sup>977</sup> In May 2024, several legal challenges against the voluntary removal scheme were initiated.<sup>978</sup>

<sup>970</sup> *AAA (Syria) and Others v Secretary of State for the Home Department* (2023) UKSC 42.

<sup>971</sup> House of Lords International Agreements Committee, ‘Memorandum of Understanding Between the UK and Rwanda for the Provision of an Asylum Partnership Arrangement - Seventh Report of Session 2022-2023’ (HoL, 2022), at 2.

<sup>972</sup> UK Parliament, ‘Home Office – Bill 38: Safety of Rwanda (Asylum and Immigration) Bill’ (UK Parliament, 2023), at Clause 2.

<sup>973</sup> Directive 2005/85/EC, ‘European Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, of 1 December 2005; Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004.

<sup>974</sup> Kate Whannel, ‘UK to pay failed asylum seekers to move to Rwanda under new scheme’, *BBC News*, 13 March 2024.

<sup>975</sup> *Ibid.*

<sup>976</sup> Paul Seddon, ‘Failed asylum seeker given £3,000 to go to Rwanda’, *BBC News*, 1 May 2024.

<sup>977</sup> *Ibid.*

<sup>978</sup> Dominic Casciani, ‘First Rwanda flight delayed until at least 24 July’, *BBC News*, 3 June 2024; Dominic Casciani, ‘Rwanda: Civil servants mount court challenge over new law’, *BBC News*, 1 May 2024; Public Law Project, ‘Press Release: Date set for Rwanda Test Case for PLP Client’, 5 June 2024.

In July 2024, the Prime Minister, Keir Starmer MP, confirmed that the new UK Government would end the “gimmick” of deporting migrants to Rwanda.<sup>979</sup> Legal challenges linked to the Rwanda schemes were settled with confirmation that the applicants would not be removed to Rwanda and their claims for asylum would be considered in the UK.<sup>980</sup> The Secretary of State for the Home Department, Yvette Cooper MP, stated that:

two and a half years after the previous Government launched it, I can report that it has already cost the... taxpayer £700 million – in order to send just four volunteers [to Rwanda]. That includes £290 million on payments to Rwanda and the costs of chartering flights that never took off, detaining hundreds of people and then releasing them, and paying for more than 1,000 civil servants to work on the scheme... It is the most shocking waste of taxpayers’ money I have ever seen.<sup>981</sup>

The Secretary of State for the Home Department confirmed that the UK Government would:

replace the Rwanda migration partnership with a serious returns and enforcement programme. We have immediately replaced the flight planning for Rwanda with actual flights to return people who have no right to stay [in the UK] to their home countries instead.<sup>982</sup>

Furthermore, the UK Government is to “start taking asylum decisions again... [to] clear the backlog... The new border security, asylum and immigration Bill announced... will bring in a new replacement arrangements, including fast-track decisions and returns to safe countries”.<sup>983</sup>

<sup>979</sup> Sam Francis, ‘Starmer confirms Rwanda deportation plan ‘dead’’, *BBC News*, 6 July 2024.

<sup>980</sup> Public Law Project, ‘Press Release: PLP client will not be removed to Rwanda’, 9 July 2024.

<sup>981</sup> UK Parliament Hansard, ‘House of Commons: Border Security and Asylum – Secretary of State for the Home Department, Rt Hon Yvette Cooper MP - Volume 752’, 22 July 2024.

<sup>982</sup> Ibid.

<sup>983</sup> Ibid.

## Safe and regular routes

For people seeking to come to the UK for humanitarian protection, there are few safe and regular routes available. There is no ‘asylum visa’ to the UK and access must be granted prior to arrival.<sup>984</sup> Current safe and regular routes to the UK include refugee resettlement, family reunion and bespoke nationality-based schemes, such as schemes for citizens of Afghanistan,<sup>985</sup> Ukraine,<sup>986</sup> and Hong Kong.<sup>987</sup>

As at March 2024, 203 individuals were resettled in NI under the Afghan Citizens Resettlement Scheme and the Afghan Relocations and Assistance Policy.<sup>988</sup> As of July 2024, 2,825 visas had been issued under the Homes for Ukraine (Sponsorship) Scheme in NI, while the number of arrivals in the UK remains lower, at 1,712 individuals.<sup>989</sup> However, there is a known undercount in NI data due to people arriving into Ireland and entering NI through the Common Travel Area.<sup>990</sup>

There is no published data relating to the number of individuals arriving in NI under the British National (Overseas) Hong Kong Visa.

## Illegal Migration Act 2023

The Illegal Migration Act 2023 denies access to the UK asylum system for individuals who arrive through unofficial routes.<sup>991</sup> The 2023 Act prevents such individuals from presenting claims for protection, no matter how compelling their case may be.<sup>992</sup>

<sup>984</sup> UN Refugee Agency, ‘Fact Sheet on Safe and Regular Routes to the UK for Refugees and Asylum-Seekers’. Available at: [UK Asylum and Policy and the Illegal Migration Bill | UNHCR UK](#)

<sup>985</sup> Afghan Relocations and Assistance Policy and the Afghan Citizens Resettlement Scheme.

<sup>986</sup> Ukraine Family Scheme, Homes for Ukraine (Sponsorship) Scheme and Ukraine Extension Scheme.

<sup>987</sup> British National (Overseas) Hong Kong Visa Scheme.

<sup>988</sup> Home Office, ‘Immigration System Statistics Year ending March 2024: Asylum and Resettlement – Resettlement by Local Authority’ (HO, 2024).

<sup>989</sup> Home Office, ‘Transparency Data: Ukraine Family Scheme, Ukraine Sponsorship Scheme (Homes for Ukraine) and Ukraine Extension Scheme Visa Data’ (HO, 2024).

<sup>990</sup> Home Office, ‘Transparency Data: Ukraine Family Scheme, Ukraine Sponsorship Scheme (Homes for Ukraine) and Ukraine Extension Scheme Visa Data’ (HO, 2024).

<sup>991</sup> Section 1(1), Illegal Migration Act 2023.

<sup>992</sup> Section 1(2), Illegal Migration Act 2023.



Instead, individuals could face detention before being removed to another country.<sup>993</sup> In 2023, the Commission raised concerns regarding the 2023 Act's compliance with human rights obligations and Windsor Framework Article 2, including the limitations on judicial oversight, the removal of support to victims and potential victims of modern slavery and human trafficking, and the weakening of child protection arrangements.<sup>994</sup> The Commission continues to advise that pursuant to Windsor Framework Article 2, EU asylum law remains relevant and raised concerns about the compliance of several provisions of the 2023 Act with the EU Procedures Directive,<sup>995</sup> EU Reception Directive,<sup>996</sup> EU Qualification Directive<sup>997</sup> and the Dublin III Regulation.<sup>998</sup>

In 2024, ruling on a judicial review issued by the Commission and an unaccompanied minor seeking asylum against the then Secretary of State for the Home Department, Suella Braverman MP, and the then Secretary of State for NI, Chris Heaton-Harris, the High Court of Justice of NI found that the 2023 Act violated Articles 3 (freedom from torture), 4 (freedom from slavery and forced labour) and 8 (right to respect for family and private life) of the ECHR. Consequently, a declaration of incompatibility was made regarding the 2023 Act's provisions relevant to the ECHR, awaiting further action from the UK Parliament.<sup>999</sup> In addition, the High Court of Justice in NI found that several provisions of the 2023 Act resulted in a diminution of rights in EU minimum

<sup>993</sup> Section 1(4), Illegal Migration Act 2023.

<sup>994</sup> NI Human Rights Commission, 'Submission to the House of Lords on the Illegal Migration Bill' (NIHRC, 2023).

<sup>995</sup> Directive 2005/85/EC, 'Council of the EU Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status', 1 December 2005.

<sup>996</sup> Directive 2003/9/EC, 'Council of the EU Directive Laying Down Minimum Standards for the Reception of Asylum Seekers', 27 January 2003.

<sup>997</sup> Directive 2004/83/EC, 'EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted', 29 April 2004.

<sup>998</sup> Regulation 2013/604/EU, 'EU Parliament and Council Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person', 26 June 2013.

<sup>999</sup> *Re NIHRC and Illegal Migration Act [2024]* NIKB 35, at para 206.



standards on effective examination of an asylum claim;<sup>1000</sup> lack of an effective remedy;<sup>1001</sup> removal;<sup>1002</sup> non-refoulement;<sup>1003</sup> detention;<sup>1004</sup> trafficking;<sup>1005</sup> and children,<sup>1006</sup> and therefore, breached Windsor Framework Article 2.<sup>1007</sup> Those provisions of the 2023 Act were disapplied in NI.<sup>1008</sup> The decision of the High Court of Justice in NI is currently under appeal.

## Unaccompanied children seeking asylum

The Immigration Act 2016 commits the Secretary of State for the Home Department to “make arrangements to relocate to the UK and support a specified number of unaccompanied refugee children from other countries in Europe”.<sup>1009</sup> The then UK Government committed to transferring 480 children.<sup>1010</sup>

<sup>1000</sup> Article 8(2), Directive 2005/85/EC, ‘Council of the EU Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005; Articles 4(3), 13 and 18, Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004.

<sup>1001</sup> Article 39, Directive 2005/85/EC, ‘Council of the EU Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005 and Article 47, EU Charter of Fundamental Rights.

<sup>1002</sup> Article 7(1), Directive 2005/85/EC, ‘Council of the EU Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005.

<sup>1003</sup> Articles 21, Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004.

<sup>1004</sup> Articles 18, Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004.

<sup>1005</sup> Article 11, Directive 2011/36/EU, ‘Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

<sup>1006</sup> Article 20, Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004; Article 24 of the EU Charter of Fundamental Rights; Articles 6 and 8, Regulation 2013/604/EU, ‘EU Parliament and Council Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person’, 26 June 2013.

<sup>1007</sup> *In the Matter of an Application by the NI Human Rights Commission for Judicial Review* [2024] NIKB 35, at paras 108, 117, 133, 138, 146, 158, 164, 168 and 173.

<sup>1008</sup> *Ibid*, at para 182.

<sup>1009</sup> Section 67, Immigration Act 2016.

<sup>1010</sup> Home Office, ‘Policy Statement: Section 67 of the Immigration Act 2016’ (HO, 2017).

Current UK immigration law permits refugees to sponsor their family members for the purposes of family reunion.<sup>1011</sup> However, it does not allow unaccompanied children to sponsor family members to join them in the UK.

As of 31 March 2024, the Health and Social Care Trusts in NI were supporting 302 unaccompanied children and young people seeking asylum.<sup>1012</sup> Of the 302, 133 were children and 169 were aged over 18 years old and in receipt of leaving and aftercare services.<sup>1013</sup>

The Nationality and Borders Act 2022 introduced provisions for a new ‘National Age Assessment Board’ operated by the Home Office.<sup>1014</sup> The Illegal Migration Act 2023 sets out further changes to the age assessment processes, including removal of the right to appeal a decision.<sup>1015</sup> In May 2024, the High Court of Justice NI found the removal of fact-based judicial review challenge to age assessment in the 2023 Act would represent a clear diminution of rights contrary to Windsor Framework Article 2, and therefore, the relevant provision has been disapplied in NI.<sup>1016</sup> The 2023 Act also empowers the Secretary of State for the Home Department to make regulations regarding the consequences of a refusal to consent to use of scientific methods of age assessment.<sup>1017</sup> The Commission raised concerns about these provisions in terms of its compliance with human rights obligations and the EU Procedures Directive.<sup>1018</sup>

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<sup>1011</sup> Home Office, ‘Immigration Rules’, 6 June 2024, at paras 352A-352G.

<sup>1012</sup> Email correspondence from the Department of Health to the NI Human Rights Commission, 12 August 2023.

<sup>1013</sup> Ibid.

<sup>1014</sup> Sections 50 and 51, Nationality and Borders Act 2022.

<sup>1015</sup> Section 57, Illegal Migration Act 2023.

<sup>1016</sup> *Re NI Human Rights Commission and Illegal Migration Act [2024]* NIKB 35, at paras 169-176 and 182.

<sup>1017</sup> Section 58, Illegal Migration Act 2023.

<sup>1018</sup> NI Human Rights Commission, ‘Submission to the House of Lords on the Illegal Migration Bill’ (NIHRC, 2023).

## Recommendations

The Commission recommends that the Home Office repeals all legislative provisions that discriminate against migrants and limit access to rights for people seeking asylum, refugees and migrants, including provisions in the Illegal Migration Act 2023 and the Nationality and Borders Act 2022. All people seeking asylum in the UK, including NI, should be processed in a way that is compliant with international human rights standards and Windsor Framework Article 2, and takes into account the difficult journey and trauma experienced by many prior to arriving in the UK.

The Commission recommends that the Executive Office urgently develops appropriate safeguards through statutory regulations and guidance to ensure the enactment of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 do not undermine existing protections for refugees and people seeking asylum in NI regarding matters of devolved competence. This includes child protection arrangements, age assessments, accommodation and support for unaccompanied children seeking asylum and support to victims and potential victims of modern slavery and human trafficking.

The Commission recommends that the Home Office amends the UK Immigration Rules to ensure that asylum applications are considered using a consistent, expeditious and child rights-based approach, including that the best interests of the child are a primary consideration, and that unaccompanied children have an unqualified right to apply for family reunification.

## Spit and bite guards

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “take legislative measures to explicitly prohibit, without exception, the use of harmful devices including spit hoods... against children”.<sup>1019</sup>

In 2020, spit and bite guards were introduced as a temporary measure by the Police Service of NI to protect officers working in specialist functions, such as the COVID-19 Response Teams, custody suites, cell vans and armed response, during the COVID-19 pandemic.<sup>1020</sup>

In 2022, spit and bite guards were made available for all front-line police officers. The Police Service of NI advised that this approach was subject to all eligible officers being trained in the Police Service of NI’s Personal Safety Programme and to further assurance around a governance framework and equality concerns.<sup>1021</sup>

In 2024, in line with the current age of criminal responsibility in NI, spit and bite guards continued to be permitted for use on children aged ten years old and upwards.<sup>1022</sup> The Police Service of NI’s policy on the use of spit and bite guards includes requirements to consider the best interests of the child as a primary concern when deciding whether to use a spit and bite guard on children.<sup>1023</sup> It also states that “where officers or staff are aware or believe that a member of the public is under 18 [years old], the presumption will be that a spit and bite guard should not be used”.<sup>1024</sup>

<sup>1019</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the United Kingdom of Great Britain and Northern Ireland’, 2 June 2023, at para 30(a).

<sup>1020</sup> Rebecca Black, ‘Police Service of NI to deploy spit and bite guards in custody suites’, *Belfast Telegraph*, 27 March 2020.

<sup>1021</sup> Letter from Police Service of NI Assistant Chief Constable, Chris Todd, to NI Human Rights Commission, 15 June 2022.

<sup>1022</sup> *Ibid.*

<sup>1023</sup> *Ibid.*

<sup>1024</sup> *Ibid.*

Between March 2020 and August 2023, spit and bite guards were used on 26 children in NI.<sup>1025</sup> Nine of these children were ‘looked after’ children at the time of the incident and seven children had a spit and bite guard applied twice.<sup>1026</sup> There is video evidence of the use of spit and bite guards causing particular distress for the children involved.<sup>1027</sup>

The Police Service of NI’s policy does not set out specific circumstances in which a spit and bite guard can be used on a child in NI.<sup>1028</sup> Instead, the Police Service of NI’s policy states that “in all cases where a spit and bite guard was deployed on a person under 18, officers must be able to demonstrate that it was absolutely necessary in the circumstances”.<sup>1029</sup>

Within the Police Service of NI, the use of spit and bite guards is monitored through utilising officers’ body worn video and a dip sampling of recordings by line managers.<sup>1030</sup> In instances where a spit and bite guard is used on a child, the video footage must be reviewed by the deploying officer’s supervisor and an officer of at least the rank of Chief Inspector.<sup>1031</sup>

In terms of an independent review, the Police Ombudsman for NI is no longer reviewing each instance of the use of a spit and bite guard.<sup>1032</sup> However, the Police Ombudsman for NI has agreed to review all footage that involves a child.<sup>1033</sup> In 2024, the Policing Board NI’s Independent Human Rights Advisor continued to review the use of spit and bite guards through a dip sampling process that is reported on within the Human Rights Advisor’s annual report.<sup>1034</sup>

<sup>1025</sup> NI Policing Board, ‘Five Year Human Rights Review’ (PBNI, 2024), at 176.

<sup>1026</sup> Ibid.

<sup>1027</sup> Ibid.

<sup>1028</sup> Police Service of NI, ‘Manual of Policy, Procedure and Guidance on Conflict Management’ (PSNI, 2023), at para 16.19.

<sup>1029</sup> Ibid.

<sup>1030</sup> Letter from Police Service of NI Assistant Chief Constable, Chris Todd, to NI Human Rights Commission, 15 June 2022.

<sup>1031</sup> Ibid.

<sup>1032</sup> Police Service of NI Stakeholder Event on the Use of Spit and Bite Guards, 25 October 2022.

<sup>1033</sup> Ibid.

<sup>1034</sup> Email correspondence from Policing Board NI to NI Human Rights Commission, 4 August 2023; NI Policing Board, ‘Five Year Human Rights Review’ (PBNI, 2024), at 176.

## Recommendations

The Commission recommends that the Police Ombudsman for NI and Police Service of NI ensure that each use of a spit and bite guard in NI is necessary, proportionate and non-discriminatory. Guided by these principles, consideration should be given to the human rights of both the recipient of the spit and bite guard and the affected police officers. Rigorous safeguarding measures should be in place and effectively utilised. This includes mandatory, regular, robust training for users; regularly reviewing the use of spit and bite guards; and ensuring that robust disaggregated data is collected, effectively monitored and evaluated on each use of a spit and bite guard in NI.

The Commission recommends that the Department of Justice, working with the NI Executive take effective steps to minimise, with a view to eliminating, the use of spit and bite guards on children. This includes ensuring that the best interests of the child are a primary consideration in such scenarios.

The Commission recommends that, while working towards the elimination of the use of spit and bite guards on children, the Police Service of NI amends its policy to ensure the exceptional scenarios in which spit and bite guards can be used on children are clearly set out. In addition, that effective training is provided to all relevant police officers, and the use of spit and bite guards in such scenarios is effectively monitored in NI.

## Strip searches

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

establish an independent complaint mechanism to carry out investigations into all allegations of racial profiling... strip searches, excessive use of force and racist violence, facilitate the reporting of victims, and ensure that perpetrators are prosecuted and punished with appropriate penalties, and that victims have access to effective remedies and adequate reparation.<sup>1035</sup>

Furthermore, the UN CERD Committee recommended that the UK Government and NI Executive:

create or strengthen effective mechanisms to regularly collect and qualitatively assess information on perpetrators and the victims, for all incidents, complaints and investigations of racial profiling... strip searches and excessive use of force by law enforcement and other public officials.<sup>1036</sup>

The UN CERD Committee also recommended that the UK Government and NI Executive “take effective steps to increase the representation of ethnic minorities in the police and military institutions, including at senior decision-making positions” and “provide adequate and continuous human rights training to law enforcement officials”.<sup>1037</sup>

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive “ensure that body search procedures are strictly supervised and that invasive searches are conducted only in exceptional cases and in the least intrusive manner possible, with full respect for the dignity and gender identity of the individual concerned”.<sup>1038</sup>

<sup>1035</sup> 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, at para 32(e).

<sup>1036</sup> Ibid, at para 32(f).

<sup>1037</sup> Ibid, at paras 32(d) and 32(g).

<sup>1038</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 35(c).



In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “take legislative measures to explicitly prohibit, without exception...the use of strip searches on children”.<sup>1039</sup>

## Children

In 2023/2024, there were 19 children strip searched in police custody in NI.<sup>1040</sup> An appropriate adult was present on 17 of those occasions.<sup>1041</sup> The Police Service of NI collects and monitors disaggregated data with regard to strip searches of children, however due to the low numbers involved it is not provided publicly due to the risk of identification.<sup>1042</sup> This data is shared with members of the Service Accountability Panel and Independent Scrutiny Panel within the Police Service of NI, who conduct periodic reviews of all strip searches of children in custody.<sup>1043</sup>

In 2023, the NI Policing Board’s Human Rights Advisor, John Wadham, recommended that the Police Service of NI updated its guidance and reevaluated its governance frameworks on strip searches in police custody.<sup>1044</sup> The Human Rights Advisor also recommended amending the legal framework to increase the likelihood of compliance with Article 8 of the ECHR and ensure that fewer children are strip searched.<sup>1045</sup>

In 2024, the NI Policing Board reported that its increased oversight of the issue of strip searching children and young people in custody had led to “reductions in the number of strip searches of children and young people in custody and the greater focus by [the Police Service of NI] on the rules designed to protect them”.<sup>1046</sup> In addition, the Department of Justice was undertaking a review of the Police and Criminal Evidence (NI) Order 1989, which includes consideration of the NI Policing

<sup>1039</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 30(a)(ii).

<sup>1040</sup> Email correspondence from Police Service of NI to NI Human Rights Commission, 31 July 2024.

<sup>1041</sup> Ibid.

<sup>1042</sup> Ibid.

<sup>1043</sup> Ibid.

<sup>1044</sup> NI Policing Board, ‘Human Rights Review - Children and Young People: Strip Searching in Police Custody’ (NIPB, 2023), at 16.

<sup>1045</sup> Ibid, at 5.

<sup>1046</sup> NI Policing Board, ‘Human Rights Five Year Review’ (NIPB, 2024), at 5.

Board's recommendations.<sup>1047</sup> However, the Minister of Justice, Naomi Long MLA, has advised that any changes to primary legislation in relation to strip searches in NI is unlikely.<sup>1048</sup>

## Prisons

In 2023, the NI Prison Service introduced new x-ray body scanners into NI prisons.<sup>1049</sup> Women, staff and visitors are not scanned, in line with the use of the technology in England and Wales.<sup>1050</sup> The NI Prison Service has developed bespoke policy and guidance on the operation of the x-ray scanners.<sup>1051</sup> This is accompanied by staff training, safeguarding procedures, internal monitoring and external inspections, such as those conducted by the Criminal Justice Inspection NI.<sup>1052</sup> However, there are no longer-term arrangements for regular internal reviews.<sup>1053</sup> In 2023, the High Court of Justice in NI found the deployment policy regarding operational management of x-ray scanners in Maghaberry was lawful and proportionate.<sup>1054</sup>

In 2024/2025, the NI Prison Service is committed to completing an evaluation of the introduction of x-ray body scanners, including considering the compliance of the NI Prison Service with policy and guidance.<sup>1055</sup> This work aims to contribute to improvements in existing procedures, if required.<sup>1056</sup> In June 2024, the evaluation commenced and was due to be completed by the end of 2024, with a decision to be made on whether to publish the findings.<sup>1057</sup>

<sup>1047</sup> NI Assembly Hansard, 'Written Question: NI Policing Board Human Rights Review - Gerry Carroll MLA - AQW 12263/22-27', 29 May 2024.

<sup>1048</sup> Ibid.

<sup>1049</sup> Department of Justice, 'Press Release: New technology a 'game changer' against illegal contraband in prisons' 1 March 2023.

<sup>1050</sup> NI Assembly Hansard, 'Oral Question: Body Scanners within the Prison Estate - Ciara Ferguson MLA - AQO 137/22-27', 11 March 2024.

<sup>1051</sup> Meeting between the NI Human Rights Commission and the NI Prison Service, 24 February 2023.; Meeting between the NI Human Rights Commission and Department of Justice, 4 August 2023.

<sup>1052</sup> Ibid.

<sup>1053</sup> Ibid.

<sup>1054</sup> *In the Matter of An Application by Sean O'Halloran for Judicial Review* [2023] NIKB 51.

<sup>1055</sup> Email correspondence from Department of Justice to NI Human Rights Commission, 16 July 2024.

<sup>1056</sup> Ibid.

<sup>1057</sup> Ibid.

## Recommendations

The Commission recommends that the Department of Justice and the NI Prison Service take effective measures to eliminate the use of strip searches on children. This includes reviewing legislation in accordance with the NI Policing Board's recommendations, and ensuring availability of less intrusive methods for conducting searches that are effectively monitored, regularly reviewed and reflect the child's best interests.

The Commission recommends that the Department of Justice, Police Service of NI and the NI Prison Service ensure that all strip searches have a clear justification that is proportionate and non-discriminatory. This includes ensuring adequate and continuous human rights training to law enforcement officials and that prompt effective remedies are in place if a discriminatory or disproportionate strip search occurs. The decision to strip search an individual and the manner in which it is conducted should take into consideration the age, maturity and any specific needs of the individual being searched.

The Commission recommends that the Department of Justice and the NI Prison Service ensure that any occasion when an individual is strip searched is documented, including the proposed justification for the search. This data should be disaggregated, including the age of the individual, and effectively monitored.

The Commission recommends that the Department of Justice and NI Prison Service develop long-term review procedures for conducting regular internal evaluations of the use and effectiveness of x-ray body scanners in NI prisons. Reviews should consider record-keeping, risk assessment and safeguarding, and outcomes.

## Victims' payments

In May 2024, the UN Human Rights Committee recommended that, in the context of accountability for past human rights violations, the UK Government “deliver truth, justice and effective remedies, including reparations to victims of the NI conflict”.<sup>1058</sup>

In 2019, the UN CAT Committee recommended, regarding conflict-related violations in NI, that the UK Government “ensure that victims of torture and ill-treatment obtain redress, including fair and adequate compensation, and as full a rehabilitation as possible”.<sup>1059</sup>

In 2021, following the Victims' Payments Regulations 2020, the Troubles Permanent Disablement Payment Scheme was established. This Scheme aims to provide “those living with permanent disablement (either physical or psychological) caused by injury through no fault of their own in a Troubles-related incident with payments primarily in acknowledgement of the harm they have suffered”.<sup>1060</sup> The Victims' Payments Board was also established, which makes decisions on applications to the Troubles Permanent Disablement Payment Scheme.<sup>1061</sup> The Scheme is open to new applicants until August 2026.<sup>1062</sup>

Under the previous UK Government, a separate, shorter deadline was in place for applying for a backdated payment under the Victims' Payments Scheme.<sup>1063</sup> In July 2024, the Secretary of State for NI, Hilary Benn MP, extended the deadline for applying for backdated payments to align with the overall closure of the scheme to new applicants in August 2026.<sup>1064</sup>

<sup>1058</sup> CCPR/C/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 3 May 2024, at para 11.

<sup>1059</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 40(e).

<sup>1060</sup> Victims Payments Board, 'Procedural Guidance' (VPB, 2021), at para 4.

<sup>1061</sup> Victims Payments Board, 'About Us'. Available at: <https://www.victimspaymentsboard.org.uk/about-us-0>; NI Direct, 'Troubles Permanent Disablement Payment Scheme'. Available at: <https://www.nidirect.gov.uk/articles/troubles-permanent-disablement-payment-scheme>

<sup>1062</sup> Ibid; NI Office, 'Secretary of State for NI extends backdating period for the Troubles Permanent Disablement Payment Scheme', 1 August 2024.

<sup>1063</sup> Ibid.

<sup>1064</sup> Ibid.

As of 1 October 2024, the Victims' Payments Scheme had received 9,842 applications.<sup>1065</sup> Of these, 2,062 applicants had received a determination.<sup>1066</sup> By 1 October 2024, over £58.9 million had been paid to successful applicants.<sup>1067</sup> There have been 254 appeals lodged against a determination made by the Victims' Payments Board.<sup>1068</sup>

There have been criticisms of the Victims' Payments Board's decision-making process and the length of time it takes.<sup>1069</sup> The President of the Victims' Payments Board, Justice McAlinden, has acknowledged the frustrations and advised that the complexity of the Scheme and the information retrieval that is needed is contributing to delays.<sup>1070</sup> Justice McAlinden stated that:

the time taken is evidence of the care taken by the board to ensure that every application is dealt with fairly and properly and that every piece of information that can be retrieved is retrieved and carefully scrutinised to ensure that no one falls through the net and is left without an appropriate recognition of a harm they have suffered.<sup>1071</sup>

By January 2024, over 40 people who had applied to the Victims' Payments Scheme had passed away before a decision was made.<sup>1072</sup> The Victims' Payments Board is taking steps to prioritise applications from individuals who are terminally ill or individuals who are over 80 years old.<sup>1073</sup> As of 1 October 2024, there were 680 priority cases identified.<sup>1074</sup>

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<sup>1065</sup> Victims' Payments Board, 'Statistics'. Available at: [Statistics | Victims' Payments Board \(victimspaymentsboard.org.uk\)](https://www.victimspaymentsboard.org.uk)

<sup>1066</sup> Ibid.

<sup>1067</sup> Ibid.

<sup>1068</sup> Ibid.

<sup>1069</sup> Brendan Hughes, 'Troubles pension: More than 40 applicants die before decisions made', *BBC News*, 4 January 2024; Claudia Savage, 'Could take decade to process applications to Troubles victims' scheme, MPs hear', *Irish News*, 4 December 2023; Jayne McCormack, 'Troubles victims pensions: One third of applicants denied access to scheme', *BBC News*, 28 September 2023.

<sup>1070</sup> UK Parliament Hansard, 'NI Affairs Committee - Oral Evidence: Victims' Payments Board, HC 308: Mr Justice McAlinden', 4 December 2023.

<sup>1071</sup> Ibid.

<sup>1072</sup> Brendan Hughes, 'Troubles pension: More than 40 applicants die before decisions made', *BBC News*, 4 January 2024.

<sup>1073</sup> Victims' Payments Board, 'Statistics'. Available at: [Statistics | Victims' Payments Board \(victimspaymentsboard.org.uk\)](https://www.victimspaymentsboard.org.uk)

<sup>1074</sup> Ibid.

In 2024, the Executive Office appointed a business consultancy service to review the operational effectiveness of the Victims' Payments Scheme and the implementation of its recommendations is underway.<sup>1075</sup> In addition, the Executive Office continues to work with the Department of Justice to explore improvements to the overall applicant's journey through Capita's assessment process.<sup>1076</sup>

### **Recommendations**

The Commission recommends that the NI Office guarantees the independence of the Victims' Payments Board, and that implementation of the scheme is effectively monitored to ensure it offers fair, adequate and prompt compensation.

The Commission recommends that the NI Office and Victims' Payments Board ensure that the Victims' Payments Scheme is accessible in practice at every point in the process to all who are eligible. This includes ensuring that the advice available is comprehensive and available in all required formats.

<sup>1075</sup> NI Assembly Hansard, 'Oral Question: Troubles Permanent Disablement Payment Scheme - Kate Nicholl MLA - AQO 728/22-27', 9 September 2024.

<sup>1076</sup> Ibid.

# Freedom from Slavery

## ● Child sexual exploitation

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

promptly and effectively investigate and intervene in all cases of violence against children, including... sexual exploitation and abuse of children...

strengthen efforts to train professionals working with and for children, including social workers, law enforcement authorities and the judiciary, to identify and effectively respond to cases of violence, including sexual exploitation...

ensure the systematic collection and analysis of data on child protection issues and violence against children to inform the implementation of national strategies on violence and child sexual abuse, including by:

- i) creating a national database for missing children;
- ii) collecting data on cases that have been reported, investigated and prosecuted; and
- iii) ensuring that data on the sexual exploitation and abuse of 16-and-17 year old children is disaggregated as children.<sup>1077</sup>

The UN CRC Committee also recommended that the UK Government and NI Executive ensure that:

<sup>1077</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at paras 33(c), 33(i) and 33(k).



all children under 18 years of age, including 16 and 17 year-olds, who are victims of offences... including sexual exploitation, sexual abuse material and sexual exploitation in prostitution, are treated as victims, receive adequate protection under the law and have access to remedies.<sup>1078</sup>

In 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive “revise its legislation to shift the burden of proof from the prosecution to the purchaser of sexual services for cases involving minors”.<sup>1079</sup>

EU obligations underpinning rights relevant to Windsor Framework Article 2 in this context of child victims of sexual exploitation and abuse include the EU Child Sexual Exploitation Directive,<sup>1080</sup> as well as other relevant EU laws which support victims.<sup>1081</sup> The EU Child Sexual Exploitation Directive recognises that the best interests of the child is a primary consideration for child victims, in line with the EU Charter of Fundamental Rights and UN CRC.<sup>1082</sup> It also recognises the need for enhanced protections for victims, including, in recognition of the harm caused by these offences, that assistance should be provided for as long as necessary for the child’s physical and psychological recovery, including into adulthood.<sup>1083</sup>

In 2023, there were 2,300 recorded sexual offences against children in NI, with 200 related to grooming and sexual communication with a child.<sup>1084</sup> There were also 848 offences

<sup>1078</sup> Ibid, at para 55(a).

<sup>1079</sup> 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 36(g).

<sup>1080</sup> Directive 2011/92/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011.

<sup>1081</sup> Directive 2012/29/EU, ‘EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012; Directive 2011/36/EU ‘Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011; Directive 2004/80/EC, ‘Council of the EU Directive Relating to the Compensation to Crime Victims’, 29 April 2004.

<sup>1082</sup> Recital 6, Directive 2011/93/EU, ‘EU Directive of the European Parliament and of the Council of the EU on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011.

<sup>1083</sup> Recital 31, Directive 2011/92/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011.

<sup>1084</sup> Police Service of NI, ‘Press Release: Mum of online grooming victims shares important warning to parents’, 6 February 2024.

relating to taking, possessing, sharing or publishing indecent images of children in NI.<sup>1085</sup>

In 2020, the Criminal Justice Inspection NI noted with concern “that little was known about the perpetrators of child sexual exploitation and the criminal justice system was urged to develop its response in this respect”.<sup>1086</sup> The Criminal Justice Inspection NI found that “Public Prosecution Service NI staff instructions specific to child sexual abuse and exploitation were needed”.<sup>1087</sup> It also found that “where cases did progress to court, support for children was required”.<sup>1088</sup> It noted positive steps such as the National Society for the Prevention of Cruelty to Children Young Witness Service and Victim Support NI’s pilot Children’s Independent Sexual Violence Advocate service. However, the Criminal Justice Inspection NI highlighted that consideration should be given to the Gillen Review recommendations regarding law and procedures in serious sexual offences in NI.<sup>1089</sup> The Barnahus model was proposed as the preferred approach.<sup>1090</sup>

The Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022 aims to implement certain Gillen Review Recommendations,<sup>1091</sup> and to improve services for victims of trafficking and exploitation. It removes potentially harmful terms such as ‘child prostitution’ and ‘child pornography’ from the Sexual Offences (NI) Order 2008 and extends the scope of offences to include the abuse of positions of trust where the perpetrator “coaches, teaches, trains, supervises or instructs” the victim in a sport or religion.<sup>1092</sup>

<sup>1085</sup> Ibid.

<sup>1086</sup> Criminal Justice Inspection NI, ‘Child Sexual Exploitation in NI: An Inspection of the Criminal Justice System’s Response’ (CJINI, 2020), at 80.

<sup>1087</sup> Ibid, at 8.

<sup>1088</sup> Ibid.

<sup>1089</sup> Ibid.

<sup>1090</sup> Ibid.

<sup>1091</sup> Sir John Gillen, ‘Report into the Law and Procedures in Serious Sexual Offences in NI: Recommendations’ (DoJ, 2019).

<sup>1092</sup> Part 1, Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022. See NI Human Rights Commission, ‘Response to Committee for Justice Call for Evidence on the Justice (Sexual Offences and Trafficking Victims) Bill’ (NIHRC, 2021).

In 2020, the Criminal Justice Inspection NI noted that “there had been great efforts to enhance the response to child sexual exploitation following the Marshall Report. Nevertheless, a cross-Departmental strategy that set out desired outcomes for children at risk of sexual abuse including child sexual exploitation was absent”.<sup>1093</sup> Furthermore, “there was no tangible trend data to evidence how children at risk of child sexual exploitation had been helped”.<sup>1094</sup> In 2024, the Department of Justice published a new strategy on modern slavery and human trafficking.<sup>1095</sup> The new strategy does not expressly mention child sexual exploitation.

The Illegal Migration Act 2023 denies victims of modern slavery, especially children, who have arrived in the UK irregularly, access to existing support.<sup>1096</sup> In May 2024, the High Court of Justice in NI found that the removal of the duty to provision of assistance and support and making the entitlement to assistance and support conditional on cooperation in a criminal investigation by the 2023 Act would cause a diminution of rights contrary to Article 11 of the EU Trafficking Directive (2011) and therefore breached Windsor Framework Article 2.<sup>1097</sup> Sections 22(2) and 22(3) of the 2023 Act were disapplied in respect of NI.

### **Burden of proof**

The Department of Justice previously indicated plans to reverse the burden of proof for the defence of ‘reasonable belief’ in sexual offences against children has been delayed.<sup>1098</sup> In 2022, the NI Assembly Committee for Justice noted concerns raised by the Commission and others that the Department of Justice had

<sup>1093</sup> Criminal Justice Inspection NI, ‘Child Sexual Exploitation in NI: An Inspection of the Criminal Justice System’s Response’ (CJINI, 2020), at 6.

<sup>1094</sup> Ibid.

<sup>1095</sup> Department of Justice, ‘NI Modern Slavery and Human Trafficking Strategy 2024-2027’ (DoJ, 2024).

<sup>1096</sup> Sections 22-29, Illegal Migration Act 2023; NI Human Rights Commission, ‘Submission to Joint Committee on Human Rights Inquiry on Illegal Migration Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Submission to House of Lords on the Illegal Migration Bill’ (NIHRC, 2023).

<sup>1097</sup> *In the Matter of an Application by the NI Human Rights Commission for Judicial Review* [2024] NIKB 35, at paras 157-8.

<sup>1098</sup> NI Assembly Hansard, ‘Written Answers: Child Sexual Exploitation - Minister of Justice, Naomi Long MLA - AQW 27342/17-22’, 22 December 2021.

not proceeded with reversing the burden of proof.<sup>1099</sup> However, the Department of Justice advised that it could not ignore the potential implications of such a change that were raised by the Bar of NI, the Public Prosecution Service NI, and the Law Society of NI.<sup>1100</sup> The Department of Justice reiterated its commitment to exploring the matter through engagement with key stakeholders to ensure any future legislative changes are “workable and appropriate within the current legal system”.<sup>1101</sup>

## Online child sexual exploitation

In 2024, the Police Service of NI reported that:

the Child Protection Team [within in the Police Service of NI] are the busiest they have ever been since their inception in 2010. In 2023, 468 searches were carried out relating to tens of thousands of indecent images of children and thousands of devices were seized. As a result of these searches, ... [the Child Protection Team] made 86 arrests.<sup>1102</sup>

The Online Safety Act 2023 places a range of new duties on social media companies and search services, making them more responsible for the safety of their users. It includes placing a legal obligation on tech companies to prevent and rapidly remove illegal content, including child sexual exploitation and abuse. It also aims to prevent children from seeing material that is harmful to them and could lead to sexual exploitation.

In February 2024, the European Commission proposed an update of the EU Child Sexual Exploitation Directive (2011) to enhance criminal laws regarding child sexual abuse and exploitation.<sup>1103</sup>

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<sup>1099</sup> NI Assembly Committee for Justice, ‘Report on the Justice (Sexual Offences and Trafficking Victims) Bill’ (NIA, 2022), at paras 112-113.

<sup>1100</sup> Ibid, at para 114.

<sup>1101</sup> NI Assembly Committee for Justice, ‘Report on the Justice (Sexual Offences and Trafficking Victims) Bill’ (NIA, 2022), at para 115.

<sup>1102</sup> Police Service of NI, ‘Press Release: Mum of online grooming victims shares important warning to parents’, 6 February 2024.

<sup>1103</sup> COM/2024/60 ‘Proposal for a Directive of the European Parliament and the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Sexual Abuse Material and Replacing Council Framework Decision 2004/68/JHA (Recast)’, 6 February 2024.

The proposed EU Directive broadens the definitions of offences, introduces harsher penalties, and sets out more detailed requirements for prevention and victim support. It complements a 2022 proposal for a new EU Regulation to prevent and combat child sexual abuse online.<sup>1104</sup> The proposed EU regulation would require internet companies to detect, report, and remove child sexual abuse material from their platforms. There is no requirement under the Windsor Framework for NI law to keep pace with EU developments beyond those relating to the EU Equality Directives listed in Annex 1. However, if these proposals become law, the Department of Justice and other relevant departments can consider aligning with those developments which strengthen protections and ensure equivalence of rights on the island of Ireland.<sup>1105</sup>

## Recommendations

The Commission recommends that the Department of Justice takes steps to assess the feasibility of reversing the burden of proof in sexual offences cases concerning children and takes appropriate measures to ensure that child victims of sexual offences have effective access to justice and perpetrators are held to account in law and practice.

The Commission recommends that, in line with best international practice and the requirements of the EU Trafficking Directive (2011) and EU Child Sexual Exploitation Directive, the Department of Justice ensures specialised training is provided for relevant professionals and measures reflective of the Barnahus Model are adopted throughout the criminal justice system in NI.

<sup>1104</sup> COM/2022/209, 'Proposal for a Regulation of the European Parliament and of the Council Laying Down Rules to Prevent and Combat Child Sexual Abuse', 11 May 2022.

<sup>1105</sup> NI Human Rights Commission and Equality Commission NI, 'Policy Recommendations: EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (NIHRC and ECNI, 2023). See also Island of Ireland Dimension of the Windsor Framework in the 'Constitutional Protections - Human Rights after UK exit for the EU' section in this Annual Statement.

The Commission recommends that the Department of Justice, the Home Office and other relevant departments and bodies, ensure that policy and legislation on child sexual exploitation is developed in compliance with Windsor Framework Article 2 including the requirements of the EU Child Sexual Exploitation Directive, EU Victims' Directive, and the EU Trafficking Directive (2011) which provide that the child's best interests be a primary consideration in their implementation.

The Commission recommends that the Home Office takes immediate steps to amend the Illegal Migration Act 2023 to ensure human rights compliant support and assistance is provided to potential child victims of human trafficking and to protect against any diminution of rights in NI law, in breach of Windsor Framework Article 2.

## Modern slavery and human trafficking

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive:

- a) ensure that the legislative framework to combat trafficking in persons is aligned with international standards on trafficking in persons, including by reforming the National Referral Mechanism and by ensuring that implementation of the Illegal Migration Act 2023 does not result in victims of trafficking in persons being returned to face further exploitation and harm; [and]
- b) intensify its efforts to provide effective remedies, including protection, rehabilitation and compensation, for all victims of trafficking in persons and exploitation, regardless of their migratory status.<sup>1106</sup>

In 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive:

<sup>1106</sup> CCPR/C/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 3 May 2024, at para 39(a) and (b).



- a) ensure that the definition of human trafficking in its domestic legislation is in line with the internationally agreed definition as set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (the Palermo Protocol);
- b) adopt a comprehensive national strategy to combat trafficking in women and girls, as previously recommended; [and]
- c) continue to improve the National Referral Mechanism, including by implementing the reform package announced in October 2017, to ensure that victims of trafficking are properly identified and adequately protected and supported.<sup>1107</sup>

The UN CEDAW Committee further recommended that the UK Government and NI Executive:

- a) take effective measures to ensure that women in vulnerable situations have effective access to employment opportunities, housing and social security so that they do not need to resort to prostitution or “sex for rent”;
- b) take effective measures to reduce demand for commercial sex, including by carrying out educational and awareness-raising measures targeted at men and boys and focused on combating all notions of subordination and objectification of women;
- c) revise legislation to decriminalise women in prostitution and clear the criminal records of women who have been convicted for offences related to prostitution to enable them to seek alternative forms of employment;
- d) ensure the availability of specialist services, which are adequately funded, inclusive and accessible, to assist women and girls to exit prostitution;

<sup>1107</sup> 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 34.



- e) create educational and employment opportunities for women who wish to exit prostitution; [and]
- f) undertake research into the prevalence and nature of prostitution in... NI... to identify the necessary changes to be made to legislation and policy.<sup>1108</sup>

In 2019, the UN CAT Committee recommended that the UK Government and NI Executive:

- a) enhance its efforts to investigate claims of human trafficking and prosecute perpetrators and ensure that victims of trafficking obtain compensation, including by considering creating a civil remedy for victims of trafficking;
- b) ensure access to sufficient protection and support for all victims of trafficking, and particularly ensure that the State party's establishment of a child trafficking protection fund results in improving the availability of specialist care and support for child victims of trafficking; [and]
- c) improve the training of law enforcement officers, prison personnel and other first responders to include statutory training into the identification of potential victims of human trafficking and modern slavery, and continue developing specialised training programmes for support workers and those providing foster care.<sup>1109</sup>

In 2021, the UN Special Rapporteur on human rights of migrants, Siobhán Mullally, the UN Special Rapporteur on contemporary forms of slavery, Felipe González Morales, and the UN Special Rapporteur on human rights in countering terrorism, Tomoya Obokata, jointly wrote to the UK Government expressing concerns about the compliance of the then Nationality and Borders Bill with the UK's international obligations "to prevent trafficking in persons, and assist and protect all victims of trafficking, without discrimination, as well as on the potential

<sup>1108</sup> Ibid, at para 36.

<sup>1109</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019.

impact on the human rights of victims of trafficking and of contemporary forms of slavery”.<sup>1110</sup> The letter also highlighted the need to “recognise the impact of trauma” on victims of trafficking and contemporary forms of slavery, including not over-relying on victim statements.<sup>1111</sup>

EU obligations underpinning rights relevant to Windsor Framework Article 2 in the context of human trafficking and modern slavery include the EU Trafficking Directive (2011),<sup>1112</sup> as well as other relevant EU laws which support victims.<sup>1113</sup> The EU Trafficking Directive sets out a number of provisions which are particularly aimed at criminalisation of trafficking offences,<sup>1114</sup> non-prosecution and non-application of penalties to victims,<sup>1115</sup> investigation and prosecution of offences<sup>1116</sup> and supporting victims, including child victims of trafficking.<sup>1117</sup> The EU Trafficking Directive also requires measures to ensure that assistance and support for victims of trafficking is not conditional on cooperation in a criminal investigation.<sup>1118</sup>

<sup>1110</sup> Letter from the UN Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally; UN Special Rapporteur on the human rights of migrants, Felipe González Morales; UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata; and UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin to the UK Government, 5 November 2021.

<sup>1111</sup> Ibid.

<sup>1112</sup> Directive 2011/36/EU ‘Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

<sup>1113</sup> Directive 2012/29/EU, ‘EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012; Directive 2011/92/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011; Directive 2004/80/EC, ‘Council of the EU Directive Relating to the Compensation to Crime Victims’, 29 April 2004.

<sup>1114</sup> Articles 2-7, Directive 2011/36/EU, ‘EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

<sup>1115</sup> Article 8, Directive 2011/36/EU, ‘EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

<sup>1116</sup> Articles 9-10, Directive 2011/36/EU, ‘EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

<sup>1117</sup> Articles 11-17, Directive 2011/36/EU, ‘EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

<sup>1118</sup> Articles 11(3), Directive 2011/36/EU, ‘EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

In 2023, 462 potential victims of human trafficking were identified in NI, a decrease from 547 in 2021.<sup>1119</sup> The figure of 462 included 110 child victims.<sup>1120</sup> The reasons for exploitation included for criminal activity, labour and sexual exploitation.<sup>1121</sup> Additionally, 427 potential victims were from outside the UK.<sup>1122</sup> This differs from trends in England and Wales, where the majority of potential victims identified were from the UK.<sup>1123</sup> The actual number of people in NI affected by modern slavery is unknown, as it often goes unreported and undetected within society.<sup>1124</sup>

## Nationality and Borders Act 2022

The Nationality and Borders Act 2022 contains several provisions which raise concerns.<sup>1125</sup> For example, the 2022 Act requires that a potential victim's late compliance with a Trafficking Information Notice, without good reason, must be taken into account as damaging that person's credibility.<sup>1126</sup> Additionally, the 2022 Act does not extend to child victims of human trafficking, nor does it recognise that the rights of the child should be a primary consideration.<sup>1127</sup> The Commission remains concerned that provisions of the 2022 Act are not compliant with the minimum standards laid out in the EU Trafficking Directive (2011) and therefore, potentially breach Windsor Framework Article 2.<sup>1128</sup> The Commission will review this matter on receipt of further detail on the new Labour government's legislative proposals in

<sup>1119</sup> Home Office, 'Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary 2023: Data Tables' (HO, 2023), at Table 3.

<sup>1120</sup> Ibid.

<sup>1121</sup> Ibid.

<sup>1122</sup> Ibid.

<sup>1123</sup> Ibid.

<sup>1124</sup> 'Potential upsurge in modern slavery in NI', *ITV News*, 18 October 2018.

<sup>1125</sup> NI Human Rights Commission and Equality Commission for NI, 'Joint NI Human Rights Commission/Equality Commission for NI Briefing Paper in the Modern Slavery and Human Trafficking and Electronic Travel Authorisation Provisions in the Nationality and Borders Bill' (NIHRC and ECNI, 2022).

<sup>1126</sup> NI Human Rights Commission, 'Joint NI Human Rights Commission/Equality Commission for NI Briefing Paper on the Modern Slavery and Human Trafficking and Electronic Travel Authorisation Provisions in the Nationality and Borders Bill' (NIHRC, 2022).

<sup>1127</sup> Ibid.

<sup>1128</sup> NI Human Rights Commission and Equality Commission for NI, 'Joint NI Human Rights Commission/Equality Commission for NI Briefing Paper in the Modern Slavery and Human Trafficking and Electronic Travel Authorisation Provisions in the Nationality and Borders Bill' (NIHRC and ECNI, 2022); Alison Harvey, 'Human Trafficking and Article 2 of the Ireland/NI Protocol' (NIHRC, 2022).

this area and the outcome of ongoing litigation on the Illegal Migration Act 2023.

### **Modern Slavery and Human Trafficking Strategy**

In 2024, following a consultation process to which the Commission responded,<sup>1129</sup> the Department of Justice published a new modern slavery and human trafficking strategy.<sup>1130</sup> The new strategy aims to prevent and address modern slavery, strengthen legal frameworks, promote responsible business practices, raise public awareness and ensure sustained progress.<sup>1131</sup>

During its consultation on tools to tackle modern slavery and human trafficking in NI, the Department of Justice sought views on the use of Slavery and Trafficking Risk Orders.<sup>1132</sup> In responding to the consultation, the Commission recommended that Slavery and Trafficking Risk Orders are promptly introduced and accompanied by robust statutory guidance in line with international human rights obligations, which explicitly acknowledges the best interests of the child principle.<sup>1133</sup> Slavery and Trafficking Risk Orders are not mentioned in the new modern slavery and human trafficking strategy for NI.<sup>1134</sup>

### **Illegal Migration Act 2023**

The Illegal Migration Act 2023 makes provision for the removal of support for victims of modern slavery and human trafficking who have entered the UK in breach of immigration control.<sup>1135</sup>

<sup>1129</sup> NI Human Rights Commission, 'Submission to the Department of Justice's Consultation on the Draft Modern Slavery and Human Trafficking Strategy' (NIHRC, 2023); Department of Justice, 'NI Draft Modern Slavery and Human Trafficking Strategy: Consultation' (DoJ, 2022).

<sup>1130</sup> Department of Justice, 'NI Modern Slavery and Human Trafficking Strategy 2024-2027' (DoJ, 2024).

<sup>1131</sup> Ibid, at para 1.19.

<sup>1132</sup> Department of Justice, 'Public Consultation on Measures to Strengthen Response to Modern Slavery and Human Trafficking - Proposed Amendments to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015' (DoJ, 2022).

<sup>1133</sup> NI Human Rights Commission, 'Submission to Department of Justice Consultation on Measures to Strengthen the Response to Modern Slavery and Human Trafficking' (NIHRC, 2022).

<sup>1134</sup> Department of Justice, 'NI Modern Slavery and Human Trafficking Strategy 2024-2027' (DoJ, 2024).

<sup>1135</sup> Sections 22-29, Illegal Migration Act 2023.

In 2024, the Commission’s legal challenge to the compliance of the Illegal Migration Act 2023 with the ECHR and Windsor Framework Article 2 was heard in the High Court of Justice in NI.<sup>1136</sup> The Commission argued that the 2023 Act renders human rights or international protection claims inadmissible, resulting in people seeking asylum either being removed from the UK, or left in legal limbo without appropriate support.<sup>1137</sup> The High Court of Justice in NI found that the trafficking provisions of the 2023 Act were incompatible with Article 4 of the ECHR, when read alongside the CoE European Convention on Action against Trafficking.<sup>1138</sup> The High Court of Justice in NI also found that the duty to remove trafficking victims who arrived in the UK in breach of immigration control; the disapplication of the duty to provide support and assistance; and linking the provision of assistance and support to cooperation in a criminal investigation under 2023 Act, would cause a diminution of rights contrary to Article 11 of the EU Trafficking Directive (2011) and therefore breached Windsor Framework Article 2.<sup>1139</sup> Sections 22(2) and 22(3) of the 2023 Act were disapplied in respect of NI.<sup>1140</sup> The decision of the High Court of Justice in NI is currently under appeal.

In 2024, the new UK Government announced plans to introduce a new Border, Security, Asylum and Immigration Bill, which aims “to modernise the asylum and immigration system, establishing a new Border Security Command and delivering enhanced counter terror powers to tackle organised immigration crime”.<sup>1141</sup> It is unclear how this will affect the 2023 Act.

## EU developments

While there is no requirement under the Windsor Framework for NI law to keep pace with EU developments beyond those relating to the EU Equality Directives listed in Annex 1, the Executive

<sup>1136</sup> *In the Matter of an Application by the NI Human Rights Commission for Judicial Review* [2024] NIKB 35, at para 229.

<sup>1137</sup> *Ibid.*

<sup>1138</sup> *Ibid.*, at para 229.

<sup>1139</sup> *Ibid.*, at paras 157-158.

<sup>1140</sup> *Ibid.*, at para 158.

<sup>1141</sup> Prime Minister’s Office, ‘King’s Speech 2024’, 17 July 2024.

Office and other relevant departments can consider aligning with those developments which strengthen protections and ensure equivalence of rights on the island of Ireland.<sup>1142</sup> In June 2024, the EU adopted a new Trafficking Directive which amends the 2011 EU Directive.<sup>1143</sup> For example, while the exploitation of surrogacy, of forced marriage or of illegal adoption already fall within scope of the 2011 EU Directive, the new EU Trafficking Directive makes express provision for these forms of exploitation.<sup>1144</sup> The new EU Trafficking Directive also expressly makes provision for victims of trafficking to be able to exercise their right to apply for international protection when they are receiving assistance, support and protection as a presumed or identified victim of trafficking.<sup>1145</sup> The deadline for EU Member States to transpose the new EU Trafficking Directive is July 2026.

## Prostitution

In 2015, loitering or soliciting for the purposes of prostitution was decriminalised in NI.<sup>1146</sup> However, running a brothel and purchasing sexual services remain crimes.<sup>1147</sup> As required by the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015, the Department of Health introduced a strategy for help and support to leave prostitution, which covers health, finance, housing, employment or training, justice, and specialised services.<sup>1148</sup>

<sup>1142</sup> NI Human Rights Commission and Equality Commission NI, 'Policy Recommendations: EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (NIHRC and ECNI, 2023). See also Island of Ireland Dimension of the Windsor Framework in the 'Constitutional Protections - Human Rights after UK exit for the EU' section in this Annual Statement.

<sup>1143</sup> Directive 2024/1712/EU, 'EU Parliament and Council Directive Amending Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 13 June 2024.

<sup>1144</sup> Recital 6 and Article 1 (amending Article 2 of the 2011 Directive), Directive 2024/1712/EU, 'EU Parliament and Council Directive Amending Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 13 June 2024.

<sup>1145</sup> Article 1 (inserting a new Article 11a), Directive 2024/1712/EU, 'EU Parliament and Council Directive Amending Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 13 June 2024.

<sup>1146</sup> Section 15, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015.

<sup>1147</sup> Ibid; Articles 58-64A, Sexual Offences (NI) Order 2008.

<sup>1148</sup> Section 19, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015; Department of Health, Social Services and Public Safety, 'Leaving Prostitution: A Strategy for Help and Support' (DHSSPS, 2015).



Since the 2015 Act was introduced, research found that there were “apparent increases in the supply of prostitution” and the legislation “has not significantly altered client behaviour”, indicating that “sex-purchase legislation is not particularly effective at reducing either the supply or demand for prostitution and in particular circumstances may actually increase both”.<sup>1149</sup> There have been few arrests, prosecutions and convictions under the 2015 Act. Research indicates that 99 per cent of transactions regarding prostitution in NI take place online, which creates “difficulties in detecting an offence that... remains largely hidden”.<sup>1150</sup> Since the 2015 Act, research also indicates that there has been “an increase in anti-social, nuisance and abusive behaviours directed to sex workers”.<sup>1151</sup> Thus, research has reported that “it is not possible to say that the change in the law [in NI] is responsible for any increase in crime against sex workers, but a heightened fear of crime has contributed to a climate whereby sex workers feel further marginalised and stigmatised”.<sup>1152</sup>

## Recommendations

The Commission recommends that the UK Government immediately repeals the Illegal Migration Act 2023 to ensure human rights compliant support and assistance is provided to all potential victims of modern slavery and human trafficking in line with its international human rights obligations and Windsor Framework Article 2. The Department of Justice and Home Office should ensure that trauma-informed, specialised, accessible support for victims of human trafficking and exploitation in NI is sufficiently and promptly available when required, and adequately funded in accordance with Article 4 of the ECHR and Windsor Framework Article 2, including the EU Trafficking Directive (2011). This includes effective access to adequate subsistence payments and specific provision for specialised care and support for child victims of human trafficking, many of whom may have experienced complex trauma.

<sup>1149</sup> Graham Ellison et al, ‘A Review of the Criminalisation of Paying for Sexual Services in NI’ (QUB, 2019), at 164-167.

<sup>1150</sup> Ibid.

<sup>1151</sup> Ibid.

<sup>1152</sup> Department of Justice, ‘Press Release: Report published on impact of sex purchase offence’, 18 September 2019.



Support services should be appropriately tailored to account for age, gender and culture. Consideration should also be given to developing measures to effectively address the root causes of human trafficking and exploitation.

The Commission recommends that the Department of Justice promptly introduces legislation providing for Trafficking and Exploitation Risk Orders in NI. In line with international human rights standards and Windsor Framework Article 2, implementation of the Trafficking and Exploitation Risk Orders should require individual assessments of victims to be conducted for the purposes of identifying the necessity and proportionality of a risk order.

The Commission recommends that, in line with international human rights standards and Windsor Framework Article 2, the Department of Justice requires compulsory specialised training and guidance to all relevant staff, which is trauma-informed and victim-centred, to ensure victims of modern slavery, human trafficking and exploitation are accurately identified and supported.

The Commission recommends that the Home Office embeds consideration of the EU Trafficking Directive (2011) and Windsor Framework Article 2 and ensures that the needs of child victims are safeguarded in the development and implementation of subsequent regulations and guidance on human trafficking resulting from the Nationality and Borders Act 2022.

The Commission recommends that the Department of Health ensures trauma-informed specialist services which are adequately funded, inclusive and accessible, to assist women and girls to exit prostitution are practically available. Furthermore, the NI Executive should ensure women in vulnerable situations in NI have effective access to employment opportunities, housing and social security so that they are not vulnerable to prostitution or 'sex for rent'.

The Commission recommends that the Department of Justice takes effective steps to reduce demand for commercial sex in NI, including by carrying out educational and awareness-raising measures focused on combating all notions of subordination and objectification of women.

The Commission recommends that the Department of Health and Department of Economy, working with the NI Executive, ensures educational and employment opportunities, and specialised support is in place to assist women who wish to exit prostitution.

# Right to Liberty and Security of the Person

## Alternatives to imprisonment

In May 2024, the UN Human Rights Committee recommended that the UK Government “should intensify its efforts to ensure that conditions of detention fully comply with relevant international human rights standards”.<sup>1153</sup> In particular, the UN Human Rights Committee recommended that the UK Government and NI Executive should “continue its efforts to reduce prison overcrowding, particularly through wider application of non-custodial measures, as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), as an alternative to imprisonment”.<sup>1154</sup>

In 2019, the UN CAT Committee recommended that the UK Government and NI Executive:

continue its efforts to improve conditions of detention and alleviate overcrowding of penitentiary institutions and other detention facilities, including through the application of non-custodial measures. In that connection, the Committee draws the State party’s attention to the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).<sup>1155</sup>

<sup>1153</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 28 March 2024, at para 35.

<sup>1154</sup> Ibid, at para 35(a).

<sup>1155</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 21(a).

## Statistics

In 2023/2024, on average there were 1,877 daily immediate custody prisoners in NI, this was an increase from 1,685 in 2022/2023.<sup>1156</sup> This is the highest immediate custody daily population in NI since 2015/2016.<sup>1157</sup> In 2023/2024, there were 207 immediate custody prisoners in NI serving six to 12 months, an increase from 199 in 2022/2023.<sup>1158</sup> There were 91 prisoners serving three to six months, an increase from 71 in 2022/2023.<sup>1159</sup>

In 2021/2022, 17.6 per cent of the 19,196 adults and young people released from custody in NI reoffended within the first year of release.<sup>1160</sup> Of the 861 young people released from custody in NI, 23.5 per cent reoffended within one year of release.<sup>1161</sup> Of individuals who received a supervised community disposal, 27.9 per cent of adults and 39.4 per cent of young people, reoffended within one year of completion.<sup>1162</sup>

## Adult Restorative Justice Strategy

In 2024, some progress had been made in implementing the Adult Restorative Justice Strategy, which includes a priority to promote understanding and awareness of restorative justice practices.<sup>1163</sup> A new Protocol governing the use of restorative interventions in the criminal justice system in NI is also operational.<sup>1164</sup> However, the implementation of the adult restorative justice strategy has been hindered by “the finite resources associated with the strategy, both in terms of staffing and funding”.<sup>1165</sup> The Department of Justice acknowledges that “there is clearly a need for secure, long-term funding

<sup>1156</sup> Department of Justice, ‘NI Prison Population 2023/2024’ (DOJ, 2024), at 6.

<sup>1157</sup> Ibid, at 3.

<sup>1158</sup> Ibid, at 11.

<sup>1159</sup> Ibid.

<sup>1160</sup> Department of Justice, ‘Adult and Youth Reoffending in NI (2021/2022 Cohort)’ (DoJ, 2024), at 3.

<sup>1161</sup> Ibid.

<sup>1162</sup> Ibid.

<sup>1163</sup> Department of Justice, ‘Adult Restorative Justice Strategy for NI: Restoring Relationships, Redressing Harm 2022-2027’ (DoJ, 2022), at 51.

<sup>1164</sup> Department of Justice, ‘Restorative Justice Protocol: A Protocol for Community-Based and Non-statutory Restorative Justice Organisations and Independent Restorative Practitioners in Northern Ireland’ (DOJ, 2023).

<sup>1165</sup> Department of Justice, ‘Restoring Relationships, Redressing Harm: Adult Restorative Justice Strategy - Annual Progress Report 2022/2023’ (DoJ, 2023), at 19.

for restorative justice”.<sup>1166</sup> However, the necessary fund has not been created, “which restricts the potential for strategic and innovative developments from being established and up-scaled”.<sup>1167</sup> Furthermore, “the current financial climate has meant that baselines across Government are under increasing pressure, seemingly with no good needs on the horizon”.<sup>1168</sup>

Additionally, in 2024, there remains no legislative or statutory basis for the use of restorative approaches in the adult justice system in NI, which has further restricted the Department of Justice’s ability to implement the adult restorative justice strategy.<sup>1169</sup> However, the Department of Justice has confirmed that it intends to create opportunities to introduce or expand the use of restorative justice across all stages of the criminal justice system in NI.<sup>1170</sup>

In September 2024, as part of identifying “safer communities” as an immediate priority, the NI Executive committed to focusing on “preventing people from entering the justice system, where possible, through early intervention, diversion and the use of community sentencing”.<sup>1171</sup>

## Recommendations

The Commission recommends that the Department of Justice, works with the NI Executive and NI Assembly, to promptly introduce, implement and monitor the necessary legislation for ensuring that there is a statutory basis for the use of restorative approaches in the adult justice system in NI.

The Commission recommends that the Department of Justice, with the NI Executive, ensures long-term sustainable funding for the effective implementation of adult restorative justice in NI.

<sup>1166</sup> Ibid.

<sup>1167</sup> Ibid.

<sup>1168</sup> Ibid.

<sup>1169</sup> Ibid.

<sup>1170</sup> Email correspondence from Department of Justice to NI Human Rights Commission, 16 July 2024.

<sup>1171</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 45.

## Definition of terrorism

In 2024, the UN Human Rights Committee expressed its regret that the UK “maintains the broadly formulated definition of terrorism in section 1 of the Terrorism Act 2000 on the belief that it remains fit for purpose”.<sup>1172</sup> The UN Human Rights Committee recommended that the UK Government “should review its counter-terrorism legislation to ensure it is in compliance with the [UN ICCPR]... and the principles of legality, certainty, predictability and proportionality, in particular with regard to the definition of terrorism”.<sup>1173</sup>

In 2018, concerns were raised regarding the lack of a definition of ‘hostile activity’ and moving criminal law into private spaces within the now Counter-Terrorism and Border Security Act 2019.<sup>1174</sup>

In 2020, the Independent Reviewer of Terrorism Legislation, Jonathan Hall KC, expressed that “for all its imperfections, the definition of terrorism in the Terrorism Act 2000 is able to embrace different variations of terror”.<sup>1175</sup> The Independent Reviewer noted that the definition is both ideology and threat neutral”.<sup>1176</sup> However, the Independent Reviewer continued that “the treatment of new or existing types of behaviour as terrorism can have unforeseen consequences”<sup>1177</sup> and that “this recognition that threats, even those capable of meeting the broad definition of terrorism in law, needed to reach a level of scale before being treated as terrorism in fact, remains relevant in the new threat-neutral world of counterterrorism”.<sup>1178</sup>

<sup>1172</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 28 March 2024, at para 28.

<sup>1173</sup> Ibid, at para 29.

<sup>1174</sup> NI Human Rights Commission, ‘Parliamentary Briefing Paper on Counter-Terrorism and Border Security Bill’ (NIHRC, 2018); House of Commons and House of Lords Joint Committee on Human Rights, ‘Ten Clauses Government Must Change in Counter-Terrorism and Border Security Bill’ (JCHR, 2018).

<sup>1175</sup> Jonathan Hall KC, ‘The Terrorism Acts in 2018 - Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006’ (IRTL, 2020).

<sup>1176</sup> Ibid, at para 28.

<sup>1177</sup> Ibid.

<sup>1178</sup> Ibid, at para 29.

In 2021, the Independent Reviewer of Terrorism also highlighted that the “onus must therefore be on how the terrorism definition is applied”.<sup>1179</sup>

Furthermore, in 2023, the Independent Reviewer of Terrorism noted that “terrorism laws contain relatively little express reference to online activity or content”, but that “embedded within the Terrorism Act 2000’s definition of terrorism is a type of terrorist action that would neatly fit a terrorist cyberattack”.<sup>1180</sup>

The National Security Act 2023 introduced new measures for the purposes of modernising counter-espionage laws and to address evolving threats to national security. The 2023 Act does not include a definition of terrorism.

In 2024, the new UK Government announced its intention to introduce a new Terrorism (Protection of Premises) Bill. This new legislation aims to introduce measures to improve the safety and security of public venues.<sup>1181</sup> The current version of the Bill does not propose to include a definition of terrorism.

## Recommendations

The Commission recommends that the Home Office promptly conducts and publishes a review of the broad definition of terrorism, including consideration of online activity or content.

The Commission recommends that the Home Office addresses the lack of a definition of ‘hostile activity’ and the moving of criminal law into private spaces within the Counter-Terrorism and Border Security Act 2019.

<sup>1179</sup> Ibid, at para 2.63.

<sup>1180</sup> Jonathan Hall KC, ‘The Terrorism Acts in 2021 - Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006 and The Terrorism Prevention and Investigation Measures Act’ (IRTL, 2023), at para 1.4.

<sup>1181</sup> Prime Minister’s Office, ‘King’s Speech 2024’, 17 July 2024.



## ● Imprisonment for fine default

In May 2024, the UN Human Rights Committee expressed concern at the number of persons, mainly members of minority groups and women, being imprisoned for failure to pay fines, “particularly in NI”.<sup>1182</sup> The UN Human Rights Committee recommended that the UK Government and NI Executive “provide for a community service order as an alternative to imprisonment for the non-payment of fines”.<sup>1183</sup>

In 2019, the UN CEDAW Committee recommended that the UK, including NI, continues “to develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences”.<sup>1184</sup>

The Justice Act (NI) 2016 provides a statutory framework for the collection and enforcement of fines. The Fine Collection Service within the NI Courts and Tribunal Services has a range of powers to collect and enforce outstanding financial penalties.

In 2022/2023, there were 109 receptions for fine default in NI, an increase from 85 in 2021/2022.<sup>1185</sup>

In 2022, research found that there is evidence of “a growing problem of unmanageable debt across the UK”<sup>1186</sup> and “in NI there are concerns that levels of problem debt could be even worse due to existing vulnerabilities within the population”.<sup>1187</sup> In NI, the increase in the cost of living for essentials, such as food and energy, is putting strain on household budgets.<sup>1188</sup> In 2023, within the Financial Lives Survey, 25 per cent of 5,286 respondents in NI had low financial resilience and 30 per cent were not coping financially at all or who were finding it difficult

<sup>1182</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 34.

<sup>1183</sup> Ibid, at para 35(a).

<sup>1184</sup> 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.

<sup>1185</sup> Department of Justice, ‘Press Release: The NI Prison Population 2022/2023’, 26 October 2023.

<sup>1186</sup> Women’s Regional Consortium, ‘Women Living with Debt’ (WRC, 2022), at 4.

<sup>1187</sup> Ibid.

<sup>1188</sup> Ibid, at 5.

to cope.<sup>1189</sup> The broader financial situation in NI can lead to difficult decisions, including an increased possibility of some finding no other option but to default on a fine.

### Recommendations

The Commission recommends that the Department of Justice promptly ends imprisonment for fine default and that the Department of Justice works with other departments and bodies to promptly develop, implement, and monitor alternative strategies, including community interventions and support services for actual or potential fine defaulters.

### Imprisonment of children with adults

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

for the few situations where deprivation of liberty is used as a measure of last resort, continue to strive for full compliance with the international requirement to detain children separately from adults and ensure that detention conditions are compliant with international standards, including with regard to access to education and health services, including mental health services.<sup>1190</sup>

The Criminal Justice (Children) (NI) Order 1998 makes provision for an offender between 15 and 17 years old who is considered likely to injure themselves or others to be detained in the young offenders centre at Hydebank Wood, which accommodates offenders up to 21 years of age. An administrative scheme has operated effectively to prevent the imprisonment of children at Hydebank Wood. However, the imprisonment of children alongside adults remains legally permissible.

<sup>1189</sup> Financial Conduct Authority, 'Financial Lives 2022' (FCA, 2023), at 124 and 150.

<sup>1190</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 54.

In 2018, the Criminal Justice Inspection NI found that the regime at the Juvenile Justice Centre had been redesigned to include 17-year-olds and that they were being successfully managed by the Centre.<sup>1191</sup>

In 2017, the Department of Justice committed to abolishing the provisions of the Criminal Justice (Children) (NI) Order 1998 that allow for the imprisonment of children alongside adults.<sup>1192</sup> In 2024, provisions were included in the Justice Bill which aim to prevent children from being held in adult custodial facilities in NI.

### Recommendations

The Commission recommends that the Department of Justice promptly introduces and implements legislation to remove the legal basis for the imprisonment of children alongside adults in NI.

### Powers of arrest under the Terrorism Act 2000

In March 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive “review its counter-terrorism legislation to ensure it is in compliance with the [UN ICCPR]... and the principles of legality, certainty, predictability and proportionality, in particular with regard to the definition of terrorism and the maximum period of pre-charge detention in terrorism cases”.<sup>1193</sup>

In the context of NI, under section 41 of the Terrorism Act 2000, a constable may arrest without a warrant a person whom they reasonably suspect to be a terrorist.

<sup>1191</sup> Criminal Justice Inspection NI, ‘An Announced Inspection of Woodlands Juvenile Justice Centre’ (CJINI, 2018), at 6.

<sup>1192</sup> Declan McGeown, ‘Scoping Study Stakeholder Update’ (DoJ, 2017).

<sup>1193</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of UK of Great Britain and NI’, 28 March 2024, at 29.

In 2023/2024, 83 individuals were arrested under section 41 of the 2000 Act in NI, which is a decrease from 114 in 2022/2023.<sup>1194</sup> Of the 83 individuals arrested, 17 were subsequently charged, a decrease from 20 in 2022/2023.<sup>1195</sup>

In 2023, the Independent Reviewer of Terrorism Legislation, Jonathan Hall, noted that NI continues to account “for a very high proportion of the arrests made under section 41 of the [2000 Act]”.<sup>1196</sup> The Independent Reviewer has noted the low charging rates of an individual detained under section 41 of the 2000 Act in NI.<sup>1197</sup> For example, in 2023/2024, of 83 people detained in NI under section 41 of the 2000 Act, only 17 (20 per cent) were charged with an offence.<sup>1198</sup>

The Independent Reviewer understands that the Police Service of NI “takes the view that arrests for terrorist-related activity ought to be carried out using terrorism powers for reasons relating to public perception”.<sup>1199</sup> Subsequently, the Independent Reviewer has recommended that the Police Service of NI “should not take account of public perception when deciding on the appropriate arrest power for terrorist-related activity”.<sup>1200</sup> In response, the Police Service of NI notified the Independent Reviewer that it intends to “commission a working group to review current practices on the use of section 41 of the [2000 Act]”.<sup>1201</sup> However, this is yet to be actioned.<sup>1202</sup>

<sup>1194</sup> Police Service of NI, ‘Police Recorded Security Situation Statistics: 1 July 2023 to 30 June 2024’ (PSNI, 2024).

<sup>1195</sup> Ibid.

<sup>1196</sup> Independent Reviewer of Terrorism Legislation, ‘Terrorism Acts in 2021: Report on the Operation of the Terrorism Acts 2000 and 2006 and the Terrorism Prevention and Investigation Measures Act 2011’ (IRTL, 2023), at para 9.27.

<sup>1197</sup> Ibid, at para 9.30.

<sup>1198</sup> Police Service of NI, ‘Police Recorded Security Situation Statistics: 1 July 2023 to 30 June 2024’ (PSNI, 2024).

<sup>1199</sup> Independent Reviewer of Terrorism Legislation, ‘Terrorism Acts in 2021: Report on the Operation of the Terrorism Acts 2000 and 2006 and the Terrorism Prevention and Investigation Measures Act 2011’ (IRTL, 2023), at para 9.28.

<sup>1200</sup> Ibid.

<sup>1201</sup> Ibid, at para 9.31.

<sup>1202</sup> Ibid.

## Recommendations

The Commission recommends that the Police Service of NI, through working with the Department of Justice and Home Office, promptly conducts and publishes a review of the exercise of arrest powers in NI under section 41 of the Terrorism Act 2000, to ensure that the principles of necessity and proportionality are strictly observed when using arrest powers and that any detention of suspects arrested under the Terrorism Act 2000 is based on an individualised determination that it is reasonable and necessary taking into account all the circumstances.

## Remand of children

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

repeal the practice of remanding children into police custody, ensure that no child is held in police custody overnight, and avoid the use, and reduce the maximum duration, of pretrial detention; and

address the overrepresentation of children belonging to minority groups in detention and develop measures, in consultation with affected children and their families, to prevent racial profiling by law enforcement authorities.<sup>1203</sup>

In 2015, the UN Human Rights Committee recommended that the UK Government and NI Executive ensures “that the detention on remand of child defendants is used only as a measure of last resort and for the shortest possible period of time and that suitable bail packages are available to child defendants in NI”.<sup>1204</sup>

<sup>1203</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 54(e) and 54(g).

<sup>1204</sup> Ibid, at para 23(c).

## Statistics

In 2023/2024, there were 214 admissions to the Juvenile Justice Centre, a decrease from 224 admissions in 2022/2023.<sup>1205</sup> Of these, 180 (84.1 per cent) were related to the Police and Criminal Evidence Order 1989 and 29 (13.6 per cent) related to remand.<sup>1206</sup> Of the 180 Police and Criminal Evidence Order admissions, 85 children were subsequently remanded by court or sentenced to custody.<sup>1207</sup> In 2023/2024, the total average daily population in the Juvenile Justice Centre was 10 children.<sup>1208</sup> Of these, eight were children on remand.<sup>1209</sup> Of the 214 admissions to the Juvenile Justice Centre, 125 were children with experience of care (58.4 per cent).<sup>1210</sup>

## Legislative proposals

In 2017, the Department of Justice committed to bringing forward legislation relating to the use of remand and of bail, including the possible introduction of a ‘real prospects’ test and the potential removal of the Woodlands Juvenile Justice Centre as a ‘place of safety’.<sup>1211</sup>

In 2023, the Criminal Justice Inspection NI reported that bail laws and processes in NI were often inadequate, and that limited progress has been made in developing viable alternatives to remand.<sup>1212</sup> The Criminal Justice Inspection NI highlighted the proposed legislative provisions for children and recommended the introduction of a broader Bail Act that would provide necessary reforms to bail for all defendants.<sup>1213</sup>

<sup>1205</sup> NI Statistics and Research Agency, ‘NI Youth Justice Agency Annual Workload Statistics 2023/2024’ (NISRA, 2024), at Table 15.

<sup>1206</sup> NI Statistics and Research Agency, ‘NI Youth Justice Agency Annual Workload Statistics 2022/2023’ (NISRA, 2023), at Table 15.

<sup>1207</sup> Ibid, at Table 3.

<sup>1208</sup> Ibid, at Table 32.

<sup>1209</sup> Ibid.

<sup>1210</sup> NI Statistics and Research Agency, ‘NI Youth Justice Agency Annual Workload Statistics 2022/2023’ (NISRA, 2023), at Table 27.

<sup>1211</sup> Declan McGeown, ‘Scoping Study Stakeholder Update’ (DoJ, 2017).

<sup>1212</sup> Criminal Justice Inspection NI, ‘The Operation of Bail and Remand in NI’ (CJINI, 2023), at 18.

<sup>1213</sup> Ibid.

The Minister of Justice, Naomi Long MLA, has consistently reaffirmed the Department of Justice's intentions to strengthen the right to bail for children and ensure that custody is used as a last resort, in line with our international obligations.<sup>1214</sup> In 2024, the Justice Bill included provisions aimed at improving arrangements regarding children's bail and remand in NI.

### **Regional Care and Justice Programme**

In 2018, the Regional Care and Justice Programme was established to oversee the implementation of recommendations from the review of regional facilities for children and young people in NI.<sup>1215</sup> In 2023, the Programme Board agreed an action plan for reducing unnecessary admissions to the Woodlands Juvenile Justice Centre with a revised focus on evidence collection, analysis, preventing arrests, and accommodation.<sup>1216</sup>

In 2024, the former Minister of Health, Robin Swann MP, and the Minister of Justice, Naomi Long MLA, agreed to close the Regional Care and Justice Campus Programme.<sup>1217</sup> The actions on minimising unnecessary admissions to the Woodlands Juvenile Justice Centre were considered partially achieved.<sup>1218</sup> The remainder of this work is being taken forward by the Youth Justice Agency in the first instance, with possible incorporation into the Children's Social Care Strategic Reform Programme, once the actions relating to evidence collection and analysis have been completed.<sup>1219</sup>

<sup>1214</sup> Department of Justice, 'Strategic Framework for Youth Justice 2022 – 2027' (DoJ, 2022), at 42-44; NI Assembly Hansard, 'Written Question – Custody of Children – Naomi Long MLA – AQO 992/17-22', 2 November 2020.

<sup>1215</sup> Department of Health, 'Review of Regional Facilities for Children and Young People' (DoH, 2018).

<sup>1216</sup> Department of Justice and Department of Health, 'The Link: The Regional Care and Justice Campus Programme Newsletter – Summer 2023, Issue 7' (DoJ and DoH, 2023).

<sup>1217</sup> Meeting of the Regional Care and Justice Campus Programme Stakeholder Reference Group, 8 May 2024.

<sup>1218</sup> Ibid.

<sup>1219</sup> Ibid.



## Recommendations

The Commission recommends that the Department of Justice, works with the NI Executive and NI Assembly, to promptly introduce, implement and monitor legislation for the purposes of ensuring that a child should only be held in pre-trial detention as a measure of last resort and that suitable accommodation will be provided within a reasonable time if released on bail.

The Commission recommends that the Department of Justice and Department of Health ensure that a range of non-custodial accommodation arrangements are available for children awaiting trial who cannot return to their homes.

## Women in detention

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive “continue its efforts to reduce prison overcrowding, particularly through wider application of non-custodial measures, as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), as an alternative to imprisonment”.<sup>1220</sup>

In May 2024, the UN Human Rights Committee further recommended that the UK Government:

should establish a statutory time limit on the duration of immigration detention and ensure that detention is used only as a measure of last resort and for the shortest possible period of time, and increase the use of alternatives to detention, particularly for children, pregnant women and families with children, that are respectful of human rights, including the right to privacy, instead of surveillance-based technological alternatives.<sup>1221</sup>

<sup>1220</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 35(a).

<sup>1221</sup> Ibid, at para 43.

In 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive:

allocate sufficient resources to effectively implement the [England and Wales] Female Offender Strategy, and ensure that a similar strategy is also adopted in other administrations of the State party... [and]

take further measures to improve the provision of mental health care in all prisons, taking into account the particular needs of women.<sup>1222</sup>

Additionally, the UN CEDAW Committee recommended that the UK Government and NI Executive “introduce a general time limit on immigration detention and implement alternatives to detention”, and in this context, “take immediate measures to end the detention of pregnant women and nursing mothers”.<sup>1223</sup>

In 2019, the UN CAT Committee recommended that the UK Government and NI Executive “continue its efforts to improve conditions of detention and alleviate overcrowding of penitentiary institutions and other detention facilities, including through the application of non-custodial measures”.<sup>1224</sup>

In May 2024, the High Court of Justice in NI confirmed that “whilst it is true to say that the [Belfast (Good Friday) Agreement] did not expressly reference immigration or asylum, there is no basis to exclude such individuals from the wide compass of ‘everyone in the community’”.<sup>1225</sup> The High Court of Justice in NI further found that the rights of people seeking asylum fall within the definition of ‘civil rights’ in the 1998 Agreement.<sup>1226</sup> Article 17 of the EU Reception Directive and Article 20 of the EU Qualification Directive require Member States to take into account the specific situation of vulnerable persons, including “minors, unaccompanied

<sup>1222</sup> 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.

<sup>1223</sup> Ibid.

<sup>1224</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 21(a).

<sup>1225</sup> *In the Matter of an Application by the NI Human Rights Commission for Judicial Review [2024]* NIKB 35, at para 69.

<sup>1226</sup> Ibid, at para 70.

minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence”.<sup>1227</sup>

## Statistics

Ash House accommodates NI’s women prisoners, which is a block located within the prison for males aged 18-21 years old, Hydebank Wood College. Ash House can accommodate up to 71 prisoners. In 2023/2024, the average daily women prisoner population was 90, an increase from 78 in 2022/2023.<sup>1228</sup>

In 2023/2024, there were 395 women prisoner receptions, an increase from 375 during 2022/2023.<sup>1229</sup> There were 23 women remand receptions, an increase from 21 in 2022/2023.<sup>1230</sup> There were 91 women immediate custody receptions, a significant increase from 65 in 2022/2023, an increase of 40 per cent.<sup>1231</sup>

## Separate facility

In 2020, the Criminal Justice Inspection NI found that “if properly supervised and managed” a small amount of properly controlled contact between men and women prisoners “can be of considerable benefit both to men and women”.<sup>1232</sup>

In 2021, the Department of Justice and NI Prison Service reconfirmed the commitment to develop a separate new women’s facility on the site of Hydebank Wood.<sup>1233</sup> In 2024, the target date for the delivery of the new women’s facility

<sup>1227</sup> Article 17, Directive 2003/9/EC, ‘Council of the EU Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003; Article 20, Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004.

<sup>1228</sup> NI Statistics and Research Agency, ‘NI Prison Population 2023/2024’ (NISRA, 2023), at 9.

<sup>1229</sup> Ibid, at 17.

<sup>1230</sup> Ibid, at 17.

<sup>1231</sup> Ibid, at 17.

<sup>1232</sup> Criminal Justice Inspection NI, ‘Report on an Unannounced Inspection of Ash House Women’s Prison Hydebank Wood’ (CJINI, 2020).

<sup>1233</sup> Email correspondence from Department of Justice to NI Human Rights Commission, 3 November 2021.

was delayed due to an increase in capital costs.<sup>1234</sup>

However, the Department of Justice are working towards a project to produce three independent living units for female prisoners, while working on a new programme of capital works for the separate women's facility.<sup>1235</sup>

## Domestic abuse and offending

UK-wide research indicates a strong link between domestic abuse and women offenders.<sup>1236</sup> Advising on a domestic and sexual abuse strategy for NI,<sup>1237</sup> the Commission has highlighted the need for measures to prevent online-based and technology-related domestic and sexual abuse.<sup>1238</sup> The Commission further recommended provisions for gender-sensitive training of criminal justice professionals with a specific focus on the links between domestic abuse and offending.<sup>1239</sup>

In September 2024, the Domestic and Sexual Abuse Strategy was published, which covers online abuse.<sup>1240</sup> The Strategy does not acknowledge the link between domestic abuse and offending, but does focus on early intervention and a trauma informed justice system.<sup>1241</sup>

## Women immigration detainees

Women immigration detainees are held with men in Larne House short-term holding facility. Women are accommodated in a separate area, but this area cannot be locked off from the men's section and there is no separate communal room available.<sup>1242</sup>

<sup>1234</sup> Email correspondence from Department of Justice to NI Human Rights Commission, 2 August 2024.

<sup>1235</sup> Ibid.

<sup>1236</sup> Ministry of Justice, 'Supporting Data Tables: Female Offender Strategy' (MoJ, 2018); Prison Reform Trust, 'There's a Reason We're in Trouble: Domestic Abuse as a Driver to Women's Offending' (PRT, 2017), at 4.

<sup>1237</sup> Department of Justice and Department of Health, 'Draft Domestic and Sexual Abuse Strategy 2023-2030' (DoJ and DoH, 2023).

<sup>1238</sup> NI Human Rights Commission, 'Response to the Department of Health and Department of Justice's Consultation on a Draft Domestic and Sexual Abuse Strategy' (NIHRC, 2023).

<sup>1239</sup> Ibid.

<sup>1240</sup> Department of Justice and Department of Health, 'Domestic and Sexual Abuse Strategy 2024-2031' (DoJ and DoH, 2024), at para 2.3.

<sup>1241</sup> Ibid, at 73 and paras 3.47 and 3.48.

<sup>1242</sup> HM Inspectorate of Prisons, 'Report on an Unannounced Inspection of the Residential Short-term Holding Facilities at Larne House, Manchester Airport and Yarl's Wood by HM Chief Inspector of Prisons' (HMIP, 2021), at para 2.27.

In 2023, Larne House submitted tenders to the Home Office for alterations, including a separate communal room for women immigration detainees.<sup>1243</sup>

The Illegal Migration Act 2023 allows for pregnant women to be detained for up to 72 hours, or up to seven days if “authorised personally by a Minister of the Crown”.<sup>1244</sup> A pregnant woman who has been released, can be detained again for the specified periods.<sup>1245</sup> The Royal College of Midwives previously stated that even a 72-hour detention period can be harmful and that the practice of detaining pregnant women for immigration purposes must end.<sup>1246</sup> In 2024, the new UK Government indicated that it intended to modernise the asylum and immigration system through a Border Security, Asylum and Immigration Bill.<sup>1247</sup> It is unclear if this will include provisions related to pregnant women.

## Recommendations

The Commission recommends that the Department of Justice expedites the delivery of a separate custodial facility for women prisoners in NI and calls on the NI Executive to provide any necessary support to ensure its completion.

The Commission recommends that the Department of Justice makes provisions for gender-sensitive training of criminal justice professionals in NI, with a specific focus on the links between domestic abuse and offending.

The Commission recommends that the Home Office promptly takes effective steps to ensure that women immigration detainees in NI are safe and have the option of gender-specific communal areas.

The Commission recommends that the Home Office takes immediate steps to end detention of pregnant women and nursing mothers in NI.

<sup>1243</sup> Ibid; Email correspondence from Larne Visitors House to NI Human Rights Commission, August 2023.

<sup>1244</sup> Section 2(2D), Illegal Migration Act 2023.

<sup>1245</sup> Sections 2(2E), Illegal Migration Act 2023.

<sup>1246</sup> Royal College of Midwives, ‘Position statement: Detention of Pregnant Women’ (RCM, 2017).

<sup>1247</sup> Prime Minister’s Office, ‘King’s Speech 2024’, 17 July 2024.

# Right to Fair Trial and the Administration of Justice

## Access to justice

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive “ensure that individuals belonging to ethnic minorities in... NI... have fair and effective access to legal aid to seek justice”.<sup>1248</sup> This includes reviewing “the legal framework on the legal aid system... in order to ensure that persons belonging to ethnic minorities are not disproportionately affected”.<sup>1249</sup> It also includes increasing “the allocation of human and financial resources to ensure the adequate and efficient functioning of the Legal Aid Agency”.<sup>1250</sup>

In 2023, the UN CRC Committee recommended that all children have access to:

legal support and representations and remedies, including by removing barriers faced by children in disadvantaged situations and expanding the types of support provided under the legal aid budget;

officials working with children in the justice system who have been adequately trained on children’s rights and child-friendly proceedings.<sup>1251</sup>

<sup>1248</sup> 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, at para 50.

<sup>1249</sup> Ibid.

<sup>1250</sup> Ibid.

<sup>1251</sup> CRC/C/GBR/CO/6-7, ‘UN CRPD Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 17.

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive ensure that “all persons with disabilities are provided with the right and adequate procedural accommodation within the justice system” and in addition “enable in particular deaf persons through the use of sign language interpreters to fully and equally participate as jurors in court proceedings”.<sup>1252</sup>

The EU Victims’ Directive, which falls within scope of Windsor Framework Article 2,<sup>1253</sup> includes the right of victims to understand and be understood in the context of criminal proceedings and for the right to interpretation and translation services, to that end.<sup>1254</sup> The EU Interpretation Directive establishes minimum protections for suspected or accused persons who do not speak or understand the language of the criminal proceedings and facilitates the application of Article 6 of the ECHR.<sup>1255</sup> Article 6(3)(e) of the ECHR states that everyone charged with a criminal offence has the right “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”.

## Legal aid

In 2024, civil and criminal legal aid were available in NI.<sup>1256</sup> Legal aid in NI costs more than £63.5 million per year.<sup>1257</sup> In NI, approximately 35 per cent of the total individuals who appear in the Magistrates’ Court and 98 per cent of the total individuals who appear in the Crown Court were legally aided.<sup>1258</sup>

<sup>1252</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 33.

<sup>1253</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 117; *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 561 and 582.

<sup>1254</sup> Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>1255</sup> Recital 14, Directive 2010/64/EU, ‘Directive of the European Parliament and of the Council on the Right to Interpretation and Translation In Criminal Proceedings’, 20 October 2010.

<sup>1256</sup> Department of Justice, ‘Legal Aid’. Available at: [Legal Aid | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/legal-aid)

<sup>1257</sup> Ibid.

<sup>1258</sup> Ibid.



In 2022 and 2023, the Law Society of NI and Bar of NI reported that cuts to the legal budget in NI, including legal aid:

would cause generational harm to the justice system to the detriment of some of society’s most vulnerable. It has the potential to put many legal professionals out of business and force many others to withdraw vitally needed services from communities. The impact would not fall evenly and there is the potential to very significantly disadvantage rural communities.<sup>1259</sup>

In 2023, barristers and solicitors in NI undertook a one-day strike across all criminal courts in protests against “wholly unreasonable delays” in receiving legal aid payments.<sup>1260</sup> It was reported that lawyers in NI faced a wait of up to six months to receive payment for work completed.<sup>1261</sup> The Department of Justice stated that it was “sympathetic to the frustration” of lawyers in NI, but deemed the strike action “premature”.<sup>1262</sup> In October 2024, a further one-day strike took place.<sup>1263</sup>

In 2024, the Department of Justice commenced a review of civil legal aid in NI.<sup>1264</sup> The review aims to ensure access to civil legal aid in NI is efficient, effective and responsive. The outcome of the review is awaited.<sup>1265</sup>

In 2024, the Minister of Justice, Naomi Long MLA, stated that “legal aid payments are forecast to be 30 per cent higher than the baseline budget, which is a... challenge”.<sup>1266</sup> The Minister of Justice further stated that the Department of Justice:

<sup>1259</sup> Law Society of NI and Bar of NI, ‘Access to Justice Under Threat: A Joint Submission on the Draft NI Executive Budget 2022-2025’ (LSNI and BNI, 2022), at 18; Letter from President of the Law Society of NI, Brian Archer, and Chair of the Bar of NI, Moira Smyth KC, to Permanent Secretary of the Department of Justice, Richard Pengelly, 24 April 2023.

<sup>1260</sup> ‘NI barristers set date for strike action over pay’, *BBC News*, 29 October 2023; Alan Erwin, ‘NI solicitors to join one-day strike over legal aid payment delays’, *Belfast Telegraph*, 16 November 2023.

<sup>1261</sup> ‘NI barristers set date for strike action over pay’, *BBC News*, 29 October 2023.

<sup>1262</sup> *Ibid.*

<sup>1263</sup> ‘Solicitors and barristers on strike in fees dispute’, *BBC News*, 4 November 2024.

<sup>1264</sup> Department of Justice, ‘Foundational Review of Civil Legal Services’ (DoJ, 2024).

<sup>1265</sup> *Ibid.*

<sup>1266</sup> NI Assembly Hansard, ‘Committee for Justice: Briefing by Minister of Justice, Naomi Long MLA’, 24 April 2024.

is facing increasing demand for services and inflationary cost rises, as well as the impact of pay awards... I am very conscious of the limited funding that the [NI] Executive had available to allocate. However, whilst the additional funding of £95 million of funding [to the Department of Justice] is welcome, it still leaves... [the Department of Justice] facing pressures of £351 million in 2024-2025. To put some perspective on the scale of the pressures involved, I will say that £351 million equates to the combined annual spend of prisons, courts and tribunals, legal aid, forensic science and the core Department. The severity of the financial position for [the Department of] Justice is exacerbated by the combined effects of historical underfunding compared with need for NI and the demand-led structure of the majority of services delivered by justice organisations.<sup>1267</sup>

In 2024, the Justice Bill included an amendment to impose restrictions on taxation of legal aid and a technical amendment regarding legal aid and land registration.

### **Litigants in person**

In 2019, following research by the University of Ulster in conjunction with the Commission,<sup>1268</sup> a Litigant in Person Reference Group was established by the Department of Justice that comprised of litigants in person, statutory bodies, academics, and legal professionals.<sup>1269</sup> In 2024, the Reference Group continued to meet quarterly, which involved providing advice to the Department of Justice on access to justice.<sup>1270</sup>

<sup>1267</sup> NI Assembly Hansard, 'Justice: Budgetary Situation - Naomi Long MLA', 20 May 2024.

<sup>1268</sup> Gráinne McKeever et al, 'Litigants in Person in NI: Barriers to Legal Participation' (UU, NIHRC and Nuffield Foundation, 2018).

<sup>1269</sup> Department of Justice, 'Terms of Reference: Litigants in Person Reference Group' (DoJ, 2019).

<sup>1270</sup> Department of Justice, 'Litigants in Person Reference Group Publications'. Available at: <https://justice-ni.gov.uk/publications/litigants-person-reference-group/>

## New technologies

In 2023, the Department of Justice introduced a Belfast Remote Evidence Centre.<sup>1271</sup> Drawing from the Gillen Review’s recommendations, this aims to ensure that certain witnesses will not encounter defendants within a court building.<sup>1272</sup> It provides a space for witnesses to give evidence via video link and to have direct access to support from Victims Support and the Young Witness Service.<sup>1273</sup>

In 2024, live links continue to operate in courts and tribunals.<sup>1274</sup> The Commission advised the Department of Justice that specific research should be undertaken to determine whether the use of live links had any adverse consequences for court users with disabilities, children, unrepresented litigants and/or individuals for whom English is not their first language.<sup>1275</sup> Furthermore, there should be clear guidance and safeguards in place to ensure technology and ways of working for the purpose of promoting access to justice are accessible and used appropriately.<sup>1276</sup>

In response to the Commission’s advice, the Department of Justice stated that courts in NI are able to conduct case-by-case consideration of the individual needs of people with disabilities or for whom English is not their first language when determining whether it is in the interests of justice to use live links.<sup>1277</sup>

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<sup>1271</sup> Department of Justice, ‘Press Release: Official opening of Belfast Remote Evidence Centre’, 28 September 2023.

<sup>1272</sup> Ibid.

<sup>1273</sup> Ibid.

<sup>1274</sup> Coronavirus Act 2020 (Extension of Provisions Relating to Live Links for Courts and Tribunals) Order (NI) 2024.

<sup>1275</sup> NI Human Rights Commission, ‘Consultation on Proposals on the Use of Live Links for Police Detention/Interviews’ (DoJ, 2020); NI Human Rights Commission, ‘Response to the Department of Justice’s Consultation on Audio and Video Links for NI Court and Tribunal Hearings’ (NIHRC, 2022); Letter from the NI Human Rights Commission to the Minister of Justice, Naomi Long MLA, 26 February 2024.

<sup>1276</sup> NI Human Rights Commission, ‘Consultation on Proposals on the Use of Live Links for Police Detention/Interviews’ (DoJ, 2020); NI Human Rights Commission, ‘Response to the Department of Justice’s Consultation on Audio and Video Links for NI Court and Tribunal Hearings’ (NIHRC, 2022).

<sup>1277</sup> Letter from Minister of Justice, Naomi Long MLA, to NI Human Rights Commission, 7 March 2024.

Furthermore, in 2024, the Department of Justice, Police Service of NI, and NI Court and Tribunals Service continued to explore technological advancements and new ways of working for the purposes of improving access to justice in NI, in line with their digital strategies.<sup>1278</sup> This work was linked to implementing the Gillen review’s recommendations on improving law and procedures regarding serious sexual offences in NI.<sup>1279</sup> Also the Justice Bill includes several provisions aimed at providing for the use of live links in police custody under certain circumstances.

In September 2024, the NI Executive identified “safer communities” as an immediate priority.<sup>1280</sup> The NI Executive committed to seeking “to drive forward a Speeding Up Justice Programme to reform the way in which cases are handled. That includes... enhanced digital capabilities to deliver efficiencies, and removing demand from the court system, such as less serious motoring offences”.<sup>1281</sup> The NI Executive also committed to seeking:

to invest to drive much needed reform at a system level, underpinned by investment in digital capabilities – supporting digital transformation across Criminal Justice Organisations including the Police Service NI, the NI Courts and Tribunals Services and Public Prosecution Service, driving efficiencies through enhanced electronic communication between those organisations, and improving citizen interfaces e.g. enhanced communication with victims and witnesses.<sup>1282</sup>

<sup>1278</sup> Department of Justice, ‘Digital Justice Strategy 2020-2025’ (DoJ, 2020); NI Courts and Tribunals Service, ‘Digital Strategy 2021-2026’ (NICTS, 2022); Department of Justice, ‘Consultation on Proposals on the Use of Live Links for Police Detention/Interviews’ (DoJ, 2020); Department of Justice, ‘Consultation on Use of Live Links for Courts and Tribunals’ (DoJ, 2022).

<sup>1279</sup> John Gillen, ‘Report into the Law and Procedures in Serious Sexual Offences in NI: Recommendations’ (DoJ, 2019).

<sup>1280</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 44.

<sup>1281</sup> Ibid.

<sup>1282</sup> Ibid.

## Recommendations

The Commission recommends that the Department of Justice ensures that individuals in NI have fair and effective access to legal aid, as required. This includes ensuring that specific needs are considered and accommodated. This also includes allocating ring-fenced resources that are adequate to ensure an efficient legal aid system in NI.

The Commission recommends that the Department of Justice promptly implements the recommendations contained in the Gillen Review and the Ulster University and Commission’s research on litigants in person to ensure that everyone has access to justice in law and practice. This includes ensuring that comprehensive consideration is given to the needs of individuals with specific needs including children, persons with disabilities, unrepresented litigants and individuals for whom English is not their first language.

The Commission recommends that the Department of Justice, working with the Police Service of NI and NI Courts and Tribunals Service, ensures that the adoption of new technologies and ways of working do not inadvertently hinder access to justice for individuals with specific needs. This includes ensuring there is clear guidance and safeguards in place to ensure technology and ways of working for the purpose of promoting access to justice are accessible and used appropriately.

## Age of criminal responsibility

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive “raise the minimum age of criminal responsibility, in accordance with internationally accepted standards, throughout the UK”.<sup>1283</sup>

<sup>1283</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 55(b).

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “raise the minimum age of criminal responsibility to at least 14 years of age”.<sup>1284</sup> The UN CRC Committee further recommended that the UK Government and NI Executive “develop early intervention for children and actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences, and, wherever possible, the use of non-custodial measures for children, such as probation or community service”.<sup>1285</sup>

The age of criminal responsibility remains at ten years old in NI, as in England and Wales. However, the Age of Criminal Responsibility (Scotland) Act 2019 raised the age of criminal responsibility in Scotland to 12 years old.

In 2011, a Department of Justice review concluded that “the minimum age should be increased to 12 [years old] forthwith and, following a period of review and preparation, perhaps to 14 [years old], which has some historical and current significance for criminal law in NI”.<sup>1286</sup>

In 2022, the Department of Justice consulted on raising the age of criminal responsibility to 14 years old.<sup>1287</sup> Over 83 per cent of respondents to the consultation supported an increase to the minimum age of criminal responsibility beyond ten years old, with the majority supporting an increase to 14 years old.<sup>1288</sup>

In 2024, the Minister of Justice, Naomi Long MLA, advised that the Department of Justice “have developed several options for progressing this issue, based on views expressed during the consultation”.<sup>1289</sup> The necessary legislative change requires the

<sup>1284</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 54(a).

<sup>1285</sup> Ibid, at para 54(c).

<sup>1286</sup> Department of Justice, ‘A Review of the Youth Justice System in NI’ (DoJ, 2011), at 107.

<sup>1287</sup> Department of Justice, ‘Public Consultation on Increasing the Minimum Age of Criminal Responsibility in NI from 10 Years to 14 Years’ (DoJ, 2022). See also Department of Justice, ‘Strategic Framework for Youth Justice 2022-2027’ (DoJ, 2022), at 47.

<sup>1288</sup> Department of Justice, ‘Increasing the Minimum Age of Criminal Responsibility in NI from 10 Years to 14 Years: Summary of Consultation Responses’ (DoJ, 2023), at 25.

<sup>1289</sup> NI Assembly Hansard, ‘Written Question: Minimum Age of Criminal Responsibility – Matthew O’Toole MLA – AQW 12831/22-27’, 5 June 2024.

approval of the NI Executive, which the Minister of Justice is working on obtaining.<sup>1290</sup> As the necessary legislative change is awaited, the Department of Justice continues its work on early intervention and community support for the purposes of supporting children of all ages in NI, particularly younger children, away from criminal activity.<sup>1291</sup>

## Recommendations

The Commission recommends the Department of Justice promptly introduces legislation to the NI Assembly, which raises the minimum age of criminal responsibility to at least 14 years old.

## Avoidable delay

In 2015, the UN Human Rights Committee recommended the introduction of “concrete measures to reduce avoidable delays in the criminal justice system in NI, including by introducing custodial time limits”.<sup>1292</sup>

In 2023, the average time from committal to hearing in the Crown Court was 182 days and from conviction to disposal was 85 days.<sup>1293</sup> In the Magistrate’s Court, the average waiting time from summons or charge to disposal in the adult criminal court was 16 weeks and 22 weeks in the youth criminal court.<sup>1294</sup> In the Court of Appeal in NI, there were 102 criminal appeals received and 95 disposed.<sup>1295</sup> There are particular concerns regarding sexual crimes, which on average take twice as long as other offences to reach the end of the criminal justice process in NI.<sup>1296</sup>

<sup>1290</sup> Ibid.

<sup>1291</sup> Ibid.

<sup>1292</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 22.

<sup>1293</sup> Department of Justice, ‘NI Court and Tribunal Service Judicial Statistics: January 2023 to December 2023’ (DoJ, 2024), at 2.

<sup>1294</sup> Ibid.

<sup>1295</sup> Ibid.

<sup>1296</sup> Lesley-Anne McKeown, ‘Sex crimes: Victim says delays left her feeling justice was taken away’, *BBC News*, 13 March 2024.



Since 2014, the Criminal Justice Inspection NI has raised concerns with there being no statutory custodial time limits in NI.<sup>1297</sup> These findings have been supported by the Gillen review into how the NI criminal justice system handles cases of serious sexual assault.<sup>1298</sup>

In 2020, the NI Executive made a commitment to implement the Criminal Justice Inspection NI and Gillen review recommendations on avoidable delay.<sup>1299</sup> Consequently, an Implementation Team was established to co-ordinate phased actions aimed at addressing Gillen Review's recommendations, as agreed by the Criminal Justice Board.<sup>1300</sup>

It is a slow, complex process.<sup>1301</sup> However, in 2024, progress continued in fully commencing the Criminal Justice (Committal Reform) Act 2022, for the purpose of simplifying and speeding up the committal process.<sup>1302</sup>

## Recommendations

The Commission recommends that the Department of Justice promptly and fully implements the Criminal Justice Inspection NI and Gillen Review's recommendations aimed at tackling undue delay within the criminal justice system, including through the full commencement of the Criminal Justice (Committal Reform) Act 2022.

<sup>1297</sup> NI Assembly Hansard, 'Committee for Justice - Criminal Justice Inspector', 25 June 2014; Criminal Justice Inspection NI, 'No Excuse: Public Protection Inspection II: A Thematic Inspection of the Handling of Domestic Violence and Abuse Cases By the Criminal Justice System in NI' (CJINI, 2019), at 10.

<sup>1298</sup> John Gillen, 'Report into the Law and Procedures in Serious Sexual Offences in NI - Part 1' (DoJ, 2019), at 13-14.

<sup>1299</sup> NI Office, 'New Decade, New Approach' (NIO, 2020), at 7-8.

<sup>1300</sup> Department of Justice, 'Press Release: We must work together to deliver real change for victims of serious sexual assault: Long', 3 February 2020.

<sup>1301</sup> Andrew Madden, 'Only a third of recommendations outlined in 2019's Gillen Review Report on sex offences have been fully implemented', *Belfast Telegraph*, 24 June 2022.

<sup>1302</sup> Department of Justice, 'Press Release: Long welcomes progress on plans to implement reforms of the court committal process', 9 March 2022.

## Closed material proceedings

In 2024, the UN Human Rights Committee reiterated its concern “about the increased use of closed material proceedings for legacy cases”.<sup>1303</sup> The UN Human Rights Committee recommended that the UK Government “adopt proper mechanisms with guarantees of independence, transparency and genuine investigation power that discharge the State Party’s human rights obligations and deliver truth, justice and effective remedies”.<sup>1304</sup>

The Justice and Security Act 2013 makes provision for closed material procedures in civil cases allowing for the introduction of sensitive security evidence to proceedings involving the UK Government, without disclosure to the claimant.

In 2022/2023, there were three applications lodged for a declaration that a closed material procedure application may be made in procedures related to NI, a decrease from four in 2021/2022.<sup>1305</sup> There was one declaration that a closed material procedure may be made in proceedings related to NI, an increase from nine in 2021/2022.<sup>1306</sup> There was no revocation of a declaration for closed material proceedings related to NI, which was the same as in 2021/2022.<sup>1307</sup> There was no final judgment related to NI that was closed, which was a decrease from one in 2021/2022.<sup>1308</sup> There were also no final judgments that were not closed related to NI, which was a decrease from four in 2021/2022.<sup>1309</sup>

<sup>1303</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 28 March 2024, at para 10.

<sup>1304</sup> Ibid, at para 11.

<sup>1305</sup> Ministry of Justice, ‘Report on the Use of Closed Material Procedure (From 25 June 2021 to 24 June 2022) (MoJ, 2024), at 8-10; Ministry of Justice, ‘Report on the Use of Closed Material Procedure (from 25 June 2022 to 24 June 2023)’ (MoJ, 2024), at 8-11.

<sup>1306</sup> Ministry of Justice, ‘Report on the Use of Closed Material Procedure (From 25 June 2021 to 24 June 2022) (MoJ, 2024), at 10-13; Ministry of Justice, ‘Report on the Use of Closed Material Procedure (from 25 June 2022 to 24 June 2023)’ (MoJ, 2024), at 11-12.

<sup>1307</sup> Ministry of Justice, ‘Report on the Use of Closed Material Procedure (From 25 June 2021 to 24 June 2022) (MoJ, 2024), at 13-14; Ministry of Justice, ‘Report on the Use of Closed Material Procedure (from 25 June 2022 to 24 June 2023)’ (MoJ, 2024), at 6.

<sup>1308</sup> Ministry of Justice, ‘Report on the Use of Closed Material Procedure (From 25 June 2021 to 24 June 2022) (MoJ, 2024), at 13-14; Ministry of Justice, ‘Report on the Use of Closed Material Procedure (from 25 June 2022 to 24 June 2023)’ (MoJ, 2024), at 12-13.

<sup>1309</sup> Ibid.

In 2022, an independent report on the operation of closed material procedure under the Justice and Security Act 2013 noted the additional cost associated with the closed material proceedings system and that:

this increase in litigation time and costs is particularly significant in NI, where, resources apart, there is as the Government Independent report on the operation of closed material procedure under the Justice and Security Act 2013 put it, a ‘complicated factual backdrop to many of the NI legacy cases’. This does not appear to have been anticipated, or catered for as it is now clear it should have been.<sup>1310</sup>

The independent report also advised that the issue of resourcing “should be addressed with alacrity and vigour, with the position in NI to the fore”.<sup>1311</sup> Of the 20 recommendations made in the independent report on closed material proceedings, 11 recommendations applied to NI.<sup>1312</sup> All of these recommendations focused on the practical outworkings of closed material proceedings, and many require amendments to the rules of the court.<sup>1313</sup>

In May 2024, the previous UK Government confirmed that it would be taking forward five of these recommendations and that it was consulting on the implementation of a sixth recommendation.<sup>1314</sup> The previous UK Government confirmed that it would not be taking forward five of the recommendations made that applied to NI as it was felt that the suggested changes would not reduce delays or costs, or would be too onerous on the wider legal system a change.<sup>1315</sup> Confirmation was awaited on whether the new UK Government would be adopting a similar approach.

<sup>1310</sup> Duncan Ouseley, ‘Review of Closed Material Procedure in the Justice and Security Act 2013’ (MoJ, 2022), at 115.

<sup>1311</sup> Ibid, at 117.

<sup>1312</sup> Ibid.

<sup>1313</sup> Ibid.

<sup>1314</sup> Ministry of Justice, ‘Closed Material Proceedings: Government Response’ (UK Gov, 2024), at paras 37-46.

<sup>1315</sup> Ibid.

## Recommendations

The Commission recommends that the Ministry of Justice ensures that sufficient, long-term resources are available where closed material procedures are used in NI.

The Commission recommends that the Ministry of Justice ensures that the use of closed material procedures in NI is limited in cases involving serious human rights violations and, at least, ensures the removal of obstacles to ensuring accountability. This must not compromise the rights to a fair trial and an effective remedy.

The Commission recommends that the Department of Justice ensures a comprehensive library for closed judgments is available and accessible to legal teams and judges in NI.

## Compensation for a miscarriage of justice

In 2015, the UN Human Rights Committee recommended that the UK Government should “review the new test for miscarriage of justice with a view to ensuring its compatibility with Article 14(6) of the UN ICCPR”.<sup>1316</sup>

Following a UK Supreme Court judgment,<sup>1317</sup> the Anti-social Behaviour, Crime and Policing Act 2014 introduced a new test for compensation for a miscarriage of justice. This new test is satisfied when a new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence.<sup>1318</sup> Where this has been established, an applicant who has been wrongfully convicted and punished as a result of this miscarriage of justice can obtain compensation from the Secretary of State of NI where that conviction has been pardoned or reversed.<sup>1319</sup> In England and Wales, this test applies to all offences. In NI, it applies only to applications for

<sup>1316</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 22(b).

<sup>1317</sup> *R (On the Application of Adams) (FC) v Secretary of State for Justice* [2011] UKSC 18; *Ryan’s (Veronica) Application* [2021] NICA 42, at para 31.

<sup>1318</sup> The Anti-social Behaviour, Crime and Policing Act 2014 inserted a new section 133(1ZA) into the Criminal Justice Act 1988.

<sup>1319</sup> Section 133(1ZA), Criminal Justice Act 1998.

compensation involving protected information on the grounds of national security.<sup>1320</sup> In this case, the Secretary of State of NI will make the determination of a right to compensation rather than the Department of Justice. Therefore, the amendment creates different tests in respect of individuals whose convictions involved protected information depending on whether the protected information could be disclosed, or an adequate summary provided.<sup>1321</sup>

In 2019, the UK Supreme Court considered whether section 133(1ZA) of the Criminal Justice Act 1988 violated Article 6(2) of the ECHR (presumption of innocence).<sup>1322</sup> The UK Supreme Court dismissed the appeal and declined to make a declaration of incompatibility.<sup>1323</sup>

In 2024, the ECtHR considered the case, during which the Commission intervened as a third party.<sup>1324</sup> The ECtHR found that a refusal of compensation under the test of section 133(1ZA) of the 1988 Act was not the equivalent to attributing criminal guilt to the applicant.<sup>1325</sup> Consequently, the ECtHR concluded, by a majority of 12-to-five, that there was not a violation of the right to presumption of innocence under Article 6(2) of the ECHR.<sup>1326</sup>

## Cross-border justice arrangements

The UK-EU Trade and Cooperation Agreement 2020 provides that criminal justice cooperation is based on respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the ECHR.<sup>1327</sup> The 2020 Agreement established a fast-track system which enables the extradition of either UK or EU nationals.<sup>1328</sup>

<sup>1320</sup> Section 133(6H), Criminal Justice Act 1998.

<sup>1321</sup> *Ryan's (Veronica) Application* [2021] NICA 42, at para 33.

<sup>1322</sup> *R (On the Application of Hallam) v Secretary of State for Justice* [2019] UKSC 2.

<sup>1323</sup> *Ibid.*

<sup>1324</sup> *Nealon v UK and Hallam v UK* (2024) ECHR 514.

<sup>1325</sup> *Ibid.*

<sup>1326</sup> *Ibid.*

<sup>1327</sup> Article 524, UK-EU Trade and Cooperation Agreement 2020.

<sup>1328</sup> Article 596-632, UK-EU Trade and Cooperation Agreement 2020. See Section 12 of the EU (Future Relationship) Act 2020 has repealed sections 64 and 65 of the Extradition Act 2003, which previously contained a waiver in relation to the requirement of dual criminality.

Following the UK's exit from the EU, the free flow of data between the EU and the UK is currently made possible by two data adequacy decisions by the EU, which recognise the “essentially equivalent level of protection” of personal data in the UK and the EU.<sup>1329</sup> The data adequacy decisions are under the EU General Data Protection Regulation<sup>1330</sup> and the EU Data Protection Law Enforcement Directive respectively, which are subject to review in 2025.<sup>1331</sup> The Commission welcomes the sharing of some information which has resulted, but regrets that access to information sharing tools, such as Schengen Information System II<sup>1332</sup> has been lost.<sup>1333</sup>

In the absence of access to Schengen Information System II,<sup>1334</sup> the previous UK Government indicated its intention to work with EU and Ireland law enforcement partners to strengthen international law enforcement cooperation<sup>1335</sup> and, specifically, to improve the exchange of alert data, between the UK, EU and third countries through the International Law Enforcement Alert Platform.<sup>1336</sup> In 2023, the Home Office indicated that co-operation with the EU under the International Law Enforcement Alert Platform would not complete until 2027/2028.<sup>1337</sup>

<sup>1329</sup> EU Commission, ‘Press Release: Data protection – Commission adopts adequacy decisions for the UK’, 28 June 2021.

<sup>1330</sup> C/2021/ 4800, ‘European Commission Implementing Decision (EU) 2021/1772, Pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the Adequate Protection of Personal Data by the UK’, 28 June 2021.

<sup>1331</sup> Ibid.

<sup>1332</sup> Schengen Information System (SIS II) is a European database which provides alerts on the movement of people or objects of interest as they cross EU borders. See Regulation 1987/2006, ‘European Parliament and EU Council Regulation on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II)’, 28 December 2006.

<sup>1333</sup> C(2021)4800, ‘European Commission Implementing Decision Pursuant to Regulation (EU) 2016/679 on the Adequate Protection of Personal Data by the UK’, 28 June 2021; C(2001) 4801, ‘European Commission Implementing Decision pursuant to Regulation (EU) 2016/680 on the Adequate Protection of Personal Data by the UK, 28 June 2021.

<sup>1334</sup> Schengen Information System (SIS II) is a European database, which provides alerts on the movement of people or objects of interest as they cross EU borders. See Regulation 1987/2006, ‘EU Parliament and Council Regulation on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II)’, 28 December 2006.

<sup>1335</sup> NI Affairs Committee, ‘Cross-border Co-operation on Policing, Security and Criminal Justice After Brexit: Government Response to the NI Affairs Committee’s Fourth Report of Session 2019–2021’ (NIAC, 2021).

<sup>1336</sup> House of Lords EU Committee ‘Beyond Brexit: Policing, Law Enforcement and Security Twenty-fifth Report of Session 2019–2021’ (EU Committee, 2021), at para 74.

<sup>1337</sup> Home Office, ‘International Law Enforcement Alerts Platform Programme Accounting Officer Assessment’ (HO, 2023)



In January 2024, in its review of the Data Protection and Digital Information Bill, the Commission raised concerns that changes to the UK data protection regime pursuant to the Bill could lead to divergences in the level of data protection rights in the UK and the EU.<sup>1338</sup> Where such a divergence results in a lowering of data protection, this could threaten renewal of the data adequacy decisions and could have a detrimental effect on NI, particularly in the area of cross-border cooperation on policing and justice.<sup>1339</sup> In May 2024, the Data Protection and Digital Information Bill fell at dissolution of the UK Parliament ahead of the General Election. In October 2024, the UK Government introduced the Data (Use and Access) Bill in the UK Parliament.

## Recommendations

The Commission recommends that Department of Justice, in cooperation with the UK Government and Government of Ireland, ensures the highest standards of victims' rights and rights of accused persons as central to cross-border criminal justice cooperation.

The Commission recommends that, in the absence of CJEU oversight of the extradition process, the UK and the EU establish clear safeguards within the Trade and Cooperation Agreement oversight mechanisms to ensure robust human rights and legal safeguards for accused persons and for victims of crimes.

<sup>1338</sup> NI Human Rights Commission, 'Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2024). Relevant EU law includes, EU General Data Protection Regulation (Regulation 2016/679/EU, 'EU Parliament and Council Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data', 27 April 2016); EU Data Protection Law Enforcement (Directive 2016/680/EU, 'EU Parliament and Council Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of Such Data', 27 April 2016); EU E-Privacy Directive (Directive 2009/136/EC, 'EU Parliament and Council Directive Amending Directive 2002/22/EC on Universal Service and Users' Rights Relating to Electronic Communications Networks and Services, Directive 2002/58/EC Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector and Regulation (EC) 2006/2004 on Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws', 25 November 2009). For rules regarding the processing of personal data by EU bodies and institutions see also Regulation 2018/1725/EU, 'EU Parliament and Council Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data by the EU Institutions, Bodies, Offices and Agencies and on the Free Movement of Such Data', 23 October 2018.

<sup>1339</sup> NI Human Rights Commission, 'Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2023).



The Commission recommends that when developing legislation that concerns data protection rights the Secretary of State for Science, Innovation and Technology considers any divergence of data protection standards between the UK and the EU to ensure that it does adversely impact cross-border cooperation on policing and justice information-sharing arrangements.

## Non-jury trials

In 2013, the UN CAT Committee recommended that the UK Government should:

take due consideration of the principles of necessity and proportionality when deciding the renewal of emergency powers in NI, and particularly non-jury trial provisions. It encourages the State party to continue moving towards security normalisation in NI and envisage alternative juror protection measures.<sup>1340</sup>

There is a presumption of trial by jury in all cases before the NI Crown Court.<sup>1341</sup> However, under the Justice and Security (NI) Act 2007, non-jury trials can take place in exceptional circumstances. This legislation is temporary and must be renewed every two years by way of an order approved by the UK Parliament.

In 2023, twelve out of 1,423 NI Crown Court cases were conducted without a jury.<sup>1342</sup>

The Justice and Security (NI) Act 2007 has been extended for a seventh time, enabling the use of non-jury trials in NI until July 2025.<sup>1343</sup> The former Secretary of State for NI, Chris Heaton-

<sup>1340</sup> CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 6 May 2013.

<sup>1341</sup> UK Government, 'Press Release: Consultation launched on the use of non-jury trials in NI', 3 November 2022.

<sup>1342</sup> Email correspondence from Department of Justice to NI Human Rights Commission, 31 July 2024.

<sup>1343</sup> Justice and Security (NI) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2023.

Harris, stated that “the continued need for the provisions is regrettable. However, the concerns raised during the consultation of the potential risk to the administration of justice and to individuals if the non-jury trial provisions were to expire imminently, cannot be ignored”.<sup>1344</sup> The former UK Government did not “want these temporary measures to become normalised, and remains fully committed to seeing an end to their use, when it is safe to do so and compatible with the interests of justice”.<sup>1345</sup>

In 2022, a Non-Jury Trial Working Group, which included the Commission, provided its report to the former Independent Reviewer of the Justice and Security Act (NI) Act 2007, Marie Breen-Smyth.<sup>1346</sup> The Working Group’s report recommended practical measures which could help reduce the number of non-jury trials taking place, and identifying elements indicating that non-jury trials should no longer be deemed necessary.<sup>1347</sup> In 2023, the former Independent Reviewer supported the indicators proposed by Working Group to assist the Secretary of State for NI in determining whether non-jury trials remain necessary.<sup>1348</sup>

## Recommendations

The Commission recommends that the NI Office implements effective measures to ensure the principles of necessity and proportionality are fully reflected within any authorisation for non-jury trials in NI.

The Commission recommends that the NI Office adopts the indicators developed by the working group on non-jury trials to determine the conditions whereby the use of non-jury trials will be discontinued.

<sup>1344</sup> HM Government, ‘Consultation Response: Non-jury Trials Justice and Security (NI) Act 2007’ (UK Gov, 2023), at para 64.

<sup>1345</sup> Ibid, at para 17.

<sup>1346</sup> NI Office, ‘Non-Jury Trials Working Group: Report to the Independent Reviewer of the Justice and Security (NI) Act 2007’ (NIO, 2022).

<sup>1347</sup> Non-Jury Trials Working Group Meeting, 27 July 2021.

<sup>1348</sup> Marie Breen-Smyth, ‘Report of the Independent Reviewer Justice and Security (NI) Act 2007 Fifteenth Report: 1 August 2021–31 July 2022’ (NIO, 2023) at 109.

# Right to Private and Family Life

## ● Access to financial support for unmarried couples

### Bereavement Benefits (Remedial) Order 2023

In 2018, the UK Supreme Court ruled that the requirement that couples are married to access Widowed Parent's Allowance violated the right to private and family life (Article 8 of the ECHR) and freedom from discrimination (Article 14 of the ECHR).<sup>1349</sup>

After several delays,<sup>1350</sup> the Bereavement Benefits (Remedial) Order 2023 came into force. This enables remedial payments for unmarried couples to be made back to 30 August 2018. Where a claimant's late partner died before this date, the 2023 Remedial Order provides for a part payment of the higher rate of Bereavement Support Payment, if the death was after 5 April 2017, provided that the claim is made by 8 February 2024. Under the Remedial Order, claimants are also eligible for Widowed Parent's Allowance, where their late partner died before 6 April 2017, and they continue to meet the entitlement conditions on 30 August 2018.<sup>1351</sup>

In its advice during the legislative passage of the 2023 Remedial Order, the Commission recommended that remedial payments should be extended to individuals who do not have children and to make ex gratia payments to fully recompense individuals bereaved back to February 2016, when the High Court of Justice

<sup>1349</sup> *In the Matter of an Application by Siobhan McLaughlin for Judicial Review (NI)* [2018] UKSC 48.

<sup>1350</sup> House of Commons Work and Pensions Committee, 'Bereavement Support Payment - First Report of Session 2019-20' (WPC, 2019); Draft Bereavement Benefits (Remedial) Order 2021.

<sup>1351</sup> Department for Work and Pensions, 'Explanatory Memorandum to The Bereavement Benefits (Remedial) Order 2022' (DWP, 2022), at para 7.13.

in NI first considered this issue.<sup>1352</sup> This was also supported by the House of Commons and House of Lords Joint Committee on Human Rights.<sup>1353</sup> This recommendation is not reflected within the 2023 Remedial Order. Consequently, the 2023 Remedial Order does not provide bereavement support on equal terms to non-married couples without dependent children.

### **Access to pensions**

In 2018, the Commission issued proceedings on behalf of an individual who was denied access to her late partner's pension by the Ministry of Defence, on the grounds that they were not married. The Commission argued that there was no objective and justifiable reason for treating the individual differently to a married woman in her circumstances and that the failure to make provision for her, and others like her, violates the right to private and family life (Article 8 of the ECHR), the right to peaceful enjoyment of possessions (Article 1 of Protocol No 1 to the ECHR) and freedom from discrimination (Article 14 of the ECHR). In 2021, the High Court of Justice in NI dismissed the respondent's application to have the claim struck out.<sup>1354</sup>

In 2022, the High Court of Justice in NI allowed the Ministry of Defence's appeal and held that taking the case via a private action instead of a public law judicial review was an abuse of process.<sup>1355</sup> In 2023, a further appeal by the Commission was dismissed by the Court of Appeal in NI. However, the Commission continued to pursue the case via judicial review. In 2024, this case was ongoing.

### **Bereavement Support Payment**

In 2024, the Commission provided legal assistance to an individual in her appeal to the Social Security Appeals Tribunal regarding the decision to refuse her Bereavement Support

<sup>1352</sup> NI Human Rights Commission, 'Submission to Joint Committee for Human Rights on the Proposal for a draft Bereavement Benefits (Remedial) Order 2021' (NIHRC, 2021).

<sup>1353</sup> House of Commons and House of Lords Joint Committee for Human Rights, 'Proposal for a Draft Bereavement Benefits Remedial Order 2021: Discrimination against Cohabiting Partners' (JCHR, 2021).

<sup>1354</sup> *Norma Mitchell v Defence Council and Secretary of State for Defence* [2021] NIMaster 4.

<sup>1355</sup> *Norma Mitchell v Defence Council and Secretary of State for Defence* [2022] NIQB 34.

Payment. A Bereavement Support Payment gives financial help to deal with the more immediate costs caused by the death of a partner, if the date of the death was on or after 6 April 2017.<sup>1356</sup> An individual is only entitled to Bereavement Support Payment if they were married or in a civil partnership with the partner that died.<sup>1357</sup> The individual had been in a relationship of over 20 years with her deceased partner. They had been living as if they were a married couple and the individual continues to have the same financial commitments as when her partner was alive, but now on a single income following his death.

The Commission is supporting the individual's claim that the current legislation is a violation of Article 14 of the ECHR (right to freedom from discrimination), in conjunction with Articles 8 (right to respect for private and family life) and Article 1 of the Protocol No 1 (protection of property) of the ECHR. In October 2024, the case was heard, with the decision of the Social Security Appeals Tribunal awaited.

## Recommendations

The Commission recommends that the Department for Work and Pensions ensures that Bereavement Benefits (Remedial) Order 2023 is fully retrospective to February 2016 for the families who made claims based on the High Court of Justice in NI's judgment.

The Commission recommends that the Department for Work and Pensions widens the criteria for social security benefits and pensions to allow couples in long term, cohabiting relationships access to these benefits.

<sup>1356</sup> NI Direct, 'Bereavement Support Payment'. Available at: [Bereavement Support Payment | nidirect](#)

<sup>1357</sup> Section 29(1)(a), Pensions Act 2015.

## Alternative care arrangements for children

In 2023, the UN CRC Committee urged the UK Government and NI Executive to:

- a) invest in measures to prevent and reduce the number of children placed in alternative care, including by allocating sufficient resources for early intervention and preventive services, including for infants and toddlers, increasing and strengthening the number of trained social workers, and improving multiagency coordination;
- b) prevent frequent or unnecessary transfers of children in alternative care settings, ensure that children are consistently supported through individualized care plans and by a social worker throughout their time in care, and conduct regular and substantive reviews of placements in care;
- c) allocate sufficient resources for the implementation of the recommendations of the independent review of children's social care...;
- d) develop a legislative framework for ensuring a child rights-based approach to the support of children who are placed in alternative care far from their place of residence...and ensure that such placements take place only as a measure of last resort;
- e) prohibit and prevent the placement of children in secure care, residential care homes without appropriate safeguards or unregulated alternative care, including hotels and bed and breakfast accommodation;
- f) allocate sufficient funds for family- and community-based care options for children who cannot stay with their families, and facilitate the reintegration of children into their families and communities whenever possible;
- g) ensure that children are heard in decisions affecting them in alternative care placement throughout their stay, and that relevant authorities and professionals have the technical capacities required to guarantee respect for children's views in alternative care; [and]

- h) strengthen measures, including through increased funding, aimed at providing education, skills, housing and opportunities for independent living for children leaving alternative care.<sup>1358</sup>

## Statistics

At 31 March 2024, 2,334 children and young people were listed on the Child Protection Register in NI.<sup>1359</sup> There were also 3,999 children and young people in care in NI, the highest number recorded since the introduction of the Children (NI) Order 1995.<sup>1360</sup> Of the 3,999 children and young people in care in NI, 84 per cent were in foster care placements, 6 per cent were placed with parents, 6 per cent were in residential care and 5 per cent were in other placements.<sup>1361</sup> Furthermore, 54 per cent were boys and 46 per cent were girls.<sup>1362</sup> In terms of age, 41 per cent were aged 12 years and over.<sup>1363</sup> Additionally, 14 per cent of were recorded as having a disability.<sup>1364</sup>

## Children's social care reform

In 2024, the Adoption and Children (NI) Act 2022 is being implemented on a phased basis over five years between 2022 and 2027.<sup>1365</sup> Work is underway in respect of the drafting of, and consultation on, the 25 sets of regulations and guidance that are required to give full effect to the wide-ranging reforms.<sup>1366</sup> A progress report on the 2022 Act is due in April 2025.<sup>1367</sup>

<sup>1358</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 38(a)-38(h).

<sup>1359</sup> NI Statistics and Research Agency, 'Children's Social Care Statistics for NI 2024/2024 (DoH, 2024)', at 15.

<sup>1360</sup> Ibid, at 28.

<sup>1361</sup> Ibid.

<sup>1362</sup> Ibid, at 29.

<sup>1363</sup> Ibid.

<sup>1364</sup> Ibid, at 32.

<sup>1365</sup> Sections 155, 157, 159, 160 and 161 of the Adoption and Children Act (NI) 2022 came into operation on Royal Assent on 27 April 2022. See, NI Assembly Hansard, 'Written Question: Adoption and Children Act (NI) 2022 - Andy Allen MLA - AQW 6177/22-27', 15 February 2024.

<sup>1366</sup> NI Assembly Hansard, 'Written Question: Adoption and Children Act (NI) 2022 - Kellie Armstrong MLA - AQW 6620/22-27', 1 March 2024.

<sup>1367</sup> Ibid; Section 158, Adoption and Children (NI) Act 2022.



In 2023, the Independent Review of Children’s Social Care Services made 54 recommendations outlining how children’s social care services in NI should be reshaped.<sup>1368</sup> The Independent Review’s core proposal is for a single region-wide children and families’ arms-length body to be created that would replace all children’s services across the current five Health and Social Care Trusts in NI.<sup>1369</sup> The Department of Health consulted on the organisational and service changes recommended in the Independent Review.<sup>1370</sup> Of the 134 responses received, the majority of respondents (60 per cent) supported the establishment of a children and families’ arms-length body.<sup>1371</sup> However, some comments indicated that support was qualified and concerns were raised about the potential disruption that a change of this magnitude would cause.<sup>1372</sup>

In 2024, the outcome of the consultation process is awaited. However, in 2023, Children’s Social Care Strategic Reform Programme was established by the Department of Health.<sup>1373</sup> In 2024, the Reform Programme’s work continued.<sup>1374</sup>

## Foster care

Unlike legislation in the rest of the UK, the Foster Placement (Children) Regulations (NI) 1996 do not include minimum standards for foster care or a statutory requirement for foster care to be inspected. In 2012, Minimum Kinship Care Standards, which are subject to regular review, were introduced.<sup>1375</sup> In 2013, the Department of Health stated that it would update fostering standards in NI, but this remains outstanding.<sup>1376</sup>

<sup>1368</sup> Department of Health, ‘An Independent Review: Children’s Social Care Services in NI’ (DoH, 2023).

<sup>1369</sup> Ibid, at 116.

<sup>1370</sup> Department of Health, ‘Consultation on Recommendations of Independent Review of Children’s Social Care Services in NI’ (DoH, 2023).

<sup>1371</sup> Department of Health, ‘Independent Review of Children’s Social Care Services: Consultation Report’ (DoH, 2024), at para 9 and 21.

<sup>1372</sup> Ibid, at para 32.

<sup>1373</sup> Department of Health, ‘Reform of Children’s Social Care Services’. Available at: <https://www.health-ni.gov.uk/topics/social-care-reform/reform-childrens-social-care-services>

<sup>1374</sup> Ibid.

<sup>1375</sup> Department of Health, ‘Minimum Kinship Care Standards NI’ (DoH, 2019).

<sup>1376</sup> Regulatory and Quality Improvement Authority, ‘Review of Statutory Fostering Services Overview Report’ (RQIA, 2013).

At 31 March 2024, there were 2,639 Health and Social Care Trust recruited foster carers and a further 254 independent sector foster carers in NI.<sup>1377</sup> During 2023/2024, 840 initial home visits were carried out and 451 fostering assessments were completed by Health and Social Care Trusts in NI.<sup>1378</sup> During 2023/2024, there were approximately 398 less foster carers in NI due to de-registration based on no longer wishing to foster, retirement, a placement being phased out, or because the carer had adopted or been granted a Residence Order.<sup>1379</sup>

In 2023, the Independent Review of Children’s Social Care Services reiterated a range of issues in NI foster care, including the need for regulations and standards and an inspection regime.<sup>1380</sup> The Department of Health also established a dedicated workstream on fostering as part of the Children’s Social Care Strategic Reform Programme.<sup>1381</sup> In 2024, the Independent Review of Children’s Social Care Services indicated general support for recommendations on foster care, including changes to policy, legislation, guidance, standards and practice.<sup>1382</sup> The Department of Health’s response to the recommendations on foster care is awaited.<sup>1383</sup>

### Secure accommodation

Article 44 of the Children (NI) Order 1995 makes provision for a child to be held in secure accommodation, meaning accommodation provided for the purpose of restricting liberty, under strict circumstances.

<sup>1377</sup> NI Statistics and Research Agency, ‘Children’s Social Care Statistics for NI 2023/2024’ (DoH, 2024), at 50.

<sup>1378</sup> Ibid.

<sup>1379</sup> Ibid.

<sup>1380</sup> Department of Health, ‘An Independent Review: Children’s Social Care Services in NI’ (DoH, 2023), at paras 13.4 – 13.30.

<sup>1381</sup> NI Assembly Hansard, ‘Written Question: Fees for Foster Carers – Cheryl Brownlee MLA – AQW 8873/22-27’, 28 March 2024.

<sup>1382</sup> Department of Health, ‘Independent Review of Children’s Social Care Services: Consultation Report’ (DoH, 2024), at 51.

<sup>1383</sup> Ibid, at para 32.

In 2022, following a consultation process,<sup>1384</sup> the NI Executive advised that the plans for a new regional campus will not go ahead and that the two secure care and justice centres will continue to operate independently, but that services should be harmonised between them.<sup>1385</sup>

In 2023, reflecting the Criminal Justice Inspection NI's concerns,<sup>1386</sup> the Independent Review of Children's Social Care Services noted the high costs of maintaining the two centres.<sup>1387</sup> The Independent Review recommended that the Regional Justice and Care Campus was integrated within the much better resourced Woodlands site.<sup>1388</sup> A formal response to recommendations in the Independent Review is awaited.<sup>1389</sup> However, in March 2024, the former Minister of Health, Robin Swann MP, and the Minister of Justice, Naomi Long MLA, closed the Regional Care and Justice Campus Programme.<sup>1390</sup> This decision was based on legal advice that "the existing legislative framework does not support sharing of space in the way envisaged".<sup>1391</sup>

<sup>1384</sup> Department of Health and Department of Justice, 'Consultation on Establishment of a Regional Care and Justice Campus' (DoH and DoJ, 2020).

<sup>1385</sup> Letter from Department of Justice and Department of Health to Regional Facilities for Children and Young People Stakeholder Reference Group Members, 24 March 2022.

<sup>1386</sup> Criminal Justice Inspection NI, 'Press Release: Inspectors praise high standards of care at Woodlands JJC and call for greater collaboration with Lakewood Secure Care Centre', 28 September 2022.

<sup>1387</sup> Department of Health, 'An Independent Review: Children's Social Care Services in NI' (DoH, 2023), at para 16.12; Letter from Department of Justice and Department of Health to Regional Facilities for Children and Young People Stakeholder Reference Group Members, 24 March 2022; Department of Health, 'An Overview of the NI Framework for Integrated Therapeutic Care for Care Experienced Children and Young People' (DoH, 2022).

<sup>1388</sup> Department of Health, 'An Independent Review: Children's Social Care Services in NI' (DoH, 2023), at para 16.14.

<sup>1389</sup> Department of Health, 'Independent Review of Children's Social Care Services: Consultation Report' (DoH, 2024), at para 32.

<sup>1390</sup> Meeting of the Regional Care and Justice Campus Programme Stakeholder Reference Group, 8 May 2024.

<sup>1391</sup> Ibid.

## Recommendations

The Commission recommends that the Department of Health promptly develops, implements and monitors the regulations and guidance required to give full effect to the Adoption and Children Act 2022.

The Commission recommends that the Department of Health develops and implements minimum standards of foster care without further delay. Additionally, the Department of Health should introduce a statutory requirement for foster care to be inspected.

The Commission recommends that the Department of Health and the Department of Justice guarantee that secure accommodation is used as a measure of last resort and for the shortest possible period in practice, requiring the development of suitably resourced and accessible alternatives across the region. This requires ensuring that effective and cost-efficient measures are in place, for example through the Regional Care and Justice Campus, to ensure children in secure accommodation in NI are provided with consistent and appropriate support when secure accommodation is necessary as a measure of last resort.

The Commission recommends that the Department of Health takes urgent steps to ensure that children's social care services in NI meet demand and address the full range of complex needs, as they arise. This includes ensuring that opportunities for strategic collaboration across services in NI are identified and maximised, including in the provision of long-term funding arrangements, particularly in the implementation of the Adoption and Children (NI) Act 2022 and the Independent Review of Children's Social Care Services.

## ● Anonymity: Children and pre-charge proceedings

Section 44 of the Youth Justice and Criminal Evidence Act 1999 prevents anyone under 18 years old allegedly involved in an offence from being named in the media.<sup>1392</sup> However, unlike in England and Wales, NI has not enacted this provision. Article 22 of the Criminal Justice (Children) (NI) Order 1998 places reporting restrictions for minors in post-charge and court scenarios, but not for minors who are pre-charge.

In 2020, a challenge was brought on behalf of a child hacker who was named in the press.<sup>1393</sup> In 2015, the applicant, who was then 15 years old, was arrested and interviewed by the Police Service of NI. After his arrest details of the applicant's personal information were published by various media outlets. The applicant sought a declaration that the Department of Justice's failure to enact section 44 of the Youth and Justice Criminal Evidence Act was unlawful and to not extend the protection of Article 22 of the Criminal Justice (Children) (NI) Order 1998 to pre-charge minors was unfair. The High Court of Justice in NI found that the applicant, who was in a pre-charge situation, was "not in a relevantly analogous situation to children who actually appear before a court" and that there was "nothing unfair or irrational in the State's approach".<sup>1394</sup>

In 2023, section 12 of the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022 came into force, which prevented suspects of sexual offences from being named until they were charged or until 25 years after their death. Section 12 of the 2022 Act extended to individuals who were under 18 years old in the specific context of sexual offences. In 2024, the High Court of Justice of NI found that section 12 of the 2022 Act violated Articles 8 and 10 of the ECHR by failing to strike an appropriate balance between the right to privacy of suspects and freedom

<sup>1392</sup> This provision applies in England, Wales and NI.

<sup>1393</sup> *In the Matter of an Application by JKL (A Minor) to Apply for Judicial Review and the In the Matter of a Decision of the Department of Justice* [2020] NIQB 29.

<sup>1394</sup> *Ibid*, at paras 70 and 72.

of expression of the media.<sup>1395</sup> Section 12 of the 2022 Act is no longer enforceable in NI.<sup>1396</sup> The Minister for Justice, Naomi Long MLA, has also confirmed that the High Court of Justice in NI’s decision will not be appealed.<sup>1397</sup>

## Recommendations

The Commission recommends that the Department of Justice amends the Youth Justice and Criminal Evidence Act 1999 to ensure that all children in NI allegedly involved in an offence are granted anonymity at every stage of the criminal justice process, including the pre-charge stages.

## Biometric data

In 2020, the ECtHR found that the policy of indefinite retention was a disproportionate interference with the applicant’s rights, in breach of Article 8 of the ECHR.<sup>1398</sup> The ECtHR stated that:

the indiscriminate nature of the powers of retention of the DNA profile, fingerprints and photograph of the applicant as person convicted of an offence, even if spent, without reference to the seriousness of the offence or the need for indefinite retention and in the absence of any real possibility of review, failed to strike a fair balance between the competing public and private interests... Accordingly, the... [UK] has overstepped the acceptable margin of appreciation.<sup>1399</sup>

In 2023, the CoE Committee of Ministers recalled its “profound concern that 15 years after *S and Marper [v UK (2008)]* became final, a [ECHR]... compliant framework for retention of biometric data with applicable safeguards is yet to come into force for those arrested but not convicted”.<sup>1400</sup>

<sup>1395</sup> *In the Matter of an Application by Mediahuis Ireland Ltd and The Irish News* [2024] NIKB 45, at para 131.

<sup>1396</sup> *Ibid.*

<sup>1397</sup> John Breslin, ‘Justice Minister Naomi Long won’t appeal ruling striking down “Jimmy Savile” provisions of sexual offences law’, *Irish News*, 3 July 2024.

<sup>1398</sup> *Gaughran v UK* (2020) ECHR 144, at para 96.

<sup>1399</sup> *Ibid.*

<sup>1400</sup> CM/Del/Dec(2023)1483/H46-43, ‘CoE Committee of Ministers Meeting on Gaughran Group v UK (Application No 45245/15), 7 December 2023, at para 5.

The Committee of Ministers “noted further that there is no review policy for biometric data and photographs in place and that current policies, including the Police Service of NI early deletion procedure, remain too limited in scope to prevent similar violations”.<sup>1401</sup>

The Commission considers that EU data protection law falls in scope of Windsor Framework Article 2.<sup>1402</sup> Data protection is given effect across a number of EU measures<sup>1403</sup> including the EU General Data Protection Regulation, which is clear that “the protection of natural persons in relation to the processing of personal data is a fundamental right”.<sup>1404</sup> In January 2024, the CJEU found that the EU Data Protection Law Enforcement Directive<sup>1405</sup> and Articles 7 and 8 of the EU Charter of Fundamental Rights prohibit indiscriminate retention of biometric data from convicted individuals up until death.<sup>1406</sup> The CJEU found that national authorities are required to ensure the data controller periodically reviews whether that storage is still necessary, and to grant the data subject the right to have the data erased where that is no longer the case.<sup>1407</sup>

<sup>1401</sup> Ibid.

<sup>1402</sup> NI Human Rights Commission and Equality Commission NI, ‘Annual Report of the NIHRC and the ECNI on the Implementation of Article 2 of the Windsor Framework 2022-2023’ (NIHRC and ECNI, 2023), at para 4.84.

<sup>1403</sup> Directive 2016/680/EU, ‘Regulation of the of the European Parliament and of the Council on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of Such Data’, 27 April 2016; Directive 2009/136/EC, ‘Directive of the European Parliament and of the Council Amending Directive 2002/22/EC on Universal Service and Users’ Rights Relating to Electronic Communications Networks and Services, Directive 2002/58/EC Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector and Regulation (EC) 2006/2004 on Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws’, 25 November 2009; Regulation 2018/1725/EU, ‘Regulation of the of the European Parliament and of the Council on the Protection of Natural Persons with Regard to the Processing of Personal Data by the EU Institutions, Bodies, Offices and Agencies and on the Free Movement of Such Data’, 23 October 2018.

<sup>1404</sup> Recital 1, Regulation 2016/679/EU, ‘EU Parliament and Council Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data’, 27 April 2016.

<sup>1405</sup> Directive 2016/680, ‘European Parliament and the Council on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties and on the Free Movement of Such Data and Repealing Council Framework Decision 2008/977/JHA’, 5 May 2016.

<sup>1406</sup> *Direktor na Glavna Direktsia “Natsionalna Politsia” Pri MVR – Sofia*, C-118/22, 30 January 2024.

<sup>1407</sup> Ibid.



The current law on DNA and fingerprint retention in NI is the Police and Criminal Evidence (NI) Order 1989. In 2008, the ECtHR found that the provisions relating to DNA retention in the 1989 Order were in violation of the Article 8 of the ECHR.<sup>1408</sup> The Criminal Justice Act (NI) 2013 was enacted to rectify this violation. However, the sections in relation to DNA retention were not commenced, pending political agreement on how these sections would affect legacy investigations.

In 2019, the Commission settled a legal challenge against the Police Service of NI on the basis that it would produce a formal policy on biometric data retention, which would expressly consider Article 8 of the ECHR and provide clear guidance to the public as to how they can apply for their biometric data to be destroyed.<sup>1409</sup>

In 2020, with a view to addressing the ECtHR's ruling in *Gaughran*, the Department of Justice consulted on proposals to amend the legislation governing the retention of DNA and fingerprints in NI.<sup>1410</sup> The Commission was concerned that the proposed periods for reviewing biometric data retention were too broadly constituted, disproportionate and incompatible with Article 8 of the ECHR.<sup>1411</sup> Revised proposals from the Department of Justice following the consultation were considered by the NI Assembly Committee for Justice.<sup>1412</sup>

In the absence of a long-term agreement and a legislative framework in NI, rolling legislation has been used to temporarily extend permission to retain conflict-related material in NI.<sup>1413</sup>

<sup>1408</sup> *S and Marper v UK* (2008) ECHR 1581.

<sup>1409</sup> NI Human Rights Commission, 'Press Release: Human Rights Commission secures settlement in DNA fingerprint retention case', 9 January 2019.

<sup>1410</sup> Department of Justice, 'Consultation on Proposals to Amend the Legislation Governing the Retention of DNA and Fingerprints in NI' (DoJ, 2020), at 96.

<sup>1411</sup> NI Human Rights Commission, 'Submission to the Department of Justice Consultation on Proposals to Amend the Legislation Governing the Retention of DNA and Fingerprints in NI' (NIHRC, 2020); Meeting between the Department of Justice and NI Human Rights Commission, 16 May 2024; Email from Department of Justice to NI Human Rights Commission, 23 July 2024.

<sup>1412</sup> NI Assembly Hansard, 'Committee for Justice: Proposals to Amend Legislation Governing the Retention of DNA and Fingerprints - Department of Justice', 15 October 2020.

<sup>1413</sup> Protection of Freedoms Act 2012 (Destruction, Retention and Use of Biometric Data) (Transitional, Transitory and Saving Provisions) (Amendment) Order 2022.

The Police Service of NI also implemented interim measures, which included the reinstatement of the Biometric Ratification Committee to determine all applications for deletion in line with the 1989 Order.<sup>1414</sup>

In 2024, the Justice Bill was introduced, which includes provisions that aim to introduce clear parameters for biometric data retention.

### Recommendations

The Commission recommends that the Department of Justice commences the DNA retention sections of the Criminal Justice Act (NI) 2013 without further delay, ensuring that its implementation complies with *Gaughran v UK* (2020).

The Commission recommends that the Police Service of NI ensures its policy on biometric data retention is fully human rights compliant, effectively implemented and expeditiously published in accessible formats.

### Climate change and environmental regulation

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive “take effective measures to address structural inequalities and discriminatory barriers in social determinants of health, including climate change and environmental health hazards”.<sup>1415</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

- a) reduce greenhouse gas emissions in line with its national and international commitments;

<sup>1414</sup> Police Service of NI, ‘Service Instruction SI9999 on Biometric Retention’ (PSNI, 2022).

<sup>1415</sup> 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, at para 44(a).

- b) adopt legislation on air quality and urgently take measures to ensure children’s environmental health, including by improving air quality in urban areas, preventing children’s exposure to environmental toxins and high levels of lead;
- c) ensure that national policies and programmes on addressing environmental protection, climate change and disaster risk management, including in the Overseas Territories, are developed and implemented in accordance with the principles of the Convention and take into account children’s needs and views...
- d) promote, with the active participation of schools, children’s awareness of and preparedness for climate change and natural disasters, especially in the Overseas Territories that are particularly vulnerable to the consequences of climate change, and strengthen awareness-raising among children on relevant climate legislation and their right to a clean environment and the enjoyment of the highest attainable standard of health; [and]
- e) undertake legislative and other measures to uphold its extraterritorial obligations concerning impacts on the environment, including in the context of international cooperation.<sup>1416</sup>

The UN CRC Committee also recommended that the UK Government and NI Executive ensures that “children are not threatened for exercising their right to freedom of association and peaceful assembly, including for their involvement in climate activism”.<sup>1417</sup>

In 2019, the UN CEDAW Committee recommended that NI “review its policy on fracking and its impact on the rights of women and girls and consider introducing a comprehensive and

<sup>1416</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 45.

<sup>1417</sup> Ibid, at para 27(c).

complete ban on fracking”.<sup>1418</sup> The UN CEDAW Committee also recommended that there is “equal participation of rural women and girls in policymaking on disaster mitigation and climate change”.<sup>1419</sup>

## Windsor Framework Article 2

In September 2024, the Court of Appeal in NI found that, on the breadth of ‘civil rights’ in the 1998 Agreement, the relevant chapter provides for a broad suite of rights and there is no reason to construe the broad language of the chapter restrictively.<sup>1420</sup> In May 2024, the High Court of Justice in NI has also found that civil rights’ encompasses the political, social and economic rights which can be upheld by the court.<sup>1421</sup> The Commission considers that the full range of rights in the ECHR, to the extent that they are underpinned by EU law in force in NI on or before 31 December 2020, fall within the scope of the non-diminution commitment in Windsor Framework Article 2.<sup>1422</sup> In April 2024, the ECtHR found that the right to respect for private and family life in Article 8 of the ECHR encompasses a right to effective protection by the State authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life.<sup>1423</sup>

The EU Charter of Fundamental Rights also continues to apply in the application and interpretation of the Withdrawal Agreement, and provisions relevant to its implementation, including provisions of EU law falling within the scope of the Windsor

<sup>1418</sup> 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 54(b).

<sup>1419</sup> Ibid, at para 54(c).

<sup>1420</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 115.

<sup>1421</sup> *In the Matter of an Application by NI Human Rights Commission for Judicial Review* [2024] NIKB 35, at para 70, confirming Justice Colton in *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 543.

<sup>1422</sup> NI Human Rights Commission and Equality Commission NI, ‘Annual Report of the NI Human Rights Commission and the Equality Commission for NI on the Implementation of Article 2 of the Windsor Framework 2022-2023’ (NIHRC and ECNI, 2023), at para 4.84. See also the Court of Appeal in NI confirming that “the trial judge was right to identify that victims’ rights are promoted and given effect by civil rights available to all victims of crime, including articles 2, 3, 6 and 14”. See *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at 117).

<sup>1423</sup> *Verein Klima Seniorinnen Schweiz and Others v Switzerland* (2024) ECHR 304.

Framework.<sup>1424</sup> The Court of Appeal in NI confirmed that relevant underpinning EU law should be interpreted in accordance with the EU Charter and general principles of EU law.<sup>1425</sup> Article 37 of the EU Charter on Fundamental Rights requires environmental protections to be integrated into policies of the EU.<sup>1426</sup>

Prior to the UK's withdrawal from the EU, EU environmental law and governance mechanisms were deeply embedded in NI. Article 5(4) of the Windsor Framework provides for the continued application of EU law and governance mechanisms in some areas of environmental regulation, but it largely omits other key conservation areas.<sup>1427</sup> The Court of Appeal in NI in *Dillon* relied on the position of the UK Supreme Court in *Allister*<sup>1428</sup> in finding that section 7A of the EU Withdrawal Act 2018, which incorporates the Withdrawal Agreement into domestic law, has “powerful legal effects within the UK, including the possibility of prevailing over primary legislation”.<sup>1429</sup>

## Climate change

The Climate Change Act (NI) 2022 includes targets for net zero greenhouse gas emissions by 2050. The 2022 Act also requires the publication of five-year Climate Action Plans, the appointment of a NI Climate Commissioner and the establishment of a Just Transition Commission. The UK Environment Act 2021 also requires that an Environmental Improvement Plan for NI is published. In September 2024, after

<sup>1424</sup> *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 126. See also Tobias Lock et al, ‘The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework’ (NIHRC, 2024).

<sup>1425</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 126. See also *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307; *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11; *In the Matter of an Application for Judicial Review by the NI Human Rights Commission and Another* [2024] NIKB 35.

<sup>1426</sup> Article 37, EU Charter of Fundamental Rights 2009.

<sup>1427</sup> Mary Dobbs and Viviane Gravey, ‘Environment and Trade’, in Chris McCrudden, *The Law and Practice of the Ireland-NI Protocol* (CUP, 2020), at 247.

<sup>1428</sup> *In the Matter of an Application by James Hugh Allister and Others for Judicial Review* [2023] UKSC 5, at para 66; *In the Matter of an Application by James Hugh Allister and Others for Judicial Review* [2022] NICA 15.

<sup>1429</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 69.

significant delay, the first Environmental Improvement Plan for NI was published.<sup>1430</sup> However, establishment of a NI Climate Commissioner and Just Transition Commission are still awaited.

In 2023, the UK’s Climate Change Committee found that planning for climate change in NI “remains at an early stage” with very limited evidence of delivery and implementation.<sup>1431</sup> The Department of Agriculture, Environment and Rural Affairs consulted on ways to become net zero in NI.<sup>1432</sup> The Commission provided a response which highlighted that all decisions taken by NI Executive Departments in relation to climate action should be informed by international human rights standards.<sup>1433</sup> The Commission also underlined the need to give consideration to Windsor Framework Article 2.<sup>1434</sup> In 2024, the draft Climate Action Plan was in development.<sup>1435</sup> As a cross-department plan, the Climate Action Plan requires approval by the NI Executive, with a public consultation expected thereafter.<sup>1436</sup>

In May 2024, the NI Affairs Committee, following an inquiry into renewable energy and net zero in NI, reported that “the implications were that NI would have to double its renewable generation capacity to meet its 2030 targets”.<sup>1437</sup> The key barriers to NI achieving its net zero goals were inadequate infrastructure to support NI’s net zero transition, an unsupportive policy environment, and a lack of consumer awareness.<sup>1438</sup>

<sup>1430</sup> Department for Agriculture, Environment and Rural Affairs, ‘Environmental Improvement Plan for NI’ (DAERA, 2024).

<sup>1431</sup> UK Climate Change Committee, ‘Adapting to Climate Change: Progress in NI’ (UKCC, 2023).

<sup>1432</sup> Department of Agriculture, Environment and Rural Affairs, ‘Consultation on NI’s 2030 and 2040 Emissions Reduction Targets and First Three Carbon Budgets and Seeking Views on Climate Change Committee Advice Report: The Path to a Net Zero NI’ (DAERA, 2023).

<sup>1433</sup> Letter from the NI Human Rights Commission to the Department for Agriculture, Environment, and Rural Affairs, 11 October 2023.

<sup>1434</sup> Ibid.

<sup>1435</sup> NI Assembly Hansard, ‘Current Issues: Mr Andrew Muir MLA, Minister of Agriculture, Environment and Rural Affairs, Committee for Agriculture, Environment and Rural Affairs’, 6 June 2024.

<sup>1436</sup> Ibid.

<sup>1437</sup> Letter from Former Chair of the NI Affairs Committee, Sir Robert Buckland, to Interim Minister for the Economy, Deirdre Hargey MLA, 24 May 2024.

<sup>1438</sup> Ibid.



In September 2024, the NI Executive identified “protecting... the environment” as an immediate priority.<sup>1439</sup> The NI Executive stated that “tackling climate change and paying attention to our natural environment are critical for our wellbeing and our prosperity and can help unlock new opportunities”.<sup>1440</sup> The NI Executive committed to setting carbon budgets for NI and developing a Climate Action Plan, which will detail “cross-cutting steps to reduce carbon emissions, adapt to changing weather patterns, and work towards net zero”.<sup>1441</sup> The NI Executive acknowledged that the Climate Action Plan “will need to ensure that reaching net zero has to be affordable for households and businesses, providing a commitment to supporting the cost of this transition in a fair and balanced way”.<sup>1442</sup>

### Environmental regulation

In 2020, the NI Executive committed to establishing “an Independent Environmental Protection Agency to oversee this work and ensure targets are met”.<sup>1443</sup> In 2024, the NI Environment Protection Agency continues to sit within the Department of Agriculture, Environment and Rural Affairs. Consequently, NI remains the only part of the UK not to have an independent environmental regulator.

In 2022, a report on air pollution found that “some pollutants in some parts of NI continue to exceed air quality objectives”.<sup>1444</sup> In 2023, further research estimated that air pollution was attributable to 900 premature deaths annually in NI.<sup>1445</sup>

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<sup>1439</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 46.

<sup>1440</sup> Ibid.

<sup>1441</sup> Ibid, at 47.

<sup>1442</sup> Ibid.

<sup>1443</sup> NI Office, ‘New Decade New Approach’ (NI Office, 2020), at 44.

<sup>1444</sup> Department for Agriculture, Environment and Rural Affairs, ‘Air Pollution in NI: 2021’ (DAERA, 2022).

<sup>1445</sup> Queen’s University Belfast and Technology University Dublin ‘Air Pollution and Mortality on the Island of Ireland’ (QUB and TUD, 2023).



Additionally, in 2023, there were significant issues in NI with flooding and water ways, including the presence of toxic algae in Lough Neagh.<sup>1446</sup> In 2024, the issues in NI’s water ways continued, with NI Water highlighting the need for urgent action.<sup>1447</sup>

In February 2024, the Chair of the Office for Environmental Protection, Dame Glenys Stacey urged the restored NI Executive to take urgent action over the failure to meet statutory deadlines, including the Environmental Improvement Plan and the Nutrient Action Plan.<sup>1448</sup> The Chair of the Office for Environmental Protection stated that the lack of a Nutrient Action plan “is even more concerning given the issues at Lough Neagh”.<sup>1449</sup> In July 2024, the Office for Environmental Protection launched an investigation of the Department of Agriculture, Environment and Rural Affairs’ failure to meet its legal obligation to publish an Environmental Improvement Plan.<sup>1450</sup> In September 2024, the Office for Environmental Protection found that “a critical plan designed to protect and improve NI’s water needs to be strengthened and implemented without further delay”.<sup>1451</sup>

In September 2024, the NI Executive identified “protecting Lough Neagh” as an immediate priority.<sup>1452</sup> The NI Executive

<sup>1446</sup> Anna Maguire, and Jessica Lawrence, ‘Downpatrick flooding has “ripped the heart” out of town’, *BBC News*, 2 November 2023; ‘Newry swamped by floods a second time as country braces for Storm Ciarán’, *The Irish Times*, 1 November 2023; Gillian Anderson, ‘Department for Infrastructure responds after claims Derry treated with “utter contempt” over flooding’, *Derry Journal*, 24 March 2023; ‘Rural residents “living in fear and dread” over flooding’, *The Irish News*, 30 January 2023; ‘Flooding in Tyrone and Donegal causes “catastrophic damage”’, *BBC News*, 23 July 2023; Louise Cullen and Alan Haslam, ‘Portrush: Beaches red-flagged for toxic algae risk’, *BBC News*, 26 July 2023; Louise Cullen, ‘Lough Neagh: The year the UK’s largest lake turned green’, *BBC News*, 2 January 2024; Louise Cullen, ‘Lough Neagh: Toxic algae potentially waking again’, *BBC News*, 7 March 2024

<sup>1447</sup> ‘Earl and minister hold “constructive” Lough Neagh talks’, *BBC News*, 17 July 2024.

<sup>1448</sup> Office for Environmental Protection, ‘Press Release: Office for Environmental Protection urges restored NI Executive to act over failure to meet statutory deadlines’, 21 February 2024.

<sup>1449</sup> Ibid.

<sup>1450</sup> Office for Environmental Protection, ‘Press Release: The Office for Environmental Protection investigates the Department for Agriculture, Environment and Rural Affairs over failure to publish environmental improvement plan’, 8 July 2024.

<sup>1451</sup> Office for Environmental Protection, ‘Press Release: The Office for Environmental Protection urges the Department of Agriculture, Environment and Rural Affairs to help improve water quality’, 3 September 2024; Office for Environmental Protection, ‘A Review of Implementation of the Water Framework Directive Regulations and River Basin Management planning in NI’ (OEP, 2024).

<sup>1452</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 46.

intends that “the Environmental Improvement Plan, in conjunction with other strategies, will provide a determined and coherent response by the [NI] Executive to the global challenges of biodiversity loss and climate change”.<sup>1453</sup> An Interagency Protocol was developed to “clarify what monitoring will be carried out, and by whom, in response to future blooms of blue-green algae at any site [in NI]” and a Small Business Research Initiative has been established “to explore potential solutions to treat or reduce blue-green algae blooms without impacting the natural environment of Lough Neagh and associated NI waterways”.<sup>1454</sup> Additionally, a Lough Neagh Action Plan was published, which focuses on education, regulation, enforcement and investment, incentivisation and innovation.<sup>1455</sup>

In 2024, the Department of Agriculture, Environment and Rural Affairs consulted on draft environmental principles policy statement for NI.<sup>1456</sup> The outcome of the consultation was awaited.

## Fracking

Under the Petroleum (Production) Act (NI) 1964, the Department for the Economy has the power to grant petroleum licenses for exploration and extraction.

In April 2024, Minister for the Economy, Conor Murphy, stated he would bring forward a proposal to ban all onshore oil and gas exploration and production.<sup>1457</sup> In the meantime, the Minister for the Economy confirmed that the Department for the Economy would not accept or process applications for onshore petroleum licenses.<sup>1458</sup>

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<sup>1453</sup> Ibid.

<sup>1454</sup> Ibid, at 48.

<sup>1455</sup> Ibid.

<sup>1456</sup> Department of Agriculture, Environment and Rural Affairs, ‘Draft Environmental Principles Policy Statement for NI – Consultation Version’ (DAERA, 2024).

<sup>1457</sup> Department for the Economy, ‘Press Release: Murphy proposes to ban onshore oil and gas exploration’, 29 April 2024.

<sup>1458</sup> Ibid.

## Recommendations

The Commission recommends that the Department of Environment, Agriculture and Rural Affairs ensures climate justice values are adopted in all laws and policies aimed at tackling climate change, including ensuring there is a focus on the specific needs of and preventative measures for individuals or communities most affected, including children.

The Commission recommends that the Department of Environment, Agriculture and Rural Affairs, working with the NI Executive and other key stakeholders, takes effective steps to mitigate against future flooding events in NI.

The Commission recommends that the Department of Environment, Agriculture and Rural Affairs, working with the NI Executive and other key stakeholders, takes effective steps to monitor and ensure good air quality and good quality water ways in NI.

The Commission recommends that the NI Executive brings forward legislation for a complete ban on fracking in NI and, in the interim, reviews the current policy on fracking on this basis.

The Commission recommends that the Department of Environment, Agriculture and Rural Affairs promptly introduces and ensures long-term resources for an effective and independent environmental regulator and an independent environment protection agency.

The Commission recommends that the Department of Agriculture, Environment and Rural Affairs takes immediate steps to set up a Just Transition Commission, which is sufficiently resourced and funded, with a mandate that allows for effective oversight functions to monitor implementation of the just transition principle under the Climate Change Act (NI) 2022.

The Commission recommends that any legislative or policy decisions by Department of Environment, Agriculture and Rural Affairs made in relation to climate change and environmental regulation consider the interplay of the ECHR, the EU Charter of Fundamental Rights and Windsor Framework Article 2.

## Data Protection

The Commission considers that EU data protection law falls in scope of Windsor Framework Article 2.<sup>1459</sup> This rests on analysis of the Belfast (Good Friday) Agreement 1998, including the commitment to civil rights and incorporation of the ECHR. In September 2024, the Court of Appeal in NI found that, on the breadth of ‘civil rights’ in the 1998 Agreement, the relevant chapter provides for a broad suite of rights and there is no reason to construe the broad language of the chapter restrictively.<sup>1460</sup> In May 2024, the High Court of Justice in NI has also found that ‘civil rights’ encompasses the political, social and economic rights which can be upheld by the court.<sup>1461</sup>

The Commission considers that the full range of rights in the ECHR, to the extent that they are underpinned by EU law in force in NI on or before 31 December 2020, fall within the scope of the non-diminution commitment in Windsor Framework Article 2.<sup>1462</sup> The ECtHR has recognised that the protection of personal data is of fundamental importance to a person’s enjoyment of her or his right to respect for private and family life in Article 8 of the ECHR.<sup>1463</sup>

<sup>1459</sup> NI Human Rights Commission and Equality Commission NI, ‘Annual Report of the NI Human Rights Commission and the Equality Commission for NI on the Implementation of Article 2 of the Windsor Framework 2022–2023’ (NIHRC and ECNI, 2023), at para 4.84.

<sup>1460</sup> *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2024] NICA 59, at para 115.

<sup>1461</sup> *In the Matter of an Application by NI Human Rights Commission for Judicial Review* [2024] NIKB 35, at para 70, confirming Justice Colton in *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 543.

<sup>1462</sup> NI Human Rights Commission, ‘Briefing on the Data Protection and Digital Information Bill’ (NIHRC, 2024).

<sup>1463</sup> *Z v Finland* (1997) ECHR 10; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* (2015) ECHR 713.

The EU Charter of Fundamental Rights also continues to apply in the application and interpretation of the Withdrawal Agreement, and provisions relevant to its implementation, including provisions of EU law falling within the scope of the Windsor Framework.<sup>1464</sup> The Court of Appeal in NI has confirmed that relevant underpinning EU law should be interpreted in accordance with the EU Charter and general principles of EU law.<sup>1465</sup> Article 7 of the EU Charter guarantees the right to respect for private life and Article 8 of the EU Charter guarantees the protection of personal data.<sup>1466</sup>

Data protection is given effect across several EU measures,<sup>1467</sup> including the EU General Data Protection Regulation, which is clear that “the protection of natural persons in relation to the processing of personal data is a fundamental right”.<sup>1468</sup> The EU General Data Protection Regulation is a binding legislative act that must be applied in its entirety across the EU in all Member States. The UK further implemented the EU General Data Protection Regulation in domestic law with the Data Protection Act 2018.

<sup>1464</sup> *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 126. See also Tobias Lock et al, ‘The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework’ (NIHRC, 2024).

<sup>1465</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NICA 59, at para 126.

<sup>1466</sup> Tobias Lock et al, ‘The Interaction between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework’ (NIHRC, 2024).

<sup>1467</sup> Directive 2016/680/EU, ‘Regulation of the of the European Parliament and of the Council on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of Such Data’, 27 April 2016; Directive 2009/136/EC, ‘Directive of the European Parliament and of the Council Amending Directive 2002/22/EC on Universal Service and Users’ Rights Relating to Electronic Communications Networks and Services, Directive 2002/58/EC, Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector and Regulation (EC) 2006/2004 on Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws’, 25 November 2009; Regulation 2018/1725/EU, ‘Regulation of the of the European Parliament and of the Council on the Protection of Natural Persons with Regard to the Processing of Personal Data by the EU Institutions, Bodies, Offices and Agencies and on the Free Movement of Such Data’, 23 October 2018.

<sup>1468</sup> Recital 1, Regulation 2016/679/EU, ‘EU Parliament and Council Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data’, 27 April 2016.

In 2023, the High Court for England and Wales confirmed that the UK General Data Protection Regulation is the retained version of the EU General Data Protection Regulation with amendments made to secure its political effectiveness,<sup>1469</sup> read together with the Data Protection Act 2018.<sup>1470</sup> Currently, the UK General Data Protection Regulation aligns with the EU General Data Protection Regulation. After the UK's exit from the EU, two data adequacy decisions by the EU Commission recognise the “essentially equivalent level of protection” in the UK and the EU, guaranteeing the free flow of data between both jurisdictions, subject to review in 2025.<sup>1471</sup>

### **Data Protection and Digital Information Bill**

In May 2024, the Data Protection and Digital Information Bill fell, ahead of the General Election.<sup>1472</sup>

The Bill had proposed changes to the UK General Data Protection Regulation, and to the Data Protection Act 2018, that aimed to offer greater flexibility on compliance with certain aspects of the data protection legislation.<sup>1473</sup> The Bill had also proposed amendments on data processing for law enforcement and intelligence services.<sup>1474</sup>

In January 2024, the Commission raised concerns that the Bill could weaken current data protection rights and safeguards, contrary to Windsor Framework Article 2, and cautioned that it could threaten the EU data adequacy decisions which are vital for ensuring that data can continue to flow freely between the

<sup>1469</sup> Data Protection, Privacy and Electronic Communications (Amendments, etc) (EU Exit) Regulations 2019.

<sup>1470</sup> *The 3 million and Open Rights Group v Secretary of State for the Home Department* [2023] EWHC 713, at para 9.

<sup>1471</sup> C/2021/4800, ‘European Commission Implementing Decision (EU) 2021/1772, Pursuant to Regulation (EU) 2016/679 of the EU Parliament and of the Council on the Adequate Protection of Personal Data by the UK’, 28 June 2021; EU Commission ‘Press Release: Data protection: Commission adopts adequacy decisions for the UK’, 28 June 2021.

<sup>1472</sup> All references to the Data Protection and Digital Information Bill relate to the version as presented in the House of Lords in December 2023 - HL Bill 30 (as brought from the House of Commons).

<sup>1473</sup> *Ibid.*

<sup>1474</sup> Clauses 21 and 27, Data Protection and Digital Information Bill.



UK and the EU.<sup>1475</sup> This is particularly important for the purposes of facilitating the cross-border and all-island aspects of health, education, justice, policing, and environmental protection on the island of Ireland.<sup>1476</sup> The Commission also raised concerns about proposed changes to automated decision-making, the transfer of data to third countries, and the processing of personal data for the purposes of research.<sup>1477</sup>

In July 2024, the new UK Government announced plans to introduce a new Digital Information and Smart Data Bill, proposing to give a statutory footing to innovative uses of data designed to accelerate innovation, investment and productivity across the UK.<sup>1478</sup> In October 2024, the UK Government introduced the Data (Use and Access) Bill in the UK Parliament.

### **Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023**

The Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023 amended the definition of fundamental rights and freedoms in the UK General Data Protection Regulation and the Data Protection Act 2018 to refer to those set out under the ECHR as opposed to the EU Charter of Fundamental Rights.

Article 8 of the EU Charter provides that everyone has the right to the protection of personal data. The Commission is concerned that the removal of the EU Charter and relevant CJEU case law from the range of applicable fundamental rights in the Data Protection Act 2018 may diminish rights contrary to Windsor Framework Article 2.

<sup>1475</sup> NI Human Rights Commission, 'Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2024), at para 3.10.

<sup>1476</sup> The Commission has commissioned several research projects that describe the challenges and complexities of shared services, facilities and resources on the island of Ireland for health, justice and workers' rights, among other issues. The free flow of data is a key condition underpinning the all-island aspects of life in NI. See NI Human Rights Commission, 'Brexit and the Implications for Justice Co-operation' (NIHRC, 2019); Tamara Hervey, 'Brexit, Health and Its Potential Impact on Article 2 of the Ireland/NI Protocol' (NIHRC, 2022); Sylvia de Mars and Charlotte O'Brien, 'Frontier Workers and Their Families: Rights After Brexit' (NIHRC, 2023).

<sup>1477</sup> NI Human Rights Commission, 'Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2024).

<sup>1478</sup> Prime Minister's Office, 'The King's Speech 2024' (Crown Copyright, 2024), at 39.



## Recommendations

The Commission recommends that the UK Government considers obligations arising from Windsor Framework Article 2, including adherence to relevant EU standards, when developing legislation that concerns data protection rights in NI.

The Commission recommends that, when developing legislation that concerns data protection rights, the Secretary of State for Science, Innovation and Technology considers any divergence of data protection standards between the UK and the EU to ensure the free flow of data between the UK and the EU is not compromised.

The Commission recommends that the Secretary of State for Science, Innovation and Technology amends the Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023 as required to ensure compliance with Windsor Framework Article 2.

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

The Health and Social Care (Control of Data Processing) Act (NI) 2016 provides a statutory framework, including safeguards, which provides for the use of health and social care information for the benefit of health and social care research.<sup>1479</sup> It includes provision for a committee to authorise the processing of confidential information, this is a key safeguard against arbitrariness.<sup>1480</sup>

In 2022, a project was established to develop and implement the Regulations required to make provision for the processing of health and social care information and to establish the authorising committee provided for within the 2016 Act.<sup>1481</sup>

<sup>1479</sup> Section 2(1), Health and Social Care (Control of Data Processing) Act (NI) 2016.

<sup>1480</sup> Section 6, Health and Social Care (Control of Data Processing) Act (NI) 2016.

<sup>1481</sup> Email correspondence from Department for Health to NI Human Rights Commission, 13 August 2024.

During this process, a substantive error with the 2016 Act was identified.<sup>1482</sup> In 2024, an amendment of the 2016 Act was being developed by the Department of Health for introduction to the NI Assembly.<sup>1483</sup>

As the necessary legislative amendment is awaited, there has been some progress in simplifying health and social care records. In 2023, the Department of Health introduced ‘Encompass’.<sup>1484</sup> Encompass is a single digital health and social care record, whereby all health and care records are brought together in digital form. The Department of Health has stated that “having one health record will reduce the need for information to be stored across multiple, ageing systems and minimise paper records”.<sup>1485</sup>

In 2023, the South Eastern Health and Social Care Trust was the first Health and Social Care Trust in NI to go live with encompass.<sup>1486</sup> In 2024, encompass was being introduced to the remaining four Health and Social Care Trusts on a phased basis. All Health and Social Care Trusts are scheduled to be operating encompass by end of 2025.<sup>1487</sup>

## Recommendations

The Commission recommends that the Department of Health, working with the NI Executive and NI Assembly, promptly introduces regulations for implementing the duties set out in the Health and Social Care (Control of Data Processing) Act (NI) 2016.

The Commission recommends that the Department of Health urgently establishes a committee to authorise the processing of confidential information under the Health and Social Care (Control of Data Processing) Act (NI) 2016.

<sup>1482</sup> Ibid.

<sup>1483</sup> Ibid.

<sup>1484</sup> Department of Health, ‘Press Release: Date set for patient record revolution’, 9 February 2023; Digital Health and Care NI, ‘Encompass’. Available at: [encompass - DHCNI \(hscni.net\)](https://encompass-dhcni.hscni.net)

<sup>1485</sup> Department of Health, ‘Press Release: Date set for patient record revolution’, 9 February 2023.

<sup>1486</sup> Ibid; Digital Health and Care NI, ‘Encompass’. Available at: [encompass - DHCNI \(hscni.net\)](https://encompass-dhcni.hscni.net)

<sup>1487</sup> Ibid.

## ● Rehabilitation of offenders

In 2003, the UN Sub-Commission on the Promotion and Protection of Human Rights, in a resolution concerning discrimination against convicted persons who have served their sentence urged States “to examine their treatment of convicted persons after they have served their punishment and to cease any official or unofficial practices of discrimination”.<sup>1488</sup>

### Legislation

In 2021, the NI Department of Justice consulted on reforming rehabilitation periods in NI, seeking views on reducing the length of time that it will take for some convictions to become spent and allowing more sentences to be included in the rehabilitation of offenders scheme in NI.<sup>1489</sup> In its consultation response, the Commission supported the proposals to reform legislation governing the rehabilitation of offenders in NI.<sup>1490</sup> The Commission further recommended that the Department of Justice’s approach to a two-part rehabilitation is examined further, taking account of rehabilitation experiences in Scotland and Wales.<sup>1491</sup> The Commission also recommended that the Department of Justice considered a review mechanism to comply with Article 8 of the ECHR and that consideration is given to conflict-related convictions that pre-date the Belfast (Good Friday) Agreement 1998.<sup>1492</sup>

In 2024, the Department of Justice was exploring legal options for how best to legislate for the necessary amends.<sup>1493</sup>

<sup>1488</sup> E/CN.4/RES/2004/2, ‘Sub-Commission on Human Rights Resolution on Discrimination Against Convicted Persons Who Have Served Their Sentence’, 13 August 2003.

<sup>1489</sup> Department of Justice, ‘Consultation on Proposals To Reform Rehabilitation Periods in NI’ (DoJ, 2021).

<sup>1490</sup> NI Human Rights Commission, ‘Submission to Rehabilitation of Offenders Reform Consultation’ (NIHRC, 2021).

<sup>1491</sup> Ibid.

<sup>1492</sup> Ibid.

<sup>1493</sup> NI Assembly Committee for Justice, ‘Evidence Report: Access to Justice Directorate Overview’, 7 March 2024.

## Commission's case

In 2020, the Commission initiated legal action against the Department of Justice to challenge the legality of Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978.

In 2022, the High Court of Justice in NI declared Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978 was incompatible with the applicant's Article 8 of the ECHR rights by reason of a failure to provide a mechanism by which the applicant could apply to have their criminal convictions considered spent irrespective of the passage of time and their personal circumstances.<sup>1494</sup> However, the High Court of Justice in NI declined to make an award of damages concluding that damages were not necessary to afford just satisfaction to the applicant.<sup>1495</sup>

In 2023, after an appeal from the Department of Justice, the Court of Appeal in NI reversed the decision of the High Court of Justice in NI and held that Article 6(1) of the 1978 Order is compatible with Article 8 of the ECHR. Consequently, the Court of Appeal in NI agreed with the High Court of Justice in NI in not awarding damages to the applicant.<sup>1496</sup>

In October 2024, UK Supreme Court heard an appeal of the Court of Appeal in NI's ruling, with the judgment awaited.

## Recommendations

The Commission recommends that the Department of Justice, works with the NI Assembly, to promptly amend the Rehabilitation of Offenders (NI) Order 1978 to enable an offender to be rehabilitated if their circumstances satisfy the criteria for compliance with Article 8 of the ECHR. This includes ensuring an effective review mechanism is operational.

<sup>1494</sup> *In the Matter of an Application by JR123 for Judicial Review* [2022] NIQB 42.

<sup>1495</sup> *Ibid.*

<sup>1496</sup> *Department of Justice and JR123* [2023] NICA 30.

## ● Stop and search

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

take effective steps to ensure that stop and search powers are used in a lawful, non-arbitrary and non-discriminatory manner on the basis of reasonable suspicion, with rigorous monitoring and review mechanisms including by reviewing and amending legislative and other measures that lower restrictions on the use of stop and search powers and increases high-discretion policing powers.<sup>1497</sup>

The UN CERD Committee recommended that the UK Government and NI Executive:

establish an independent complaint mechanism to carry out investigations into all allegations of racial profiling, stop and search... excessive use of force and racist violence, facilitate the reporting of victims, and ensure that perpetrators are prosecuted and punished with appropriate penalties, and that victims have access to effective remedies and adequate reparation.<sup>1498</sup>

Furthermore, the UN CERD Committee recommended that the UK Government and NI Executive:

create or strengthen effective mechanisms to regularly collect and qualitatively assess information on perpetrators and the victims, for all incidents, complaints and investigations of racial profiling, stop and search... and excessive use of force by law enforcement and other public officials.<sup>1499</sup>

<sup>1497</sup> 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, at para 32(a).

<sup>1498</sup> Ibid, at para 32(e).

<sup>1499</sup> Ibid, at para 32(f).

The UN CERD Committee also recommended that the UK Government and NI Executive “take effective steps to increase the representation of ethnic minorities in the police and military institutions, including at senior decision-making positions” and “provide adequate and continuous human rights training to law enforcement officials”.<sup>1500</sup>

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive:

redouble its efforts to prevent, combat and eradicate all forms of racial and ethnic discrimination, and particularly systematic discrimination against Gypsies, Roma and Travellers and people of African descent in the criminal justice system, [regarding] stop and search powers... including by monitoring and assessing legislative and policy measures on racism and non-discrimination, and ensuring the allocation of sufficient resources for the full implementation of its anti-discrimination plans and policies.<sup>1501</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

- a) effectively enforce the prohibition of the use of non-statutory stop and search checks against children, prohibit their use in NI...;
- b) ensure that their statutory use is proportionate and non-discriminatory, including by implementing the best use of stop and search scheme, and conducting mandatory training for law enforcement officials; [and]
- c) improve the monitoring of the use of stop and search checks on children, including through the collection and publication of related data, and investigate all allegations of their disproportionate or discriminatory use on children.<sup>1502</sup>

<sup>1500</sup> Ibid, at paras 32(d) and 32(g).

<sup>1501</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 28 March 2024, at para 15(a).

<sup>1502</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 28.

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive:

review laws and policies aimed at countering terrorism and violent crime to ensure that these do not discriminate directly or indirectly against groups of concern to the CoE European Commission against Racism and Intolerance, in particular Muslims and Black persons/people of African descent, and take any necessary action at legislative and policy level as a result; [and]

enhance police accountability in cases of racist misconduct and racial profiling, including by appropriately funding actions such as research by the Independent Office for Police Conduct on the service user experience of Black and other ethnic minority complainants when accessing the police complaints mechanism.<sup>1503</sup>

The CoE European Commission against Racism and Intolerance also recommended that the UK Government and NI Executive:

take further action, including through the development of guidance, aimed at facilitating the recruitment, retention and career development of members of Black communities and other groups of concern to the CoE European Commission against Racism and Intolerance in policy and prosecution services as well as, through appropriate channels, in the judiciary.<sup>1504</sup>

Legislation in NI enables stop and searches regarding stolen property, misuse of drugs, weapons, establishment of identity and movements, protection of wildlife and acts of terrorism.<sup>1505</sup>

<sup>1503</sup> CoE European Commission Against Racism and Intolerance, 'Report on the UK (Sixth Monitoring Cycle)' (ECRI, 2024), at para 113.

<sup>1504</sup> Ibid, at para 115.

<sup>1505</sup> Section 3, Police and Criminal Evidence (NI) Order 1989; Section 23, Misuse of Drugs Act 1971; Sections 21 and 24, Justice and Security (NI) Act 2007; Sections 43, 43A and 47A, Terrorism Act 2000; Section 139B, Criminal Justice Act 1988; Schedule 5, Terrorism Prevention and Investigation Measures Act 2011; Article 6, Crossbows (NI) Order 1985; Article 23B, Public Order (NI) Order 1987; Psychoactive Substances Act 2016.



In 2023/2024, 25,054 persons were stopped and searched or questioned in NI, with 1,615 subsequently arrested.<sup>1506</sup> This was an increase from 23,650 stop and searches and 1,411 subsequent arrests in 2022/2023.<sup>1507</sup> In 2024, the NI Policing Board found that stop and searches in NI were high in numbers, but low in outcomes.<sup>1508</sup> The NI Policing Board also found that there was a variation across districts, for example, with the arrest rate three per cent in Ards and North Down, but eight per cent in Belfast City.<sup>1509</sup>

In 2024, stop and searches in NI are monitored through the Police Service of NI's use of body worn cameras and dip sampling by supervisors.<sup>1510</sup> The NI Policing Board confirmed that it was continuing to advocate for "improved recording, monitoring and analysis" of stop and search powers utilised by the Police Service of NI.<sup>1511</sup> This is to ensure the Police Service of NI "remains transparent and accountable", "to improve public understanding of how and why the powers are used", and "to support a more intelligence-led and targeted approach to stop and search and improve the "stop-to-outcome" ratio".<sup>1512</sup>

## Children

In 2021, the Court of Appeal in NI considered the lawfulness of the Justice and Security (NI) Act 2007 in respect of children and young people.<sup>1513</sup> The Court of Appeal in NI found that "the arrangements put in place for the exercise of stop and search powers under the 2007 Act were in accordance with the law, but... that the Police Service of NI had failed to implement that scheme". However, the Court of Appeal in NI noted that the "Police Service of NI has... altered its position" and did not consider a declaration of incompatibility as necessary.<sup>1514</sup>

<sup>1506</sup> NI Statistics and Research Agency, 'Use of Stop and Search Powers by the Police in NI: 1 April 2023 to 31 March 2024' (NISRA, 2024), at 3.

<sup>1507</sup> NI Statistics and Research Agency, 'Use of Stop and Search Powers by the Police in Ni: 1 April 2022 to 31 March 2023' (NISRA, 2023), at 5.

<sup>1508</sup> NI Policing Board, 'Human Rights Five Year Review' (NIPB, 2024), at 61.

<sup>1509</sup> *Ibid*, at 62.

<sup>1510</sup> *Ibid*, at 71.

<sup>1511</sup> *Ibid*, at 56.

<sup>1512</sup> *Ibid*, at 56-59.

<sup>1513</sup> *In the Matter of an Application by Ailise Ni Mhurchu* [2021] NICA 17.

<sup>1514</sup> *Ibid*, at para 48.

In 2023/2024, 2,089 children were stopped and searched or questioned in NI, with 79 children subsequently arrested. This was a decrease from 2,561 children stop and searches and 76 subsequent arrests in 2022/2023.<sup>1515</sup>

In 2021, as part of the work of the stop and search working group focused on children and young people,<sup>1516</sup> the Police Service of NI conducted a survey seeking views of children stopped and searched in NI.<sup>1517</sup> Of 3,235 respondents, 77 per cent said it was a negative experience, 72 per cent felt their search was unjustified and 65 per cent had decreased confidence in local police because of their encounter.<sup>1518</sup>

In 2022, the former Independent Reviewer of the Justice and Security (NI) Act 2007, Marie Breen-Smyth, highlighted that there was a lack of progress on the provision of safeguards for the use of these ‘no-suspicion’ powers against children.<sup>1519</sup> In 2023, the former Independent Reviewer recommended that the Police Service of NI conduct a review of its policies and practices in relation to stops and searches of children between 10 and 14 years old.<sup>1520</sup>

In 2023, the Police Service of NI introduced a children and young person’s strategy, which included commitments aimed at enhancing transparency, improved practices and ensuring that a stop and search of a child is justified.<sup>1521</sup>

## Monitoring

In 2024, the NI Policing Board found that stop and search powers in NI are disproportionately used against members of Traveller communities, with “nearly 16 per cent of the Traveller population [in NI]... subject to [stop and search powers]...

<sup>1515</sup> NI Statistics and Research Agency, ‘Use of Stop and Search Powers by the Police in Ni: 1 April 2022 to 31 March 2023’ (NISRA, 2023), at 6.

<sup>1516</sup> Police Service of NI, ‘Stop and Search’. Available at: [Stop and Search | PSNI](#)

<sup>1517</sup> Police Service of NI, ‘Stop and search survey for young people’. Available at: <https://www.psni.police.uk/latest-news/stop-and-search-survey-young-people>

<sup>1518</sup> Police Service of NI, ‘Stop and Search Survey: Summary Findings’ (PSNI, 2022), at 3.

<sup>1519</sup> Marie Breen-Smyth, ‘Report of the Independent Reviewer Justice and Security (NI) Act 2007 Fourteenth Report: 1 August 2020-31 July 2021’ (NIO, 2022).

<sup>1520</sup> Marie Breen-Smyth, ‘Report of the Independent Reviewer Justice and Security (NI) Act 2007 Fifteenth Report: 1 August 2021-31 July 2022’ (NIO, 2023), at 54.

<sup>1521</sup> Police Service NI, ‘Children and Young Person’s Strategy’ (PSNI, 2023).

every year”.<sup>1522</sup> The NI Policing Board also found that “the statistics for minority ethnic groups are also proportionally higher than that for the white population”.<sup>1523</sup>

In 2020, the Court of Appeal in NI considered whether the Police Service of NI’s Code of Practice for Monitoring Community Background imposed sufficient safeguards to ensure that the impugned powers are not exercised arbitrarily. The Court of Appeal in NI agreed with the High Court of Justice in NI that, considering the scheme as a whole, there were “sufficient safeguards to protect the individual against arbitrary interference”, but found a breach of Article 8 ECHR on the basis that the Police Service of NI did not record the basis for the search.<sup>1524</sup>

In 2022, the former Independent Reviewer of the Justice and Security (NI) Act 2007, Marie Breen-Smyth, highlighted there has been little progress regarding the lack of community background recording of persons stopped and searched under the Justice and Security (NI) Act 2007.<sup>1525</sup>

The Police Service of NI has raised that data collection is a challenge due to the different systems involved.<sup>1526</sup> The Police Service of NI has “always articulated that the preferable position was to have the collation of the data underpinned by relevant legislation to ensure a lawful basis and deliver a complete data set”.<sup>1527</sup> However, “clarity that this will not be the case”, the Police Service of NI has “agreed, in the absence of legislative change, that community background monitoring data (in regard to the Justice and Security (NI) Act 2007 stop and search powers)... [will] be collected”.<sup>1528</sup> A working group was established by the Police Service of NI to implement community background monitoring of persons stopped and searched in NI.<sup>1529</sup>

<sup>1522</sup> NI Policing Board, ‘Human Rights Five Year Review’ (NIPB, 2024), at 62.

<sup>1523</sup> Ibid.

<sup>1524</sup> *In the Matter of an Application by Stephen Ramsey (No 2)* [2020] NICA 14, at para 68.

<sup>1525</sup> Ibid, at paras 55-58; Professor Marie Breen-Smyth, ‘Report of the Independent Reviewer Justice and Security (NI) Act 2007: Fourteenth Report - 1 August 2020-31 July 2021’ (NIO, 2022).

<sup>1526</sup> Meeting between Racial Equality Sub-group and Chief Constable, Simon Byrne, 30 March 2023.

<sup>1527</sup> NI Policing Board, ‘Human Rights Five Year Review’ (NIPB, 2024), at 90-95.

<sup>1528</sup> Ibid.

<sup>1529</sup> Ibid.

In 2024, the Police Service of NI implemented a pilot scheme to collect community background information.<sup>1530</sup>

## Recommendations

The Commission recommends that the Police Service of NI ensures that all instances of stop and search have a statutory footing, are non-discriminatory and are proportionate, including taking into consideration the age and maturity of the child. This includes ensuring adequate and continuous human rights training to law enforcement officials and that prompt effective remedies are in place if a discriminatory or disproportionate stop and search occurs.

The Commission recommends that the Police Service of NI expedites the development, implementation and monitoring of a suitable methodology for recording disaggregated data on all stop and searches in NI, which includes robust data on age, including children, and the community background of individuals stopped and searched.

## Surveillance technology

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

adopt the measures necessary, including legislative, policy, regulatory, institutional and standard-setting measures, to ensure that the design, development, deployment and use of artificial intelligence systems and biometric surveillance technologies, including facial recognition technology, comply with international human rights standards, in particular with regard to the protection of persons against discrimination or profiling, including on the grounds of race, colour, descent or national or ethnic origin.<sup>1531</sup>

<sup>1530</sup> Ibid.

<sup>1531</sup> 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, at para 36(d).

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive, “should end the use of facial recognition and other mass surveillance technologies by law enforcement agencies at protests, in order to safeguard privacy, non-discrimination, freedom of expression and association and assembly rights for protesters”.<sup>1532</sup>

The Commission considers that EU data protection law falls in scope of Windsor Framework Article 2.<sup>1533</sup> Data protection is given effect across several EU measures<sup>1534</sup> including the EU General Data Protection Regulation, which is clear that “the protection of natural persons in relation to the processing of personal data is a fundamental right”.<sup>1535</sup> In addition, the EU E-Privacy Directive requires States to ensure the confidentiality of communications and to prohibit interception or surveillance of communications without consent, except when authorised by law.<sup>1536</sup>

<sup>1532</sup> CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 3 May 2024, at para 53.

<sup>1533</sup> NI Human Rights Commission and Equality Commission NI, ‘Annual Report of the NI Human Rights Commission and the Equality Commission for NI on the Implementation of Article 2 of the Windsor Framework 2022/2023’ (NIHRC and ECNI, 2023), at para 4.84.

<sup>1534</sup> Directive 2016/680/EU, ‘EU Parliament and Council Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of Such Data’, 27 April 2016; Directive 2009/136/EC, ‘EU Parliament and Council Directive Amending Directive 2002/22/EC on Universal Service and Users’ Rights Relating to Electronic Communications Networks and Services, Directive 2002/58/EC Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector and Regulation (EC) 2006/2004 on Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws’, 25 November 2009; Regulation 2018/1725/EU, ‘EU Parliament and Council Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data by the EU Institutions, Bodies, Offices and Agencies and on the Free Movement of Such Data’, 23 October 2018.

<sup>1535</sup> Recital 1, Regulation 2016/679/EU, ‘EU Parliament and Council Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data’, 27 April 2016.

<sup>1536</sup> Article 5, Directive 2002/58/EC, ‘Directive of the European Parliament and of the Council Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (Directive on Privacy and Electronic Communications)’, 12 July 2002.

The EU Directive does not generally apply to matters of national security,<sup>1537</sup> however it may apply to private actors tasked with national security functions by the State.<sup>1538</sup>

## Biometric surveillance technology

In 2020, the Court of Appeal of England and Wales found South Wales Police's use of facial recognition technology breached privacy rights and data protection laws.<sup>1539</sup> The South Wales Police had paused its use of the technology, however an independent review later found it was not discriminatory and its use was resumed.<sup>1540</sup> Civil society organisations continue to raise their concerns.<sup>1541</sup> Police services across the UK, including NI, continue to consider deploying the use of this technology.<sup>1542</sup>

In 2023, the former UK Biometric and Surveillance Camera Commissioner, Fraser Sampson, identified the need for legislation and guidance to provide greater certainty and accountability in the use of biometric material and surveillance across the UK.<sup>1543</sup> The former Biometric and Surveillance Camera Commissioner highlighted that the previous UK Government's Data Protection and Digital Information Bill, which was intended to extend to NI, did not make provision for these concerns.<sup>1544</sup>

<sup>1537</sup> Article 1(3), Directive 2002/58/EC, 'Directive of the European Parliament and of the Council Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (Directive on Privacy and Electronic Communications)', 12 July 2002.

<sup>1538</sup> See Article 15(1), Directive 2002/58/EC, 'Directive of the European Parliament and of the Council Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (Directive on Privacy and Electronic Communications)', 12 July 2002; Opinion of Advocate General Campos Sánchez-Bordona, *La Quadrature du Net, French Data Network, Fédération des Fournisseurs D'accès à Internet Associatifs, Igwan.net v Premier Ministre, Garde des Sceaux, Ministre de la Justice, Ministre de l'Intérieur, Ministre des Armées*, Joined Cases C 511/18 and C 512/18.

<sup>1539</sup> *R (Bridges) v Chief Constable of South Wales Police* [2020] EWCA Civ 1058.

<sup>1540</sup> South Wales Police, 'Facial Recognition Technology'. Available at: [Facial Recognition Technology | South Wales Police \(south-wales.police.uk\)](#); 'Facial recognition tech: Liberty 'police racism' claim', *BBC News*, 8 April 2023.

<sup>1541</sup> 'Facial recognition tech: Liberty 'police racism' claim', *BBC News*, 8 April 2023.

<sup>1542</sup> UK Government, 'Blog Post: Police use of Facial Recognition: Factsheet'. Available at: [Police use of Facial Recognition: Factsheet - Home Office in the media \(blog.gov.uk\)](#); Metropolitan Police, 'Facial Recognition Technology'. Available at: <https://www.met.police.uk/advice/advice-and-information/fr/facial-recognition-technology/>; NI Policing Board, 'Human Rights Review of Privacy and Policing' (NIPB, 2023), at 45.

<sup>1543</sup> Office of the Biometrics and Surveillance Camera Commissioner, 'Commissioner for the Retention and Use of Biometric Material Annual Report January 2021-March 2022 and Surveillance Camera Commissioner Annual Report March 2021-March 2022' (HO, 2023), at 18-19.

<sup>1544</sup> Letter to the House of Commons from the Biometrics and Surveillance Camera Commissioner, 15 May 2023.



In January 2024, the former Biometrics and Surveillance Camera Commissioner reported:

I remain concerned about the narrow focus that the Home Office applies to biometrics in concentrating almost exclusively on DNA and fingerprints. In my view, there is far too little engagement with emerging issues and new technologies... There is a risk that legislation and oversight of growing technology will fall further behind. This apparent lack of interest in proper regulation is borne out by the reluctance to make major changes in the last iteration of the Surveillance Camera Code or to address the need for further regulation in the Live Facial Recognition space.<sup>1545</sup>

In August 2024, in response to violent disorder in England, the new UK Government indicated its support for increasing the use of facial recognition technology across the UK.<sup>1546</sup> In 2024, the Police Service of NI did not use live facial recognition technology.<sup>1547</sup> However, if introduced, the NI Policing Board has raised concerns that “live facial recognition technology, powered by Artificial Intelligence has the potential to be discriminatory, as the image databanks that the technology is trained often contains more white faces”.<sup>1548</sup>

In 2024, “most CCTV cameras in NI... are not operated by the police, but rather by the private sector and public authorities, such as Councils and transport authorities”.<sup>1549</sup> The former Biometrics and Surveillance Camera Commissioner has raised “security and ethical concerns about the companies that supply” surveillance cameras, continuing that:

<sup>1545</sup> Office of the Biometrics and Surveillance Camera Commissioner, ‘Biometrics and Surveillance Camera Commissioner’s Annual Report 2022 to 2023’ (Gov.UK, 2024).

<sup>1546</sup> UK Government, ‘Press Release: Prime Minister launches new clamp down on criminal and violent disorder’, 1 August 2024.

<sup>1547</sup> NI Policing Board, ‘Five Year Human Rights Review’ (NIPB, 2024), at 215.

<sup>1548</sup> Ibid.

<sup>1549</sup> Ibid, at 216.



clearly it is vital sometimes that police must be able to use intrusive surveillance technology in public places. But if they want the public to trust them to do so, they must be able to persuade us, not only that they are working partners and providers that can be trusted, but also that they will use the technology available to them lawfully, responsibly and according to a set of clear agreed principles... We should, both for security and ethical reasons, really be asking ourselves whether it is ever appropriate for public bodies to use equipment made by companies with such serious questions hanging over them.<sup>1550</sup>

The NI Policing Board has a statutory obligation to monitor the use of surveillance technology by the Police Service of NI. In 2024, the NI Policing Board identified a “democratic deficit” regarding the “absence of significant consultation by the police, the Department of Justice, or the NI Office” on the use of biometric surveillance techniques in policing in NI.<sup>1551</sup>

### **Private surveillance technology**

There have been growing concerns regarding the use of airtags and other tracking devices by third parties for the purposes of perpetrating stalking, violence and abuse.<sup>1552</sup> In 2023, the Police Service of NI warned that “smart technology has been used by stalkers to monitor their victims”.<sup>1553</sup> This has a disproportionate effect on women, who account for over 95 per cent of stalking victims in NI.<sup>1554</sup>

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<sup>1550</sup> Biometrics and Surveillance Camera Commissioner, ‘Press Release: UK policing “shot through” with Chinese surveillance technology’, 21 March 2023.

<sup>1551</sup> NI Policing Board, ‘Human Rights Review of Privacy and Policing’ (NIPB, 2023), at 15.

<sup>1552</sup> Marie O’Halloran, ‘Coercive control and stalking laws may not cover use of electronic tagging devices, Seanad told’, *The Irish Times*, 30 April 2024; James Clayton and Jasmin Dyer, ‘Apple AirTags - ‘A perfect tool for stalking’’, *BBC News*, 20 January 2022.

<sup>1553</sup> Brendan Hughes, ‘Stalkers using smart technology to track victims, Police Service of NI say’, *BBC News*, 16 November 2023.

<sup>1554</sup> *Ibid.*

However, if used legitimately, it is acknowledged that camera-enabled doorbells and dash cameras have played key roles in providing evidence of violence and abuse that have led to successful prosecutions.<sup>1555</sup>

## Recommendations

The Commission recommends that the Department of Justice, in partnership with the Police Service of NI and other relevant public authorities, promptly ensures that the use of biometric surveillance technologies in policing and criminal justice in NI are appropriately regulated, non-discriminatory and proportionate. Any legislative or policy proposals should be subject to a human rights impact assessment and extensive public consultation process. Also, procurement and monitoring exercises should be undertaken that ensure that biometric surveillance technology and its infrastructure operate lawfully, responsibly and according to a set of clear human rights principles in NI.

The Commission recommends that the Department of Justice, working with all relevant public authorities, ensures that the use of private surveillance technologies is appropriately regulated and that there are effective awareness raising campaigns to ensure good societal understanding of the benefits and threats of such technology and good safeguarding practices associated with private surveillance technologies. This includes ensuring that information is widely available that is understandable and fully accessible. It also requires effective monitoring and immediate action to ensure that legal safeguards are keeping pace with technological advancements.

<sup>1555</sup> 'Lurgan: Brothers admit intimidation of woman from her home', *BBC News*, 23 January 2024; Mark Townsend, 'How CCTV played a vital role in tracking Sarah Everard – and her killer', *The Guardian*, 2 October 2021.

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



## Blasphemy

In 2008, the UN Human Rights Committee welcomed the abolition of the common law offence of blasphemy in England and Wales<sup>1556</sup> as a positive measure to ensure compliance with Article 19 of the UN ICCPR on the right to freedom of expression and opinion.<sup>1557</sup> A similar approach has been followed in Ireland and Scotland.<sup>1558</sup>

The common law offences of blasphemy and blasphemous libel remain on the statute books in NI and, whilst a prosecution has not occurred since 1855, an individual may be subject in law to prosecution for committing either of these offences.<sup>1559</sup> In 2021, the Minister of Justice, Naomi Long MLA, stated that regarding these offences she was “committed to freedom of and from religion and am fully supportive of removing such archaic and unused offences from the law”.<sup>1560</sup>

<sup>1556</sup> Criminal Justice and Immigration Act 2008.

<sup>1557</sup> CCPR/C/GBR/CO/6, ‘UN Human Rights Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 30 July 2008, at para 4.

<sup>1558</sup> Thirty-seventh Amendment of the Constitution of Ireland (Repeal of Offence of Publication or Utterance of Blasphemous Matter) Act 2018; Hate Crime and Public Order (Scotland) Act 2021.

<sup>1559</sup> BJAC Valentine, ‘Booklet of Criminal Offences in NI’ (LSNI, 2016).

<sup>1560</sup> NI Assembly Hansard, ‘Written Answer – Blasphemy – Naomi Long MLA – AQW 14245/17-22’, 17 February 2021.

In 2022, the Minister of Justice reiterated her support for introducing legislation to that effect.<sup>1561</sup> In 2024, there has been no legislative progress on removal of blasphemy as an offence.

### Recommendations

The Commission recommends that the Department of Justice, working with the NI Executive and NI Assembly, introduces and implements legislation to abolish the common law offence of blasphemy and blasphemous libel to ensure compatibility with the ECHR and Article 19 of the UN ICCPR.

### Defamation

In 2008, the UN Human Rights Committee raised concerns that the:

practical application of the law of libel [in the UK] has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work, including through the phenomenon known as ‘libel tourism’.<sup>1562</sup>

The UN Human Rights Committee recommended that the UK Government and NI Executive should:

re-examine its technical doctrines of libel law, and consider the utility of a so-called ‘public figure’ exception, requiring proof by the plaintiff of actual malice in order to go forward on actions concerning reporting on public officials and prominent public figures.<sup>1563</sup>

<sup>1561</sup> NI Assembly Hansard, ‘Written Answer – Blasphemy – Naomi Long MLA – AQW 403/22-27’, 30 May 2022.

<sup>1562</sup> CCPR/C/GBR/CO/6, ‘UN Human Rights Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 21 July 2008, at para 25

<sup>1563</sup> Ibid.

In March 2024, a new EU directive to protect individuals and organisations targeted by strategic lawsuits against public participation was adopted.<sup>1564</sup> The newly adopted EU Directive aims to strengthen media pluralism in the EU and protect human rights defenders.<sup>1565</sup> Given NI’s unique position in the UK of sharing a land-border with Ireland, an EU Member State, the Commission highlighted the potential for a divergence of rights across the island of Ireland.<sup>1566</sup> There is no requirement under the Windsor Framework for NI law to keep pace with EU developments beyond those relating to the EU Equality Directives listed in Annex 1. The Commission noted that the NI Assembly could voluntarily choose to align with EU developments, even where it is not required to do so under the Windsor Framework, to strengthen protections and to ensure equivalence of rights on the island of Ireland.<sup>1567</sup>

The Defamation Act 2013, which does not extend to NI, addressed the UN Human Rights Committee’s recommendation in the rest of the UK. In 2022, the Defamation Act (NI) was passed by NI Assembly, which largely replicated the reforms under the Defamation Act 2013. However, despite recommendations to do so,<sup>1568</sup> the 2022 Act does not include the “serious harm” test.

<sup>1564</sup> Directive 2024/1069, ‘European Parliament and the Council Directive on Protecting Persons who Engage in Public Participation from Manifestly Unfounded Claims or Abusive Court Proceedings (Strategic Lawsuits Against Public Participation)’, 11 April 2024.

<sup>1565</sup> EU Commission, ‘Proposal for a Directive of the European Parliament and of the Council on Protecting Persons who Engage in Public Participation from Manifestly Unfounded or Abusive Court Proceedings (Strategic Lawsuits against Public Participation) - COM(2022) 177’ (EU Commission, 2022).

<sup>1566</sup> NI Human Rights Commission and Equality Commission NI, ‘Policy Recommendations: EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland’ (NIHRC and ECNI, 2023). See also Island of Ireland Dimension of the Windsor Framework in the ‘Constitutional Protections - Human Rights after UK Exit for the EU’ section in this Annual Statement.

<sup>1567</sup> Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, ‘Policy Recommendations: EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland’ (ECNI, NIHRC and IHREC, 2023).

<sup>1568</sup> Letter from the NI Human Rights Commission to the Department of Finance, 18 November 2021.

In 2023, the Department of Finance consulted on a review of defamation law in NI.<sup>1569</sup> The Commission responded to the consultation, identifying concerns regarding the lack of serious harm test and its effect on the balance between the right to private and family life and freedom of expression and the disparity between NI legislation and that of England and Wales, creating an increased risk of “libel tourism”.<sup>1570</sup> The Commission also identified its concerns that the 2022 Act does not make specific provision to address Strategic Lawsuits Against Public Participation.<sup>1571</sup> Notably, the review highlighted the newly adopted EU Directive as aiming to “address Strategic Lawsuits Against Public Participation across EU Member States where there is a cross-border dimension”.<sup>1572</sup> It is the Department of Finance’s intention that its review of the 2022 Act would incorporate “those parts of the EU Directive on Strategic Lawsuits Against Public Participation relevant to defamation law”.<sup>1573</sup>

In 2024, the Department of Finance’s review concluded that the 2022 Act had been operational for only two years and there had been too few defamation cases for its affects to be properly assessed. Thus, the Department of Finance “believe it too soon to legislate further on defamation particularly in the context of competing legislative priorities and resource constraints”.<sup>1574</sup> The Department of Finance noted its intention to further monitor defamation law in NI, including Strategic Lawsuits Against Public Participation.<sup>1575</sup>

<sup>1569</sup> Department of Finance, ‘Review of the Defamation Act (NI) 2022: Request for Input’ (DoF, 2023).

<sup>1570</sup> NI Human Rights Commission, ‘Response to the Department of Finance Consultation on the Review of Defamation Law in NI’ (NIHRC, 2024).

<sup>1571</sup> Strategic Lawsuits Against Public Participation are recognised as actions, including defamation actions, taken primarily to embroil the defendant in costly and prolonged legal proceedings with the view to deterring them from researching or reporting on a matter of public interest. See NI Human Rights Commission, ‘Response to the Department of Finance Consultation on the Review of Defamation Law in NI’ (NIHRC, 2024).

<sup>1572</sup> Department of Finance, ‘Review of the Defamation Act (NI) 2022’ (DoF, 2024), at para 13.

<sup>1573</sup> Ibid, at 109.

<sup>1574</sup> Ibid, at para 143.

<sup>1575</sup> Ibid, at para 149.

## Recommendations

The Commission recommends that the Department of Finance should ensure that defamation law in NI strikes a fair balance between freedom of expression and the right to private life, either by working with the NI Assembly to amend the Defamation Act (NI) 2022, or introducing additional safeguards to complement the 2022 Act. This should include introducing a serious harm test.

The Commission recommends that the Department of Finance works with relevant bodies to ensure that robust data on libel cases heard in NI is collected, accessibly published, monitored and evaluated, including cases resolved outside of court.

The Commission recommends that the Department of Finance works with the NI Executive and NI Assembly to introduce legislation to tackle Strategic Lawsuits Against Public Participation, in line with its obligations under international human rights law and align NI law, on a voluntary basis, with EU law which strengthen protections.

## Freedom of expression of journalists and protection of legal professional privilege

In 2023, the UN Working Group on the Universal Periodic Review recommended that the UK Government and NI Executive “continue efforts within the Media Freedom Coalition to defend media freedom at home and abroad, and improve the safety of journalists and media workers who report across the world”.<sup>1576</sup> The UN Working Group on the Universal Periodic Review also recommended that the UK Government and NI Executive “take concrete steps to improve the safety of journalists, investigate incidents of attacks on journalists and implement the UN Plan of Action on the Safety of Journalists and the Issue of Impunity”.<sup>1577</sup>

<sup>1576</sup> A/HRC/52/10, ‘Report of the UN Working Group on the Universal Periodic Review UK of Great Britain and NI’, 9 January 2023, at para 43.117.

<sup>1577</sup> Ibid, at para 43.120.



Between January 2011 and March 2024, the Police Service of NI made 323 applications for communications data relating to a person who identified as a journalist, with 76.8 per cent authorised.<sup>1578</sup> The Police Service of NI also made 500 applications relating to a person who identified as a lawyer, with 73 per cent authorised.<sup>1579</sup>

In 2023, it was confirmed that the UK Investigatory Powers Tribunal was investigating whether the Police Service of NI acted lawfully in monitoring the phones of journalists Barry McCaffery and Trevor Birney in 2013. It is alleged that the Police Service of NI started monitoring the journalist's phone to identify a whistleblower after Mr McCaffrey contacted the Police Service of NI's press office to make an inquiry regarding a story he was investigating. However, the journalist was unaware that the Investigatory Powers Tribunal had authorised this investigation.<sup>1580</sup> This followed an earlier High Court of Justice in NI judgment that search warrants issued against journalists Barry McCaffery and Trevor Birney were "disproportionate".<sup>1581</sup>

In 2024, lawyer, Kevin Winters, requested that the UK Investigatory Powers Tribunal investigated whether the Police Service of NI were under police surveillance.<sup>1582</sup>

In 2024, the outcome of the UK Investigatory Powers Tribunal cases was awaited.<sup>1583</sup> Furthermore, the Chief Constable of NI, Jon Boutcher, ordered an independent review into the use of surveillance by the Police Service of NI on journalists, lawyers, non-governmental organisations, NI Policing Board and Police Ombudsman NI.<sup>1584</sup>

<sup>1578</sup> Police Service of NI, 'Chief Constable's Report to the NI Policing Board: Covert Powers in Relation to Journalists and Lawyers' (NIPB, 2024), at paras 2.29 and 2.30.

<sup>1579</sup> Ibid, at paras 2.38 and 2.39.

<sup>1580</sup> 'Police Service of NI monitored phone of journalist Barry McCaffery', *BBC News*, 24 July 2023.

<sup>1581</sup> *In the Matter of an Application by Fine Point Films and Trevor Birney for Judicial Review and the in the Matter of an Application by Barry McCaffey and the in the Matter of an Application by Police Service of NI and Durham Constabulary for Search Warrants* [2020] NIQB 55, at para 55.

<sup>1582</sup> Connla Young, 'Leading human rights lawyer raises Police Service of NI surveillance concerns', *Irish News*, 7 June 2024.

<sup>1583</sup> Julian Fowler, 'Police Service of NI surveillance hearing takes place in London', *BBC News*, 1 October 2024.

<sup>1584</sup> Connla Young, 'PSNI make more than 800 applications for journalist and lawyer phone data', *The Irish News*, 6 June 2024; Connla Young, 'Police Service of NI "snooping" review of journalists and lawyers widened to include Policing Board and Police Ombudsman', *Irish News*, 12 July 2024.

In responding to calls for a public inquiry, the Minister of Justice, Naomi Long MLA, stated that it would not be “appropriate” to act until other investigations have concluded.<sup>1585</sup>

In 2024, a Sunday World journalist was notified by the Police Service of NI that there were subject to threats from paramilitaries.<sup>1586</sup> The threats have been widely condemned.<sup>1587</sup>

## Recommendations

The Commission recommends that the Department of Justice ensures that there is effective, human rights compliant protection in NI that promotes and protects lawyers’ legal professional privilege and journalists’ ability to report on issues of public importance.

The Commission recommends that the Department of Justice and Police Service of NI ensure that journalists and lawyers have an effective remedy for the purposes of stopping and preventing intimidation or reprisals for doing their job.

## Parades and protests

In 2013, the then UN Special Rapporteur on peaceful assembly, parades and association, Maina Kiai, called for a “political resolution of the issues – such as parades, flags and emblems – that still make the enjoyment of freedom of peaceful assembly problematic in NI”.<sup>1588</sup>

In 2014, the Stormont House Agreement proposed that responsibility for parades and related protests should, in principle, be devolved to the NI Assembly.<sup>1589</sup> In 2024, the Parades Commission for NI remains answerable to the Secretary of State for NI.

<sup>1585</sup> Jayne McCormack, ‘Police surveillance public inquiry on hold – Long’, *BBC News*, 4 June 2024.

<sup>1586</sup> National Union of Journalists, ‘Press Release: National Union of Journalists condemns two threats made to Sunday World journalist in NI’, 9 September 2024.

<sup>1587</sup> Ibid.

<sup>1588</sup> A/HRC/23/39/Add.1, ‘Report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, On His Mission to the UK (14-23 January 2013)’, 17 June 2013, at para 96.

<sup>1589</sup> Stormont House Agreement, 23 December 2014, at para 17.

In 2014, the Stormont House Agreement also proposed that the Office of Legislative Counsel, working in conjunction with the Executive Office, should produce a range of options on how the remaining key issues which include the Code of Conduct, criteria and accountability could be addressed in legislation. In 2024, this was still awaited.

In 2023/2024, the Parades Commission for NI was notified of 3,856 parades and parade-related protests, an increase from 3,585 notifications in 2022/2023.<sup>1590</sup> This included 2,676 Protestant/Unionist/Loyalist, 99 Catholic/Republican/Nationalist, and 1,081 ‘other parades.’<sup>1591</sup> Of these, 150 Protestant/Unionist/Loyalist, one Catholic/Republican/Nationalist, and 41 ‘others’ were considered ‘sensitive’, with the potential to raise concerns and community tensions.<sup>1592</sup>

In 2023/2024, 145 parades and parade-related protests had conditions imposed, a decrease from 154 in 2022/2023. Such conditions can include restrictions on the route, size and timing of a parade or parade-related protest, type of music played, behaviour and dress code.<sup>1593</sup>

## Recommendations

The Commission recommends that the UK Government, working with the UK Parliament, devolves responsibility for parades and protests to the NI Assembly, in line with the Stormont House Agreement.

The Commission recommends that the Executive Office promptly drafts and submits to the NI Executive a discussion paper setting out a range of options on how issues relating to parades and protests could be addressed in legislation, as required by the Stormont House Agreement. This paper should be considered by the NI Executive expeditiously.

<sup>1590</sup> Parades Commission for NI, ‘Annual Report and Accounts 2023-2024 for the Period 1 April 2023 to 31 March 2024’ (PCNI, 2024), at 8.

<sup>1591</sup> Ibid.

<sup>1592</sup> Ibid.

<sup>1593</sup> Parades Commission for NI, ‘Annual Report and Financial Statements for the Year Ended 31 March 2023’ (PCNI, 2023).

## ● Participation of women in public and political life

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive “continue taking effective measures, including special measures, to improve the representation of ethnic minority groups, notably women, in political and public affairs at all levels of government, in institutions responsible for developing policies that affect them, and in decision-making positions”.<sup>1594</sup>

In 2019, the UN CEDAW Committee recommended the UK Government and NI Executive:

take specific targeted measures, including temporary special measures, to improve the representation of women, including “Black, Asian and Minority Ethnic” women and women with disabilities, in Parliament, the judiciary and decision-making positions in the Foreign Service and its diplomatic missions.<sup>1595</sup>

The UN CEDAW Committee further recommended that the UK Government and NI Executive:

ensure the inclusion of the provisions of the [UN CEDAW] Convention, the ECHR and the “acquis communautaire” (or “EU acquis”) in its domestic legislation, and utilise the human rights framework and the empowerment of women as a strategic tool to tackle the current challenges.<sup>1596</sup>

Specific to NI, the UN CEDAW Committee called on the NI Executive “to take measures to address the low representation of women in political and public life in NI, including by ensuring the implementation of Section 43A of the Sex Discrimination (NI) Order 1976 enabling the use of gender quotas”.<sup>1597</sup>

<sup>1594</sup> 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, at para 28.

<sup>1595</sup> 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.

<sup>1596</sup> Ibid.

<sup>1597</sup> Ibid.

The UN CEDAW Committee also recommended that the UK Government and NI Executive:

take concrete measures to ensure the effective participation of women in post-conflict reconstruction and peacebuilding processes in NI, in line with Security Council Resolution 1325 (2000), including by:

- a) addressing the obstacles to their participation, including intimidation by paramilitary groups, as noted in 2014 inquiry by the All-Party Parliamentary Group on Women, Peace and Security; [and]
- b) guaranteeing women’s participation in the context of the transitional justice mechanisms envisaged in the draft NI (Stormont House Agreement) Bill.<sup>1598</sup>

Women’s involvement with peace initiatives is protected by the UN Security Council’s Resolution 1325.

Articles 2 and 13 of the Windsor Framework require the UK Government to ensure NI law ‘keeps pace’ with any changes made by the EU to six Annex 1 Equality Directives which improve the minimum levels of protection including monitoring all relevant current and future CJEU jurisprudence. Four of these EU equal treatment Directives provide for specific protection against gender discrimination, including in employment and vocational training, access to goods and services and social security.<sup>1599</sup>

<sup>1598</sup> Ibid.

<sup>1599</sup> Directive 2006/54/EC, ‘EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006; Directive 2010/41/EU, ‘EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-employed Capacity’, 7 July 2010; Directive 2004/113/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment Between Men and Women in the Access to and Supply of Goods and Services’, 13 December 2004; Directive 79/7/EEC, ‘EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security’, 19 December 1978.

In addition to the keeping pace obligation, the NI Executive can align, on a voluntary basis, with EU developments, even where it is not required by Windsor Framework Article 2, to strengthen protections and ensure North-South equivalence of rights on the island of Ireland.<sup>1600</sup> In 2022, the EU adopted the EU Directive on improving gender balance in non-executive director roles, which requires EU Member States to ensure that listed companies employ at least 40 per cent of women members in non-executive director roles or 30 per cent of all director positions.<sup>1601</sup> Ireland is obliged under EU law to adopt these measures to promote the participation of women. Should provisions not be reflected in NI law, this could lead to a divergence of rights on the island of Ireland.

## Statistics

In 2024, 50.2 per cent of the NI Civil Service workforce were women, an increase from 50.1 per cent reported in 2023.<sup>1602</sup> In 2024, women's representation within senior grades was 43.8 per cent, an increase from 42.8 per cent in 2023.<sup>1603</sup> However, men still outnumber women in senior civil service positions in NI.

Women, particularly minority women, remain under-represented in political life in NI. In 2022, a record number of 32 of the 90 MLAs elected were women.<sup>1604</sup> Co-option increased this number to 33 with women therefore holding 35.6 per cent of seats at Stormont. Three of NI's five main political parties have women leaders. In July 2024, of the 18 MPs from NI elected to Westminster, five were women, an increase from four women in 2019.<sup>1605</sup>

<sup>1600</sup> NI Human Rights Commission and Equality Commission NI, 'Policy Recommendations: EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (NIHRC and ECNI, 2023).

<sup>1601</sup> Directive 2022/2381/EU, 'Directive of the European Parliament and of the Council on Improving the Gender Balance Among Directors of Listed Companies and Related Measures', 7 December 2022.

<sup>1602</sup> NI Statistics and Research Agency, 'Equality Statistics for NI Civil Service 2024' (NISRA, 2024), at 5.

<sup>1603</sup> Ibid.

<sup>1604</sup> Allison Morris, 'Record number of women MLA's elected to Stormont', *Independent*, 9 May 2022.

<sup>1605</sup> Raymond Russell, 'Election Report: Westminster General Election 4 July 2024' (NI Assembly, 2024), at 3.

In April 2024, Lilian Seenoi-Barr became NI's first black Mayor when she was selected for the post in Derry City and Strabane District Council.<sup>1606</sup>

A lack of accessible information to empower minority women is a barrier in NI, not only to stand for election, but to vote and engage with elected representatives.<sup>1607</sup> Public information is not adequately available in different formats and languages, which means that it can be inaccessible. This particularly affects migrant, d/Deaf and disabled women.<sup>1608</sup>

### **Gender sensitive approach**

In 2021, research showed that there is a “persistence of deeply embedded gendered inequalities which continue to inhibit women’s life opportunities in NI” and that there is a focus on gender neutrality within policy-making in NI.<sup>1609</sup> Yet, “countries with greater levels of gender equality are associated with lower levels of human rights violations and better outcomes for peace and reconciliation”.<sup>1610</sup> Consequently, experts have recommended that a gender budgeting approach is adopted in NI, which is facilitated by “the collection, analysis and regular reporting of gender disaggregated data (including data that is currently not collected and/or currently collected, but not analysed and reported) across government for the purposes of policy formation and resource allocation”.<sup>1611</sup> This requires development of “gender budgeting capacity and competence in the NI public and Civil Service”.<sup>1612</sup> In 2024, these findings are still relevant.<sup>1613</sup>

<sup>1606</sup> ‘Lilian Seenoi-Barr set to make history as Derry Mayor’, *BBC News NI*, 29 April 2024.

<sup>1607</sup> Roundtable discussions with NI women’s policy groups and NI women’s community groups, October 2017, November 2017, February 2018 and March 2018.

<sup>1608</sup> *Ibid.*

<sup>1609</sup> Joan Ballantine et al, ‘Gender Budgeting: Working Paper 1 – What Does the Literature Tell Us? Lessons for NI’ (Ark Working Papers, 2021).

<sup>1610</sup> *Ibid.*

<sup>1611</sup> *Ibid.*

<sup>1612</sup> *Ibid.*

<sup>1613</sup> Meeting between Ulster University Gender Budgeting Group and NI Human Rights Commission, 4 July 2024.



A gender-neutral approach to policy making and budgeting has detrimental effects. For example, in 2021, the Expert Advisory Panel of the Gender Equality Strategy highlighted continuing issues with resourcing of the women’s community groups and civil society.<sup>1614</sup> Women that attend community groups that are experiencing resource issues are distressed by the funding cuts that are placing the continuation of such groups and their activities under threat.<sup>1615</sup> Women in NI have stated that attendance at such women’s community groups has saved lives, assisted with depression, provided a sense of belonging and support, and improved confidence.<sup>1616</sup>

The Expert Advisory Panel of the Gender Equality Strategy made several recommendations related to participation of women in public and political life.<sup>1617</sup> In July 2024, the Minister for Communities, Gordon Lyons MLA, was considering the next steps to be taken in relation to the Gender Equality Strategy.<sup>1618</sup> Furthermore, section 43A of the Sex Discrimination (NI) Order 1976 allows political parties to take positive measures to reduce inequality between men and women elected to Parliament, the NI Assembly, District Councils and, if required, the European Parliament.<sup>1619</sup> This provision has not been utilised.

## UN Security Council Resolution 1325

Paramilitary activity is having a particular effect on women within the affected communities, who live in fear of such groups. In practice, this intimidation, which can include threats to life is preventing women from accessing funding, to engage with peace initiatives and to be empowered to participate in public and political life.<sup>1620</sup>

<sup>1614</sup> Department for Communities, ‘Gender Equality Strategy Expert Advisory Panel Report’ (DfC, 2021).

<sup>1615</sup> ‘Féile an Phobail and Equality Commission NI: What Every Women Wants – Equality!’, An Chultúrlann, 8 August 2018.

<sup>1616</sup> Ibid.

<sup>1617</sup> Department for Communities, ‘Gender Equality Strategy Expert Advisory Panel Report’ (DfC, 2021), at 12.

<sup>1618</sup> Letter from Department for Communities to NI Human Rights Commission, 25 July 2024.

<sup>1619</sup> Sex Discrimination (NI) Order 1976.

<sup>1620</sup> Roundtable discussions with NI women’s policy groups and NI women’s community groups, October 2017, November 2017, February 2018 and March 2018.

In 2015, academics developed Gender Principles for Dealing with the Legacy of the Past in NI.<sup>1621</sup> There has been a lack of development of this area at a UK and local government level. However, in 2023, the UK Government’s National Action Plan on Women Peace and Security included peacebuilding in NI for the first time by committing to “recognise and promote the crucial work of Northern Ireland’s women in peacebuilding, especially for the 25th Anniversary of the Belfast (Good Friday) Agreement in 2023”.<sup>1622</sup>

### Recommendations

The Commission recommends that the NI Executive takes effective steps to ensure women’s participation in public and political life is proportionate to NI’s population. This includes ensuring that specific needs are considered as required, for example, regarding women with disabilities, or racial or ethnic minority women.

The Commission recommends that the Department for Communities, and as appropriate other NI Departments, ensure that all existing and future gender equality strategies and policies, including the Gender Equality Strategy for NI, identify and address effectively the barriers hindering women’s participation in public and political life. This includes adopting a gender-sensitive approach and embedding gender budgeting within law and policy making in NI.

The Commission recommends that the Department for Communities consider aligning, on a voluntary basis, with any enhancement to equality and human rights pursuant to the EU directive on gender balance in non-executive director roles.

<sup>1621</sup> Legacy Gender Integration Group, ‘Gender Principles for Dealing with the Legacy of the Past’ (LGIG, 2015).

<sup>1622</sup> UK Government, ‘UK Women, Peace and Security National Action Plan 2023-2027’ (UK Gov, 2023), at 39.

# Right to Work and to Just and Favourable Conditions of Work

## ● Accessible childcare

In 2023, the UN CRC Committee recommended that UK Government and NI Executive:

- a) strengthen measures to enable working parents and caregivers to balance their professional and family responsibilities, including by allocating sufficient resources for childcare services, encouraging parents to take parental leave and ensuring access to affordable childcare options for socioeconomically disadvantaged families, families in rural and remote areas and families with irregular work schedules; [and]
- b) expand eligibility criteria for State-subsidised childcare, such as the Childcare Offer and Flying Start childcare in Wales, and establish childcare strategies in Northern Ireland, the Overseas Territories and Crown Dependencies where such a strategy is not in place, to ensure that all children in socioeconomically disadvantaged situations have access to free childcare.<sup>1623</sup>

<sup>1623</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at paras 36(a) and 36(b).

In 2019, the UN CEDAW Committee expressed concern that “childcare costs remain excessive, particularly in NI, which constitutes an obstacle for women to enter and progress in the workplace”.<sup>1624</sup> The UN CEDAW Committee recommended that the UK Government and NI Executive:

- a) ensure the availability of affordable and accessible childcare facilities and/or arrangements throughout the State party, in particular NI;
- b) consider removing the 26-week waiting period for employees to apply for flexible working arrangements; [and]
- c) provide further incentives for men to take parental leave, such as non-transferrable leave, and encourage men to participate equally in childcare responsibilities.<sup>1625</sup>

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive develop and implement policies “securing sufficient and disability-sensitive childcare as a statutory duty across the State party”.<sup>1626</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive “increase its efforts to ensure the availability, accessibility and affordability of childcare services throughout the State Party, particularly in Scotland and NI”.<sup>1627</sup>

### **Childcare provision**

In 2020, the NI Executive committed to giving “immediate priority to developing arrangements to deliver extended, affordable, responsive, high-quality provision of early education and care initiatives for families with children aged three-four”.<sup>1628</sup>

<sup>1624</sup> 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 46.

<sup>1625</sup> Ibid, at para 45.

<sup>1626</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 21.

<sup>1627</sup> 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 44.

<sup>1628</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020).

Yet there remains no statutory duty in NI akin to that on local and public authorities in England, Scotland and Wales to provide adequate childcare provision.

In 2024, 19 per cent of families in NI use formal childcare with, on average, parents spending around £14,000 a year on formal childcare for a child under five years old.<sup>1629</sup>

The Pre-School Education Programme for three-to-four-year-olds in NI funds one year of non-compulsory education before a child starts primary school, however this early education initiative is more limited than the childcare schemes available elsewhere in the UK and Ireland.<sup>1630</sup>

There are tax, social security and subsidy schemes available in NI to help parents pay for childcare, with the permanent NI Childcare Subsidy Scheme the most recent addition.<sup>1631</sup> However, research highlights that many childcare providers require advance payment and “many low-income families are not in a financial position to make such large, upfront payments. Furthermore, childcare payment reimbursement for such upfront payments is retrospective, which can further adversely impact parents’ financial situation”.<sup>1632</sup>

<sup>1629</sup> NI Assembly Research and Information Service, ‘Briefing Paper: Economic Inactivity, Key Employment Barriers and Childcare Costs Potentially Impacting Those Barriers: Initial Considerations for NI’, 17 May 2024.

<sup>1630</sup> UK Government, ‘15 hours Free Childcare for 3 and 4-year-olds’. Available at: <https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds>; Welsh Government, ‘Childcare for 3 and 4 year olds’. Available at: <https://gov.wales/childcare-3-and-4-year-olds>; Scottish Government, ‘Early Education and Care’. Available at: <https://www.gov.scot/policies/early-education-and-care/early-learning-and-childcare/>; Government of Ireland, ‘Early Childhood Care and Education Programme’. Available at: <https://www.gov.ie/en/publication/2459ee-early-childhood-care-and-education-programme-ecce>

<sup>1631</sup> UK Government, ‘Tax-Free Childcare’. Available at: <https://www.gov.uk/tax-free-childcare>; NI Direct, ‘Adviser Discretion Fund’. Available at: [Adviser Discretion Fund \(ADF\) | nidirect](https://www.nidirect.gov.uk/adviser-discretion-fund); Employers for Childcare, ‘New NI Childcare Subsidy Scheme to help with childcare costs’, 25 June 2024; Department of Education, ‘Press Release: Education Minister announces £25million package of measures for early learning and childcare in Northern Ireland’, 23 May 2024; NI Assembly Hansard, ‘Urgent Written Ministerial Statement: Early Learning and Childcare Measures 2024/25 – Paul Givan MLA, Minister of Education’, 23 May 2024.

<sup>1632</sup> NI Assembly Research and Information Service, ‘Briefing Paper: Economic Inactivity, Key Employment Barriers and Childcare Costs Potentially Impacting Those Barriers: Initial Considerations for NI’, 17 May 2024, at 2.

In 2023, the Department of Education’s independent review of childcare services in NI revealed that issues with the cost and accessibility of childcare in NI are having a significant effect on parents’ employment, particularly for women, one parent families, low-income households and parents whose children have additional needs.<sup>1633</sup> Of parents/carers surveyed, 51 per cent said that there was not enough information about childcare provision, which is having a particular effect on parents whose main language is not English.<sup>1634</sup>

In September 2024, the NI Executive identified “deliver more affordable childcare” as an immediate priority.<sup>1635</sup>

### **Early Learning and Childcare Strategy**

The only childcare strategy for NI expired in 1992. In 2015, the NI Executive consulted on a draft childcare strategy, but the consultation did not result in one being adopted.<sup>1636</sup> In 2020, the NI Executive reaffirmed its commitment to publishing a new childcare strategy.<sup>1637</sup>

In 2022, the former Minister of Education, Michelle McIlveen MLA, advised of plans to develop a new integrated early learning and childcare strategy.<sup>1638</sup> In 2023, the Department of Education’s independent review of childcare services reinforced the need for a comprehensive childcare strategy to tackle the range of issues facing the sector.<sup>1639</sup>

In May 2024, the Minister of Education, Paul Givan MLA, advised that “a major data collection exercise will be taken forward to help evaluate 2024/2025 measures and inform the longer-

<sup>1633</sup> Department of Education, ‘Review of Childcare Services in NI – Final Report’ (DE, 2023), at 132-142.

<sup>1634</sup> Ibid, at 21 and 56.

<sup>1635</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 20.

<sup>1636</sup> Office of the First Minister and Deputy First Minister, ‘Towards a Childcare Strategy – A Consultation Document’ (OFMDFM, 2012).

<sup>1637</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020).

<sup>1638</sup> NI Assembly Hansard, ‘Written Ministerial Statement: Department of Education – Update on Childcare Strategy Developments including Proposal to offer every Child in their Pre-School Year a Minimum of 22.5 Hours of Pre-School Education per Week’, 7 September 2022.

<sup>1639</sup> Ibid, at 143.

term strategy”.<sup>1640</sup> There is no set timeframe for delivering the strategy, but the Minister of Education has stated that “a priority during 2024/2025 will be the collection of data to provide an evidence base on which further, informed decisions can be taken regarding longer-term models of support”.<sup>1641</sup>

In September 2024, the NI Executive identified as an immediate priority developing “an Early Learning and Childcare Strategy which improves provision and includes two high-profile targets: supporting the development of our children to give every child the best start in life, while supporting more affordable childcare”.<sup>1642</sup>

## Recommendations

The Commission recommends that the Department of Education ensures that childcare facilities and arrangements in NI are available, affordable and accessible. This includes ensuring access to affordable childcare options for families that are socioeconomically disadvantaged, families in rural and remote areas, and families with irregular work schedules.

The Commission recommends that the Department of Education urgently develops, implements and monitors an Early Learning and Childcare Strategy for NI, that has a measurable action plan and is adequately resourced. Parents, carers, guardians and representative organisations should be involved at every stage of the process.

The Commission recommends that the Department of Education, working with the NI Assembly, introduces statutory arrangements to deliver extended, affordable, responsive, high-quality provision of early education and care initiatives for families with children, using the provision available in other parts of the UK as a starting point.

<sup>1640</sup> NI Assembly Hansard, ‘Urgent Written Ministerial Statement: Early Learning and Childcare Measures 2024/2025 – Paul Givan MLA, Minister of Education’, 23 May 2024.

<sup>1641</sup> NI Assembly Hansard, ‘Written Question: Timeline for Early Learning and Childcare Strategy – Kate Nicholl MLA – AQW 14106/22-27’, 8 July 2024.

<sup>1642</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 24.



## ● Children in the Armed Forces

In 2023, the UN CRC Committee recommended that the UK Government:

consider raising the minimum age of voluntary recruitment into the armed forces to 18 years;

prohibit all forms of advertising and marketing for military service targeted at children, in particular at schools and targeting children belonging to ethnic minority groups and socioeconomically disadvantaged children;

ensure that safeguards for voluntary recruitment are sufficient, including by ensuring that no child from a separated family is recruited within the consent of only one parent;

ensure that children currently enlisted in the armed forces do not serve a minimum period that is longer than those who enlisted as adults and that they have the right to leave the armed forces with no notice;

promptly investigate any reports of sexual abuse, sexual harassment and other forms of violence against children in the armed forces, particularly during armed forces training, and ensure that perpetrators are prosecuted and sanctioned;

take measures to address the reported heavy mental health burden among child recruits, including incidence of suicide among infantry personnel who enlisted when they were under the age of 18;

ensure that all children under 18 years of age receive special protection under the Joint Doctrine Publication 1-10 for Captured Persons, including by amending the definition of the child in line with the [UN CRC]; [and]

ensure the early and effective identification of all asylum-seeking, refugee and migrant children who may have been recruited or used in armed conflicts abroad upon entering the [UK].<sup>1643</sup>

<sup>1643</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at paras 55(b)-55(i).

Children aged 16 and 17 years old can be recruited to the British Armed Forces, provided it is voluntary and there are safeguards in place.<sup>1644</sup> It remains that the consent of only one parent or legal guardian is required.<sup>1645</sup> During the passage of the Armed Forces Act 2021, a proposed amendment raise the minimum recruitment age to 18 years of age was rejected.<sup>1646</sup>

In 2024, the UK continues to be the only country in Europe that routinely recruits 16-and-17-year-olds into the armed forces. Such recruitment can adversely affect the child's mental and physical health.<sup>1647</sup>

### Recommendations

The Commission recommends that the Ministry of Defence raises the minimum age of recruitment for the British Armed Forces to 18 years old. While awaiting legislative amendments, the Ministry of Defence should reconsider any recruitment policy that specifically targets children and strictly limit military recruiters' access to schools, including in NI.

<sup>1644</sup> Article 3, Optional Protocol to the UN CRC on the Involvement of Children in Armed Conflict 2000.

<sup>1645</sup> British Army, 'Register'. Available at: <https://Apply.army.mod.uk/register>

<sup>1646</sup> UK Parliament Hansard, 'Public Bill Committee: Armed Forces Bill (First sitting)', 25 March 2021.

<sup>1647</sup> British Medical Journal, 'Press Release: Stop recruiting children, UK Armed Forces urged', 25 February 2019; CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at paras 55(b)-55(i).

## ● Employment equality

Articles 2 and 13 of the Windsor Framework require dynamic alignment of NI equality law with any changes made by the EU to the six Annex 1 EU Equality Directives, which improve the minimum levels of protection, including adherence to relevant current and future CJEU case law.<sup>1648</sup>

Four of the Annex 1 EU Directives cover the area of employment equality on grounds of race and ethnicity, sexual orientation, religion and belief, disability, age and gender. These are:

- EU Racial Equality Directive;<sup>1649</sup>
- EU Employment Equality (Framework) Directive;<sup>1650</sup>
- EU Equal Treatment Directive;<sup>1651</sup> and
- EU Self-Employment Equal Treatment Directive.<sup>1652</sup>

The Commission, along with the Equality Commission for NI, has identified several measures which they consider amend and/or replace the EU Equality Directives in Annex 1.

<sup>1648</sup> Article 13, Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020; Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment Between Men and Women in the Access To and Supply of Goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.; Directive 79/7/EEC, 'EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978.

<sup>1649</sup> Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

<sup>1650</sup> Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000.

<sup>1651</sup> Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006.

<sup>1652</sup> Directive 2010/41/EU, 'EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.

These include the EU Pay Transparency Directive<sup>1653</sup> and two EU directives on binding standards for equality bodies.<sup>1654</sup>

Additional EU obligations, relevant to employment equality, include the EU Parental Leave Directive,<sup>1655</sup> the EU Pregnant Workers Directive<sup>1656</sup> and other safeguards for part-time workers<sup>1657</sup> and agency workers.<sup>1658</sup> These fall within scope of Windsor Framework Article 2, requiring no diminution in standards in place on 31 December 2020.

In 2019, the EU adopted the EU Work-Life Balance Directive,<sup>1659</sup> which repeals and replaces the EU Parental Leave Directive.<sup>1660</sup> The EU Work-Life Balance Directive aims to improve families' access to family leave and flexible work arrangements, encourage a more equal sharing of parental leave between men and women, and to address women's underrepresentation in the labour market.<sup>1661</sup> The deadline for transposition into the law of Member States post-dates EU withdrawal. As this measure is not listed in Annex 1, there is no requirement under the Windsor Framework for NI law to keep pace with this change.

<sup>1653</sup> Council Directive 2024/1499/EU, 'EU Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC', 7 May 2024.

<sup>1654</sup> Ibid; Directive 2024/1500, 'Directive of the European Parliament and of the Council on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Amending Directives 2006/54/EC and 2010/41/EU', 14 May 2024.

<sup>1655</sup> Directive 2010/18/EU, 'EU Council Directive Implementing the Revised Framework Agreement on Parental Leave', 8 March 2010.

<sup>1656</sup> Directive 92/85/EEC, 'EU Council Directive on the Introduction of Measures to Encourage Improvements in the Safety and Health at Work of Pregnant Workers and Workers who have Recently Given Birth or are Breastfeeding', 19 October 1992.

<sup>1657</sup> Directive 97/81/EC, 'EU Council Directive Concerning the Framework Agreement on Part-time Workers', 15 December 1997.

<sup>1658</sup> Directive 2008/104/EC, 'EU Parliament and Council Directive on Temporary Agency Work', 19 November 2008.

<sup>1659</sup> Directive 2019/1158/EU, 'EU Parliament and Council Directive on work-life balance for parents and carers', 20 June 2019.

<sup>1660</sup> Directive 2010/18/EU, 'EU Council Directive Implementing the Revised Framework Agreement on Parental Leave', 8 March 2010.

<sup>1661</sup> Directive 2019/1158/EU, 'EU Parliament and Council Directive on Work-life Balance for Parents and Carers', 20 June 2019.

However, the NI Executive can consider aligning with those developments which strengthen protections and ensure equivalence of rights on the island of Ireland.<sup>1662</sup> Moreover, this would avoid NI law mirroring the more limited obligations of the now, outdated, EU Parental Leave Directive.<sup>1663</sup>

In 2023, the Commission, along with the Equality Commission for NI and the Irish Human Rights and Equality Commission, published research,<sup>1664</sup> which highlighted CJEU caselaw relevant to the EU Employment Equality (Framework) Directive.<sup>1665</sup> The CJEU found that differentiating between religious symbols in some circumstances can amount to direct discrimination under Article 2(2) of the EU Directive, and cannot be justified, except by reference to a narrow list of occupational requirements, rather than by a commercial policy of neutrality.<sup>1666</sup>

The CJEU also found that the EU Directive must be interpreted as meaning that a rule prohibiting workers from wearing any visible sign of political, philosophical or religious beliefs in the workplace, does not constitute direct discrimination on the grounds of religion or belief, provided that this rule is applied in a general and undifferentiated way.<sup>1667</sup>

<sup>1662</sup> NI Human Rights Commission and Equality Commission NI, 'Policy Recommendations: EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (NIHRC and ECNI, 2023). See also Island of Ireland Dimension of the Windsor Framework in the 'Constitutional Protections - Human Rights after UK exit for the EU' section in this Annual Statement.

<sup>1663</sup> Directive 2010/18/EU, 'EU Council Directive Implementing the Revised Framework Agreement on Parental Leave', 8 March 2010.

<sup>1664</sup> Sarah Craig et al, 'EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 68.

<sup>1665</sup> Directive 2000/78/EC, 'Council of the EU Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000.

<sup>1666</sup> *IX v WABE eV*, Case C-804/18 and *MH Müller Handels GmbH v MJ*, Case C-341/19, 15 July 2021.

<sup>1667</sup> *Ibid.*

In May 2024, the EU Parliament and the EU Council adopted the two new directives strengthening standards for equality bodies.<sup>1668</sup> The EU Directives amend provisions of the EU Equality Directives listed in Annex 1 and must be transposed by June 2026.<sup>1669</sup> The previous UK Government confirmed that the proposals fall within scope of Windsor Framework Article 2.<sup>1670</sup>

In 2023, the EU Pay Transparency Directive came into force and must be transposed by Member States by 7 June 2026.<sup>1671</sup> The EU Directive aims to strengthen the existing enforcement tools and procedures regarding the rights and obligations and equal pay provisions set out in the EU Gender Equality (Employment) Directive.<sup>1672</sup> The Commission, and the Equality Commission for NI, take the view that NI equality law must keep pace with these changes, further to the UK Government's dynamic alignment obligation in the Windsor Framework.<sup>1673</sup>

<sup>1668</sup> Directive 2024/1499/EU, 'EU Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC, 7 May 2024; Directive 2024/1500/EU, 'Directive of the European Parliament and of the Council on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Amending Directives 2006/54/EC and 2010/41/EU', 14 May 2024. See for more on the Commission's advice on Windsor Framework Article 2 the NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024' (NIHRC and ECNI, 2024). See also the 'Equality and Non-Discrimination - Consolidating, Strengthening and Clarifying Equality Protections' section of this Annual Statement.

<sup>1669</sup> Article 24, Directive 2024/1499/EU, 'EU Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC, 7 May 2024; Article 25, Directive 2024/1500/EU, 'Directive of the European Parliament and of the Council on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Amending Directives 2006/54/EC and 2010/41/EU', 14 May 2024.

<sup>1670</sup> Letter from the Minister of State for NI, Steve Baker, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Ni, 18 September 2023.

<sup>1671</sup> Directive 2023/970/EU, 'EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value Between Men and Women Through Pay Transparency and Enforcement Mechanisms', 10 May 2023.

<sup>1672</sup> Directive 2006/54/EC, 'EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.

<sup>1673</sup> Equality Commission for NI and NI Human Rights Commission, 'Briefing Paper: The EU Pay Transparency Directive: The UK Government's dynamic alignment obligations relating to Windsor Framework Article 2' (ECNI and NIHRC, 2024).

In May 2024, the EU Directive on Combating Violence against Women and Domestic Violence was adopted.<sup>1674</sup> The EU Directive makes particular provision for specialist provision for victims of sexual harassment at work<sup>1675</sup> and for managers and supervisors to receive training on how to recognise, prevent and address sexual harassment at work.<sup>1676</sup> The Commission is currently examining the extent to which the EU Directive on Combating Violence against Women and Domestic Violence amends and/or replaces provisions of the EU Gender Equality (Employment) Directive.<sup>1677</sup>

### Recommendations

The Commission recommends that, to facilitate compliance with the keep pace obligation pursuant to Articles 2 and 13 of the Windsor Framework, NI Executive, and relevant NI Departments, publish an annual report monitoring any relevant CJEU case law and proposed changes by the EU to the six Annex 1 equality.

The Commission recommends that the NI Executive, and relevant NI Departments, ensure that the EU Employment Equality (Framework) Directive is interpreted in line with the decision of the CJEU in the cases of *WABE* and *Müller*.

The Commission recommends that the Executive Office and other relevant NI Departments amend NI law to keep pace with those provisions of the EU directives on minimum standards for equality bodies, and EU Pay Transparency Directive which amend or replace the Annex 1 EU Equality Directives, in line with the transposition deadline for Member States in the EU directives.

<sup>1674</sup> Directive 2024/1385/EU, 'EU Parliament and Council Directive on Combating Violence Against Women and Domestic Violence', 14 May 2024.

<sup>1675</sup> Article 28 and Recital 65, Directive 2024/1385/EU, 'EU Parliament and Council Directive on Combating Violence Against Women and Domestic Violence', 14 May 2024.

<sup>1676</sup> Article 36, Directive 2024/1385/EU, 'EU Parliament and Council Directive on Combating Violence Against Women and Domestic Violence', 14 May 2024.

<sup>1677</sup> Directive 2006/54/EC, 'EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.



The Commission recommends that, in addition to any changes required by the keeping pace obligation under the Windsor Framework, the Department for Communities, on a voluntary basis, ensure NI law aligns with the EU Directive on Combating Violence Against Women and of the EU Work-Life Balance Directive to the extent that they enhance equality and human rights protections and align with international human rights standards and best practice.

## Gender pay gap

In 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive “ensure that the provisions regarding mandatory pay gap reporting in the Employment Act (NI) 2016 is brought into effect in NI”.<sup>1678</sup> The UN CEDAW Committee further recommended that the UK Government encourages “employers to publish a narrative with their gender pay gap data to understand the reasons behind the gender pay gap and to take appropriate remedial measures”.<sup>1679</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive “adopt effective measures to eliminate the persistent gender pay gap”.<sup>1680</sup>

Articles 2 and 13 of the Windsor Framework require the UK Government to ensure NI law ‘keeps pace’ with any changes made by the EU to six Annex 1 Equality Directives which improve the minimum levels of protection available, after 1 January 2021, including adherence to relevant current and future CJEU case law.

In June 2023, the EU Pay Transparency Directive came into force and must be transposed by Member States by 7 June 2026.<sup>1681</sup>

<sup>1678</sup> 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 44(c).

<sup>1679</sup> Ibid, at para 44(d).

<sup>1680</sup> 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 27(a).

<sup>1681</sup> Directive 2023/970/EU, ‘EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value Between Men and Women Through Pay Transparency and Enforcement Mechanisms’, 10 May 2023.

The EU Directive sets minimum standards and aims to strengthen the existing enforcement tools and procedures regarding the rights and obligations and equal pay provisions set out in the EU Gender Equality (Employment) Directive which protects against discrimination in employment on the grounds of gender and is listed in Annex 1.<sup>1682</sup> The Commission, and the Equality Commission for NI, take the view that, apart from a small number of provisions of the EU Pay Transparency Directive that are no longer relevant now that the UK has left the EU, NI equality law must keep pace with these changes, further to the UK Government's dynamic alignment obligation in the Windsor Framework in line with the transposition deadline.<sup>1683</sup>

The EU Pay Transparency Directive aims to give effect to the 'principle of equal pay', enshrined in Article 157 of the Treaty on Functioning of the EU and the prohibition of discrimination laid down in Article 4 of the EU Gender Equality (Employment) Directive, in particular through pay transparency and reinforced enforcement mechanisms.<sup>1684</sup> Implementing the EU Pay Transparency Directive in NI law would lead to greater accountability and transparency by certain employers on gender pay gaps within their organisations. For example, the EU Pay Transparency Directive introduces new obligations on certain employers in terms of pay reporting and joint pay assessments linked to ensuring compliance with the principle of equal pay.<sup>1685</sup>

<sup>1682</sup> Directive 2006/54/EC, 'EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.

<sup>1683</sup> Equality Commission for NI and NI Human Rights Commission, 'Briefing Paper: The EU Pay Transparency Directive: The UK Government's Dynamic Alignment Obligations Relating to Windsor Framework Article 2' (ECNI and NIHRC, 2024).

<sup>1684</sup> Directive 2023/970/EU, 'Directive of the European Parliament and of the Council of the EU to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value Between Men and Women Through Pay Transparency and Enforcement Mechanisms', 10 May 2023.

<sup>1685</sup> Article 9 and 10, Directive 2023/970/EU, 'EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value Between Men and Women Through Pay Transparency and Enforcement Mechanisms', 10 May 2023. This includes that, employers with at least 100 workers must provide and report on the pay gap between female and male workers to a monitoring body, all workers and their representatives and remedy any gender pay differences that are not justified by objective and gender-neutral factors.

It also introduces enhanced enforcement measures to improve access to justice and enforcement of rights, for example, the right of ‘equality bodies’ to engage in court or administrative procedures in support of workers regarding equal pay discrimination,<sup>1686</sup> and strengthened rights relating to compensation.<sup>1687</sup>

In 2023, NI was recorded as the top performing UK region for women’s employment outcomes, with a recorded gender pay gap of five percent.<sup>1688</sup> However, NI was also recorded as having the lowest female labour force participation rate.<sup>1689</sup> This suggests that while employment outcomes for women in NI are better than other parts of the UK, a lower proportion of working age women in NI are participating in the labour market to begin with.<sup>1690</sup> Research by the Nevin Economic Research Institute also found that, controlling for a range of individual, family/household and job characteristics, logged hourly earnings of women in NI are 7.2 percent lower than men’s earnings.<sup>1691</sup> The NI Statistics and Research Agency states that “the gender pay gap in NI is due to the higher proportion of women part-time employees than male part-time employees and the higher proportion of part-time jobs that are low paid”.<sup>1692</sup>

In 2021, gender budgeting experts concluded that:

the NI gendered differential in the NI economic inactivity figures and the gender pay gap are examples which acutely illustrate the need to develop policies which integrate both gender analysis and as a means of identifying persistent structural inequalities and explicit gender equality actions and outcomes in order to ameliorate them.<sup>1693</sup>

<sup>1686</sup> Article 15, Directive 2023/970/EU, ‘EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value Between Men and Women Through Pay Transparency and Enforcement Mechanisms’, 10 May 2023.

<sup>1687</sup> Article 16, Directive 2023/970/EU, ‘EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value Between Men and Women Through Pay Transparency and Enforcement Mechanisms’, 10 May 2023.

<sup>1688</sup> Price Waterhouse Cooper, ‘Women in Work Index 2023’ (PWC, 2023), at 13.

<sup>1689</sup> Ibid.

<sup>1690</sup> Ibid.

<sup>1691</sup> Lisa Wilson and Ciara O’Gorman, ‘How are We Unequal? The Adjusted Gender Pay Gap in NI’ (NERI, 2023), at 51.

<sup>1692</sup> NI Statistics and Research Agency, ‘Employee Earnings in NI’ (NISRA, 2022).

<sup>1693</sup> Joan Ballantine et al, ‘Gender Budgeting: Working Paper 1 – What Does the Literature Tell Us? Lessons for NI’ (Ark Working Papers, 2021), at 2.

In 2024, these conclusions are still relevant.<sup>1694</sup>

The Employment Act (NI) 2016 creates reporting requirements and requires action plans to be adopted by certain employers and the Executive Office aimed at tackling the issue. In 2024, provisions on mandatory reporting have not been commenced. Regulations are required to clarify which employers fall within scope of the reporting requirements. In 2017, requirements to report on the gender pay gap were introduced in England, Wales and Scotland.<sup>1695</sup> In 2021, Ireland introduced the Gender Pay Gap Information Act 2021.<sup>1696</sup> In 2024, the Minister for Communities, Gordon Lyons MLA, is considering next steps in relation to the gender pay gap in the context of the ongoing development of the Gender Equality Strategy.<sup>1697</sup> A timeframe for introducing the Gender Equality Strategy is awaited.<sup>1698</sup> The Minister for Communities also agreed in principle to use the Employment Rights Bill as a vehicle for progressing gender pay gap reporting in NI.<sup>1699</sup> In 2024, the Employment Rights Bill was consulted on,<sup>1700</sup> with its introduction to the NI Assembly awaited.

## Recommendations

The Commission recommends the Department for Communities, working with NI Executive and NI Assembly, ensures that the gender pay gap and insecure, low-paid employment of women in NI is effectively addressed and monitored. This includes adopting a gender budgeting approach and ensuring that the provisions regarding mandatory pay gap reporting in the Employment Act (NI) 2016 are brought into effect in NI.

<sup>1694</sup> Meeting between Ulster University Gender Budgeting Group and NI Human Rights Commission, 4 July 2024.

<sup>1695</sup> Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. The 2017 Regulations came into force on 6 April 2017. They apply to all private and voluntary sector employers with 250 or more employees in England, Wales and Scotland. Public sector employers with 250 or more employees that are listed in the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 are also required to publish information on their gender pay gap.

<sup>1696</sup> Gender Pay Gap Information Act 2021.

<sup>1697</sup> Email Correspondence from the Department for Communities to the NI Human Rights Commission, 17 July 2024.

<sup>1698</sup> Letter from Minister for Communities, Gordon Lyons MLA, to Gender Equality Co-design Group Members, 11 October 2024.

<sup>1699</sup> NI Assembly Hansard, 'Written Answer: Employment Rights Bill – Gordon Lyons MLA – AQW 15701/22-27', 28 October 2024.

<sup>1700</sup> Department for the Economy, 'The Good Jobs Employment Rights Bill Consultation' (DfE, 2024); NI Human Rights Commission, 'Submission to the Department for the Economy on the Employment Rights Bill Consultation' (NIHRC, 2024).

The Commission recommends that the Department for Communities, working with the NI Executive and NI Assembly, requires employers to publish a narrative with their gender pay gap data and that this is evaluated, including through a gender budgeting lens. Immediate steps should be taken to address any issues identified.

The Commission recommends that, as required by Windsor Framework Articles 2 and 13, the Department for Communities, working with the NI Executive and NI Assembly, urgently brings forward legislation to amend NI law to ensure it keeps pace with those provisions of the EU Pay Transparency Directive that amend and/or replace provisions of the EU Gender Equality (Employment) Directive, by 7 June 2026.

## Menopause

In 2016, the UN CEDAW Committee recommended that the UK Government and NI Executive:

adopt specific measures, including temporary special measures, to facilitate access for women belonging to marginalised groups, such as ‘Black, Asian and Minority Ethnic’ women and women with disabilities to the labour market to increase employment rates among those groups of women and reduce the concentration of such women in low-paying jobs.<sup>1701</sup>

The obligation under Articles 2 and 13 of the Windsor Framework to ‘keep pace’ with the Annex 1 Equality Directives includes the EU Gender Equality (Employment) Directive which protects against discrimination in employment on the grounds of gender.<sup>1702</sup>

<sup>1701</sup> 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 44(f).

<sup>1702</sup> Directive 2006/54/EC, ‘Council of the EU Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006.

NI equality law must align with any improvements made by the EU to these rights, on or after 1 January 2021, including monitoring relevant current and future CJEU case law.<sup>1703</sup>

Equality laws in NI protect against discrimination relating to pregnancy and maternity.<sup>1704</sup> Yet, in 2024, there remains no specific protection in NI against discrimination relating to menopause. Menopause-related claims in the UK are often argued on the grounds of sex, age and disability discrimination.<sup>1705</sup> Certain groups may face particular challenges related to menopause including lesbian, gay, bisexual, transgender, queer, intersex+ people, younger women and ethnic minority women.<sup>1706</sup> Yet, the current law in NI does not reflect the intersectional nature of menopause in many cases.<sup>1707</sup>

In 2023, the British Standards Institute published guidance on menstruation, menstrual health and menopause in the workplace.<sup>1708</sup> This is additional to guidance on promoting equality in employment for women affected by menopause in NI that was published in 2021.<sup>1709</sup> The British Standards Institute’s guidance aims “to support the health and well-being of all employees who menstruate or experience peri/menopause”.<sup>1710</sup> It also aims to “encourage a more open and inclusive work culture around menstrual health and peri-menopause”.<sup>1711</sup> The guidance is viewed as particularly beneficial to “managers, human resources, diversity and inclusion specialists, health and safety personnel, occupational health, architects and designers of office spaces”.<sup>1712</sup>

<sup>1703</sup> Article 13, Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020.

<sup>1704</sup> See for example Equal Pay Act (NI) 1970, Sex Discrimination (NI) Order 1976; Maternity and Parental Leave etc. Regulations (NI) 1999.

<sup>1705</sup> *Merchant v BT PLC* [2012] ET/140135/11; *A v Bonmarche Ltd (In Administration)* [2019] 4107766/2019; *Donnachie v Telent Technology Services Ltd* [2020] 1300005/2020.

<sup>1706</sup> House of Commons Women and Equalities Committee, ‘Menopause and the Workplace’ (HoC, 2022), at 11.

<sup>1707</sup> *Ibid.*, at 30.

<sup>1708</sup> Maria Tomlinson, ‘Menstruation, Menstrual Health and Menopause in the Workplace – Guide’ (BSI, 2023).

<sup>1709</sup> NI Committee Irish Congress of Trade Unions, Equality Commission for NI and Labour Relations Agency, ‘Promoting Equality in Employment for Women Affected by Menopause: Guidance for Employers, Trade Union Representatives and Employees’ (ICTUNI, 2021).

<sup>1710</sup> Maria Tomlinson, ‘Menstruation, Menstrual Health and Menopause in the Workplace – Guide’ (BSI, 2023).

<sup>1711</sup> *Ibid.*

<sup>1712</sup> *Ibid.*



In 2024, there were also several employers, such as the NI Civil Service, who introduced menopause policies with the aim of supporting women going through the menopause.<sup>1713</sup>

### Women’s Health Action Plan

In 2024, NI was the only area of the UK without a women’s health strategy. In February 2024, the then Minister of Health Robin Swann MP, announced that the Department of Health would bring forward a Women’s Health Act Plan.<sup>1714</sup> The former Minister of Health noted that this action plan would be taken forward within the current budget “despite the difficult financial position that the Health and Social Care system faces”.<sup>1715</sup> The former Minister of Health further announced that the Department of Health would provide funding for a “public listening exercise” on women’s health in NI.<sup>1716</sup> The Department of Health was continuing to work to develop the action plan, which is intended to include menopause as a women’s health issue.<sup>1717</sup>

In October 2024, the Minister for Health, Mike Nesbitt MLA, confirmed that “a strategy for women’s health will [not] happen in the immediate future” due to “financial constraints and the absence of a long-term budget in NI”.<sup>1718</sup> The Minister for Health also confirmed that the focus continued on introducing an action plan on women’s health in NI, which is deemed feasible within the available resourcing and funding.<sup>1719</sup>

<sup>1713</sup> Department of Finance, ‘Press Release: Civil Service launches Menopause Policy to support staff’, 8 March 2022.

<sup>1714</sup> Department of Health ‘Press Release: Minister Swann outlines Women’s Health Action Plan’, 13 February 2024.

<sup>1715</sup> Ibid.

<sup>1716</sup> Department of Health ‘Press Release: Minister announces public listening exercise on women’s health’, 5 March 2024.

<sup>1717</sup> Meeting between NI Human Rights Commission and Department of Health, 25 June 2024.

<sup>1718</sup> NI Assembly Hansard, ‘Ministerial Statement – Maternity and Neonatal Services - Minister for Health, Mike Nesbitt MLA’, 22 October 2024.

<sup>1719</sup> Ibid.



## Recommendations

The Commission recommends that the Department for the Economy identifies, develops, implements and monitors effective measures to ensure perimenopausal and menopausal women have equal access to employment throughout their working life and the necessary support to ensure such access is practically available. Every stage of this process should be based on meaningful engagement with perimenopausal and menopausal women and their representative organisations. It should also involve consulting on revising equality legislation and policies to include menopause as a protected characteristic.

The Commission recommends that the Department of Health takes immediate steps to ensure perimenopausal and menopausal women have access to the medication and treatments that they need to treat their menopause symptoms on a long-term and affordable basis, with a view to supporting all women's enjoyment of rights, including access to work.

## Working conditions of migrant workers

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive:

intensify its efforts to strengthen legislation, including the visa policy, and regulations protecting migrant workers against abuse and exploitation, facilitate access to effective legal remedies, with interpreting services, and ensure that workers can access those remedies without fear of reprisal, detention or deportation; [and]

facilitate the reporting of abuse and exploitation, including by ensuring access to multiple forms of reporting and by conducting educational campaigns for migrant workers, in their own languages, about their rights and available remedies.<sup>1720</sup>

<sup>1720</sup> CCPR/C/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 3 May 2024, at para 39(c)-39(d).

In 2023, the UN CRC Committee recommended that the UK Government consider ratifying the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.<sup>1721</sup> In 2019, a similar recommendation was made by the UN CEDAW Committee.<sup>1722</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive:

- a) adopt all necessary measures to ensure that all migrant workers, including migrant domestic workers, enjoy the same conditions as other workers regards remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours, social security and maternity leave protection;
- b) protect migrant workers and migrant domestic workers from all forms of exploitation and abuse...;
- c) improve the complaint mechanisms and legal assistance provided to migrant workers; [and]
- d) ensure effective inspection mechanisms for monitoring the conditions of work of migrant workers and migrant domestic workers.<sup>1723</sup>

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive “work towards repealing legislation making it a criminal offence... to employ, migrants who are irregularly present in the country”.<sup>1724</sup>

<sup>1721</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 22 June 2023, at para 58.

<sup>1722</sup> CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Review of the UK of Great Britain and NI’, 14 March 2019, at para 63.

<sup>1723</sup> 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 35.

<sup>1724</sup> CoE European Commission Against Racism and Intolerance, ‘Report on the UK (Sixth Monitoring Cycle)’ (ECRI, 2024), at para 40.

In 2023, the Commission published research on the equality rights of migrants in NI after Brexit.<sup>1725</sup> It highlighted that EU/EEA nationals resident in the UK on 31 December 2020, or individuals with frontier workers' rights under the UK-EU Withdrawal Agreement, remain protected against discrimination in the workplace on the ground of nationality.<sup>1726</sup> Other migrant workers fall outside this protection; however, Windsor Framework Article 2 protects “everyone in the community” against a diminution of rights across a range of areas e.g. sex discrimination in employment.<sup>1727</sup>

In 2024, migrant workers in NI continue to be at high risk of exploitation, including by being unaware of their employment rights in NI.<sup>1728</sup> It has been reported that individuals that rely on sponsorship visas are at particular risk, including being charged by their employer if they try to leave before their contract is finished.<sup>1729</sup> This is a particular issue regarding non-unionised sectors, agriculture, the care home sector, and zero-hour contract employers.<sup>1730</sup> It is difficult to establish the demography of migrant workers in NI because data is not always available.<sup>1731</sup>

## Recommendations

The Commission recommends that the UK Government ratifies the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

<sup>1725</sup> Alison Harvey, ‘Legal Analysis of Immigration or Related Rights and Equality Protections in NI After Brexit’ (NIHRC, 2023).

<sup>1726</sup> Ibid, at 10. See also ‘Constitutional Protections – EU Settlement Scheme and Frontier Workers’ above.

<sup>1727</sup> Alison Harvey, ‘Legal Analysis of Immigration or Related Rights and Equality Protections in NI After Brexit’ (NIHRC, 2023), at 13.

<sup>1728</sup> Irish Congress of Trade Union, ‘Migrant Workers and Their Families in NI: A Trade Union Response’ (ICTU, 2023), at 46.

<sup>1729</sup> Jane Starling, ‘If you want a reference, pay up.’ How UK care homes are exploiting overseas nurses’, *UNISON Magazine*, 24 February 2022; NI Human Rights Commission, ‘Submission to the UN ICESCR Committee: Parallel Report for the List of Issues in Relation to the Seventh Periodic Report of the UK’ (NIHRC, 2022).

<sup>1730</sup> NI Human Rights Commission, ‘Submission to the UN ICESCR Committee: Parallel Report for the List of Issues in Relation to the Seventh Periodic Report of the UK’ (NIHRC, 2022).

<sup>1731</sup> Irish Congress of Trade Union, ‘Migrant Workers and Their Families in NI: A Trade Union Response’ (ICTU, 2023), at 46.

The Commission recommends that the Department for the Economy ensures that migrant workers are protected against exploitation and abuse. This includes ensuring that all migrant workers enjoy the same conditions as other workers in NI, and have effective access to complaint mechanisms, including interpretation services, and legal assistance. Furthermore, that migrant workers have access to effective remedies without fear of reprisal, deportation or detention.

The Commission recommends that the Department for the Economy ensures that the conditions of migrant workers in NI are effectively monitored, including by regularly collecting and disseminating all relevant, disaggregated data.

# Right to An Adequate Standard of Living and To Social Security

## ● Access to food

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

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

- 1) ensuring all children's access to nutritious foods and reducing their reliance on food banks, regardless of their or their parents' migration status;
- 2) expanding the free school meals programme to all children in disadvantaged situations, including children whose parents receive Universal Credit;
- 3) addressing the root causes of food insecurity including poverty;
- 4) providing nutrition services in schools and communities; and
- 5) promoting healthy lifestyles and physical activity.<sup>1732</sup>

<sup>1732</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 41(e).

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive “develop a comprehensive national strategy for the protection and promotion of the right to adequate food in order to address food insecurity in all jurisdictions of the State party and to promote healthier diets”.<sup>1733</sup>

## Strategy

In 2021, the Department of Agriculture, Environment and Rural Affairs consulted on a draft NI Food Strategy Framework which envisages a cross-departmental approach to NI’s food system, providing opportunities to improve the environment, health and wellbeing, and tackle issues such as food insecurity.<sup>1734</sup> In 2024, the Food Strategy Framework was in its final drafting stages before being brought to the NI Executive.<sup>1735</sup>

## Food insecurity

In 2023, the Food Standards Agency reported that 26 per cent of 3,519 respondents in NI were food insecure, meaning individuals are facing either reduced quality, variety or desirability of diet, or disrupted eating patterns and reduced food intake.<sup>1736</sup>

In 2023/2024, the Trussell Trust network distributed 90,300 emergency food parcels, including over 38,000 parcels for children.<sup>1737</sup> The Trussell Trust has commented that:

figures represent more than doubling (143 per cent increase) in the number of parcels distributed five years ago in 2018/2019 and they are far above the levels seen before the rapid increase in the cost of living in 2021/2022 (62,600 parcels). This growth in need is higher for children, with the number of parcels provided for them increasing by 151 per cent over the five-year-period between 2018/2019 and 2023/2024.<sup>1738</sup>

<sup>1733</sup> 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 67.

<sup>1734</sup> Department of Agriculture, Environment and Rural Affairs, ‘NI Food Strategy Framework: Public Consultation Document’ (DAERA, 2021).

<sup>1735</sup> NI Assembly Hansard, ‘Official Report: Farm Support and Development Programme – 14 May 2024’ (NIA, 2024).

<sup>1736</sup> Food Standards Agency, ‘Food and You 2: NI Wave 5-6 Key Findings’ (FSA, 2023).

<sup>1737</sup> Trussell Trust, ‘Emergency Food Parcel Distribution in NI: 1 April 2023 to 31 March 2024’ (TT, 2024), at 1.

<sup>1738</sup> Ibid.

It is important to note that other providers operate emergency food relief, therefore official figures do not represent the scale of food insecurity in NI. Furthermore, many people experiencing food insecurity may not access this form of support.

Trussell Trust and Ipsos research has found that people with disabilities, working age adults, particularly individuals living alone, people with caring responsibilities, women, and children are overrepresented among individuals using foodbanks in NI.<sup>1739</sup> It has also been reported that individuals with food allergies or intolerances are particularly affected by the rise in food costs and face challenges in accessing appropriate foods, including in foodbanks.<sup>1740</sup>

The Trussell Trust reports that the “significant increases in need seen over the last few years are linked to the soaring cost of living for people across NI and the fact that people’s incomes (especially for social security) have failed to keep up with these costs”.<sup>1741</sup> There are concerns that “the level of need... [in 2023/2024] has placed a significant strain on food banks”.<sup>1742</sup> There are “multiple examples of food banks placing temporary limits on the number of referrals a person can access, in order to manage the food bank’s resources and capacity at the time of unprecedented need”.<sup>1743</sup> The Trussell Trust has stressed that:

these levels of need are part of a longer-term trend which pre-dates the cost of living crisis, and even the COVID-19 pandemic. While these two events have had a major impact on food bank need, they are not the main cause. Rather, they have exposed and exacerbated a longer-term crisis, that of a weakened social security system that is unable to protect people from the most severe forms of hardship, forcing more people to the doors of food banks.<sup>1744</sup>

<sup>1739</sup> Trussell Trust and Ipsos, ‘Hunger in NI’ (TT and Ipsos, 2023), at 26.

<sup>1740</sup> NI Commissioner for Children and Young People, ‘A Place to Call Home – Report Launch’, 23 February 2023; Sara Neill, ‘Cost of Living: NI woman with coeliac disease says food bill has doubled’, *BBC News*, 24 July 2023.

<sup>1741</sup> Trussell Trust, ‘Emergency Food Parcel Distribution in NI: 1 April 2023 to 31 March 2024’ (TT, 2024), at 2.

<sup>1742</sup> *Ibid.*

<sup>1743</sup> *Ibid.*

<sup>1744</sup> *Ibid.*



## Free School Meals

In 2023/2024, data on free school meals in NI was suspended.<sup>1745</sup> In 2022/2023, there were 96,319 children in NI schools with free school meal entitlement (28 per cent of enrolments).<sup>1746</sup>

Unlike elsewhere in the UK, there is no long-term commitment to continue free school meals during school holidays as standard.<sup>1747</sup> Between 2020 and 2022, the School Holiday Food Grant scheme provided direct payments to families in receipt of free school meals during COVID-19 term-time school closures and across summer holidays.<sup>1748</sup> However, in 2023, the Department of Education ended free school meals during school holidays in NI, in light of significant budgetary pressures.<sup>1749</sup> In 2024, there were no free school meals available during the school holidays in NI.<sup>1750</sup> There is all party support to reinstate holiday hunger payments.<sup>1751</sup> However, in March 2024, the Minister of Education, Paul Givan MLA, confirmed that ring-fenced funding is required to provide for free school meals during holidays.<sup>1752</sup> In 2024, a draft Private Members Bill aimed at placing a legal duty on the Department of Education and Education Authority NI to provide payments to parents in place of free school meals during the school holiday period was being explored.<sup>1753</sup>

<sup>1745</sup> Department of Education, 'School Meals Statistical Bulletins'. Available at: [School meals statistical bulletins | Department of Education \(education-ni.gov.uk\)](https://www.education-ni.gov.uk/school-meals-statistical-bulletins)

<sup>1746</sup> Department of Education, 'Free School Meal Entitlement Year 2022/2023' (DE, 2023).

<sup>1747</sup> NI Assembly Hansard, 'Written Answers: Free School Meals – Peter Weir MLA – AQW 7681/17-22', 8 October 2020; Robbie Meredith, 'Free school meals: Meals to be funded during holidays until 2022', *BBC News*, 20 November 2020.

<sup>1748</sup> Department of Education, 'Press Release: Ministers take action in relation to Free School Meals payment', 26 March 2020; Department of Finance, 'Press Release: Murphy allocates funds for Health, Childcare and Free School Meals', 30 June 2020; NI Assembly Hansard, 'Written Answers: Free School Meals – Minister of Education, Michelle McIlveen MLA – AQW 947/22-27', 20 June 2022.

<sup>1749</sup> Robbie Meredith, 'Free school meals: NI 'holiday hunger' payments axed', *BBC News*, 30 March 2023.

<sup>1750</sup> Ross McCrea, 'Children "may go hungry without summer meal payments"', *BBC News*, 30 June 2024.

<sup>1751</sup> NI Assembly Hansard, 'Official Report: Holiday Hunger – Nick Mathison MLA – 19 March 2024' (NIA, 2024).

<sup>1752</sup> NI Assembly Hansard, 'Official Report: Holiday Hunger – Paul Givan MLA – 19 March 2024' (NIA, 2024).

<sup>1753</sup> Sinn Fein, 'Press Release: "It's time to end holiday hunger" – Baker bringing forward legislation to tackle holiday hunger', 6 June 2024.

## Recommendations

The Commission recommends that the Department for Communities and the Department for Agriculture, Environment and Rural Affairs take immediate and effective measures to ensure food security in NI on an emergency and long-term basis, including promptly developing, implementing and monitoring a rights-based strategy for the protection of the right to adequate and good quality food and the promotion of healthy diets in NI. Such measures should consider and reasonably accommodate food allergies and intolerances.

The Commission recommends that the Department of Education ensures that Free School Meals are consistently available during school holidays and can be fully accessed by children in NI as required.

## Asylum and refugee accommodation

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “strengthen measures to phase out temporary and “contingency” accommodation schemes”.<sup>1754</sup>

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government, and NI Executive, “as a matter of priority... prolong the move-on period between the asylum support and the general social support systems well beyond 28 days to ensure there is no gap in support, notably as regards housing and payments ensuring subsistence”.<sup>1755</sup>

The UK Government recognises that Windsor Framework Article 2 applies to “everyone who is subject to [NI]... law”.<sup>1756</sup>

<sup>1754</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 46(a).

<sup>1755</sup> CoE European Commission Against Racism and Intolerance, ‘Report on the UK (Sixth Monitoring Cycle)’ (ECRI, 2024), at para 86.

<sup>1756</sup> NI Office, ‘UK Government Commitment To “No Diminution of Rights, Safeguards and Equality of Opportunity” In NI: What Does It Mean and How Will It Be Implemented?’ (NIO, 2020), at para 8.

In May 2024, the High Court of Justice in NI confirmed that “[w]hilst it is true to say that the [Belfast (Good Friday) Agreement] did not expressly reference immigration or asylum, there is no basis to exclude such individuals from the wide compass of ‘everyone in the community’”.<sup>1757</sup> The High Court of Justice in NI further found that the rights of people seeking asylum fall within the definition of ‘civil rights’ in the 1998 Agreement.<sup>1758</sup> The High Court of Justice in NI confirmed an earlier decision<sup>1759</sup> and found a number of EU measures were relevant to refugees and people seeking asylum,<sup>1760</sup> including the EU Reception Directive which sets minimum standards for material reception conditions and requires states to ensure an adequate standard of living.<sup>1761</sup>

While immigration and asylum procedures are ultimately the responsibility of the UK Home Office, NI Executive departments are responsible for providing support and services to refugees and people seeking asylum to assist their resettlement in NI.

As of 31 March 2024, the reported number of people receiving asylum support in NI was 2,748.<sup>1762</sup> The actual number of people seeking asylum is likely to be higher, as some people may not be eligible for asylum support and, therefore will not be reflected in reported figures.<sup>1763</sup>

<sup>1757</sup> *In the Matter of an Application by the NI Human Rights Commission for Judicial Review* [2024] NIKB 35, at para 69.

<sup>1758</sup> *Ibid*, at para 70.

<sup>1759</sup> *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, at para 94.

<sup>1760</sup> Directive 2005/85/EC, ‘EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005; Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004; Regulation 2013/604/EU, ‘EU Parliament and Council Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person’, 26 June 2013.

<sup>1761</sup> Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

<sup>1762</sup> Home Office, ‘Immigration System Statistics Year Ending March 2024: Asylum and Resettlement – Asylum Seekers in Receipt of Support’ (HO, 2024).

<sup>1763</sup> Law Centre NI, ‘Information Briefing: NI Refugee Statistics July 2023’. Available at: [Resource library | Law Centre Northern Ireland \(lawcentreni.org\)](https://www.lawcentreni.org/).

## Asylum accommodation

In 2023, the High Court of England and Wales found that the Home Office acted unlawfully in routinely and systematically accommodating newly arrived unaccompanied children seeking asylum in hotels since 2021.<sup>1764</sup>

The Mears Group PLC is sub-contracted by the Home Office to provide accommodation and support for people seeking asylum in NI.<sup>1765</sup> It is intended that there are two types of asylum accommodation – initial accommodation (short-term housing for first three to four weeks) and dispersal accommodation (longer-term housing while awaiting determination of asylum claim).<sup>1766</sup> However, in 2020, the use of ‘contingency accommodation’ increased significantly across the UK.<sup>1767</sup> In 2023, the then UK Government started to introduce alternative forms of accommodation, such as barges and tents on former military bases.<sup>1768</sup> The Minister for Border Security and Asylum, Angela Eagle MP, has indicated that the new UK Government does not wish to continue with such alternative forms of temporary accommodation.<sup>1769</sup>

In NI, contingency accommodation in the form of hotels is the main form of temporary asylum accommodation being used.<sup>1770</sup> Such accommodation is being used for much longer than the intended three to four weeks, often with no set timeframe for

<sup>1764</sup> *EPCAT UK, R (On the Application Of) v Kent County Council and Anor* [2023] EWHC 1953 (Admin).

<sup>1765</sup> UK Government, ‘Contracts Finder – Asylum Accommodation and Support Services Contract NI’. Available at: <https://www.contractsfinder.service.gov.uk/Notice/af043016-dd83-4308-8b3c-0d134a3a89c9>.

<sup>1766</sup> UK Visas and Immigration, ‘A Home Office Guide to Living in Asylum Accommodation’ (HO, 2019).

<sup>1767</sup> Independent Chief Inspector of Borders and Immigration, ‘An Inspection of Contingency Asylum Accommodation May 2021–November 2021’ (UK Gov, 2022).

<sup>1768</sup> Andrew McDonald, ‘UK to house migrants in ex-army barracks, mulls use of barges’, *Politico*, 29 March 2023; Home Office, ‘Factsheet: Asylum accommodation on a vessel in Portland Port’ 18 July 2023; Kiran Stacey, ‘UK ministers accused over asylum backlogs after 2,000 tents bought’, *The Guardian*, 28 July 2023; Rajeev Syal, ‘First occupants of Bibby Stockholm barge are taken onboard’, *The Guardian*, 7 August 2023.

<sup>1769</sup> Charlotte Andrews, ‘Bibby Stockholm migrant barge to be closed’, *BBC News*, 23 July 2024.

<sup>1770</sup> UK Visas and Immigration, ‘A Home Office Guide to Living in Asylum Accommodation’ (HO, 2019); Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

being moved to dispersal accommodation.<sup>1771</sup> There have also been reports that when the move from contingency to dispersal accommodation occurs, it is conducted in an arbitrary manner, without any form of advance notice and without any meaningful support to ensure access to education, healthcare and support services.<sup>1772</sup>

In 2022, the Commission conducted two site visits to hotels being used as contingency accommodation in NI.<sup>1773</sup> During the visits, hotel managers and Mears Welfare Officers confirmed awareness of the difficulties people seeking asylum are having in accessing healthcare, education and Migrant Help, but advised that delays often come down to capacity in local services, which they are unable to resolve in isolation.<sup>1774</sup>

The Commission has also been made aware that UK Home Office dispersal accommodation, where people seeking asylum are moved to after contingency accommodation, is often inadequate, with residents living with damp or mould in some cases.<sup>1775</sup>

In 2023, the Independent Chief Inspector of Borders and Immigration, David Neal, conducted an inspection of contingency asylum accommodation for families with children in NI.<sup>1776</sup> In February 2024, the Independent Chief Inspector's reported concerns with the length of time families seeking asylum in NI were spending in hotels.<sup>1777</sup> The average length of stay in hotels in NI for the purposes of asylum accommodation was 201 days, but many families had been there for over 12 months.<sup>1778</sup> The Independent Chief Inspector's also noted concerns regarding the

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<sup>1771</sup> Ibid.

<sup>1772</sup> Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

<sup>1773</sup> Meeting between NI Human Rights Commission, Home Office and Mears Group PLC, 15 December 2022.

<sup>1774</sup> Ibid.

<sup>1775</sup> NI Human Rights Commission roundtable meeting with civil society organisations, 9 April 2024.

<sup>1776</sup> Independent Chief Inspector of Borders and Immigration, 'Press Release: An inspection of contingency asylum accommodation for families with children in NI'. Available at: <https://www.gov.uk/government/news/an-inspection-of-contingency-asylum-accommodation-for-families-with-children-in-northern-ireland>

<sup>1777</sup> Independent Chief Inspector of Borders and Immigration, 'An Inspection of Contingency Asylum Accommodation for Families with Children in NI' (ICIBI), at para 1.1.

<sup>1778</sup> Ibid.

ability of statutory services to meet complex needs of people seeking asylum; families' seeking asylum's experience of negative attitudes and lack of respect from hotel staff; provision of quality and culturally appropriate food; staff access to accommodation; a lack of training on safeguarding among staff; and a lack of child-friendly materials on available support services.<sup>1779</sup>

The Home Office fully accepted two of the Independent Chief Inspector's recommendations and partially accepted the remaining three recommendations.<sup>1780</sup> In 2024, Executive Office officials were continuing to liaise with the Home Office on implementation of the Independent Chief Inspector's recommendations and "have put in place regular check-in meetings to be assured on progress and enable local representation of issues".<sup>1781</sup>

In 2024, the new UK Government is to "start taking asylum decisions again... [to] end asylum hotels. The new border security, asylum and immigration bill announced... will bring in a new replacement arrangements, including fast-track decisions and returns to safe countries".<sup>1782</sup>

### **Move on accommodation after receiving refugee status**

After individuals and families receive their refugee status, they are evicted from Home Office dispersal accommodation and have 28 days to find alternative accommodation, referred to as 'moving on' accommodation.<sup>1783</sup> In 2024, reports suggest that this notice period is sometimes shorter in NI.<sup>1784</sup>

Refugees that present to the NI Housing Executive as homeless will be offered available accommodation, which can often be temporary hotel accommodation, and often in a different

<sup>1779</sup> Ibid, at paras 1.2-1.7.

<sup>1780</sup> NI Assembly Hansard, 'Written Answer: Asylum Accommodation - Michelle O'Neill MLA and Emma Little-Pengelly MLA - AQW 12125/22-27', 17 July 2024.

<sup>1781</sup> Ibid.

<sup>1782</sup> UK Parliament Hansard, 'House of Commons: Border Security and Asylum - Secretary of State for the Home Department, Rt Hon Yvette Cooper MP - Volume 752', 22 July 2024.

<sup>1783</sup> Section 22, Asylum Support Regulations 2000.

<sup>1784</sup> Meeting between the NI Human Rights Commission and the Horn of Africa People's Aid NI, 16 April 2024.



area.<sup>1785</sup> The Commission has received reports that this can be significantly disruptive and create anxiety.<sup>1786</sup> For example, many of the individuals or families affected will have experienced trauma.<sup>1787</sup> Furthermore, the requirement to move from an area where an individual or family has settled affects access to healthcare and education.<sup>1788</sup> Additionally, where hotels are used as temporary accommodation, there are no available cooking facilities for individuals and families to prepare meals.<sup>1789</sup>

## Recommendations

The Commission recommends that the Home Office and the Executive Office urgently review the support and accommodation provided to refugees and people seeking asylum in NI to ensure it is adequate, fit for purpose and culturally appropriate, in compliance with international human rights standards and EU standards falling within scope of Windsor Framework Article 2, including the EU Reception Directive. This review should be conducted in consultation with refugees, people that are seeking asylum and their representative organisations.

The Commission recommends that the Home Office and the Executive Office urgently develop and resource a realistic, long-term strategy aimed at expeditiously ending the use of hotels as the 'contingency' asylum accommodation model in NI, including the use of hotels, particularly for families, children and persons with disabilities. The strategy should be culturally appropriate, take into account individual's specific needs and be developed in meaningful consultation with refugees, people that are seeking asylum and their representative organisations.

<sup>1785</sup> Ibid.

<sup>1786</sup> Ibid.

<sup>1787</sup> Ibid.

<sup>1788</sup> Ibid.

<sup>1789</sup> Ibid.



The Commission recommends that the NI Executive ensures that appropriate resource and support is available for the NI Housing Executive to provide appropriate ‘move on’ accommodation to individuals and families granted asylum in NI, as required. This accommodation should be of an adequate standard, culturally appropriate and located in an area where it is still reasonably possible for successful asylum applicants to continue to use the same healthcare or education provider that they had been utilising or engaging during the asylum application process.

### Asylum financial support

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive “revise the no recourse to public funds rule and ensure that it does not expose migrant households to a higher risk of poverty and precarity”.<sup>1790</sup>

In 2019, the UN CEDAW Committee recommended that the UK Government “take measures to enable asylum seeking and refugee women to access employment and appropriate housing”.<sup>1791</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government “increase the level of support provided to asylum seekers, including through the daily allowance, in order to ensure that they enjoy their economic, social and cultural rights, in particular the right to an adequate standard of living”.<sup>1792</sup> The UN ICESCR Committee further recommended that the UK Government “ensure that asylum seekers are not restricted from accessing employment while their claims are being processed”.<sup>1793</sup>

<sup>1790</sup> 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, at para 48.

<sup>1791</sup> 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 55(c).

<sup>1792</sup> 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 25.

<sup>1793</sup> Ibid.

The UK Government recognises that Windsor Framework Article 2 applies to “everyone who is subject to [NI]... law”.<sup>1794</sup> In May 2024, the High Court of Justice in NI confirmed that “[w]hilst it is true to say that the [Belfast (Good Friday) Agreement] did not expressly reference immigration or asylum, there is no basis to exclude such individuals from the wide compass of ‘everyone in the community’”.<sup>1795</sup> The High Court of Justice in NI further found that the rights of people seeking asylum fall within the definition of ‘civil rights’ in the 1998 Agreement.<sup>1796</sup> The High Court of Justice in NI confirmed an earlier decision<sup>1797</sup> and found several EU measures were relevant to refugees and people seeking asylum,<sup>1798</sup> including the EU Reception Directive sets minimum standards for the reception of people seeking asylum, includes “the material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence”.<sup>1799</sup> The EU Directive also provides specific protections for vulnerable persons during the asylum process.<sup>1800</sup>

People seeking asylum are not able to work in the UK, including NI, for the first year that their claim is being considered. Such individuals are therefore at a greater risk of destitution as many have no means to supplement their income. Section 95 of the Immigration and Asylum Act 1999 provides for support for people seeking asylum and their dependents who appear to be destitute or who are likely to become destitute.

<sup>1794</sup> NI Office, ‘UK Government Commitment To “No Diminution of Rights, Safeguards and Equality of Opportunity” In NI: What Does It Mean and How Will It Be Implemented?’ (NIO, 2020), at para 8.

<sup>1795</sup> *In the Matter of an Application by the NI Human Rights Commission for Judicial Review* [2024] NIKB 35, at para 69.

<sup>1796</sup> *Ibid*, at para 70.

<sup>1797</sup> *In the Matter of an Application by Aman Angsom for Judicial Review* [2023] NIKB 102, at para 94.

<sup>1798</sup> Directive 2005/85/EC, ‘EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005; Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004; Regulation 2013/604/EU, ‘EU Parliament and Council Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-country National or a Stateless Person’, 26 June 2013.

<sup>1799</sup> Article 13, Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

<sup>1800</sup> Articles 17-20, Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

In March 2024, 2,598 people seeking asylum were in receipt of section 95 support in NI.<sup>1801</sup>

Section 95 support includes housing and £49.18 allowance per week for each person in self-catered accommodation.<sup>1802</sup> For people in accommodation that is catered they receive £8.86 allowance per week. £5.25 per week is available for people seeking asylum that are pregnant or a mother of a child aged one to three years old.<sup>1803</sup> Up to £9.50 is available for a mother of a baby under 1 year old.<sup>1804</sup>

Reports indicate that people seeking asylum find it difficult to make their support payments stretch to cover their living costs.<sup>1805</sup> It is also not possible for asylum support payments to be made or used online. It has been reported that children are facing extreme poverty, homelessness and destitution due to their parent's or carer's immigration status.<sup>1806</sup> This situation was exacerbated by the COVID-19 pandemic.<sup>1807</sup>

In 2023, the High Court of England and Wales found that the then Secretary of State for the Home Department, Suella Braverman MP, acted unlawfully in failing to promptly provide basic support to people seeking asylum, including young children and pregnant women.<sup>1808</sup> This followed an earlier mandatory order requiring the Secretary of State for the Home Department to increase support payments after they unlawfully failed to act on internal advice to increase the rate to keep pace with inflation and mitigate the consequential rises in the cost of living throughout 2022.<sup>1809</sup>

<sup>1801</sup> Home Office, 'Immigration System Statistics: Asylum and Resettlement – Asylum Seekers in Receipt of Support' (HO, 2024).

<sup>1802</sup> UK Government, 'Asylum Support'. Available at: <https://www.gov.uk/asylum-support/what-youll-get>

<sup>1803</sup> Ibid.

<sup>1804</sup> Ibid.

<sup>1805</sup> British Red Cross, 'The Longest Year: Life Under Local Restrictions – NI Briefing' (BRC, 2021).

<sup>1806</sup> NI Commissioner for Children and Young People, 'A Hostile Environment: Children and Families Affected By Immigration Status and NI Recourse to Public Funds' (NICCY, 2021), at 42.

<sup>1807</sup> Ibid.

<sup>1808</sup> *HA, SXK, K, NY, and AM v Secretary of State for the Home Department* [2023] EWHC 1876.

<sup>1809</sup> *R (CB) v Secretary of State for the Home Department* [2022] EWHC 3329.

The Illegal Migration Act 2023 provides that individuals who are not detained and whose cases have been declared inadmissible under the UK asylum process will be eligible for support on similar terms as individuals whose asylum claims have been finally refused.<sup>1810</sup> However, it is anticipated that the 2023 Act will significantly increase the number of people reliant on this support, which may increase the number at risk of destitution and exploitation.<sup>1811</sup> In 2024, in respect of a judicial review taken by the Commission, the High Court in NI found provisions of the Illegal Migration Act 2023 to be incompatible with Articles 3, 4 and 8 of the ECHR and to diminish minimum EU asylum standards in breach of Windsor Framework Article 2.<sup>1812</sup> The High Court of Justice in NI disapplied several provisions of the 2023 Act in NI.<sup>1813</sup>

In 2024, the ‘no recourse to public funds’ condition remained a particular concern in NI.<sup>1814</sup> In such scenarios, the UK Government is relying on local authority provision as an alternative source of support, however NI local councils do not have responsibility for housing, social services or education.<sup>1815</sup> The Minister for Border Security and Asylum, Angela Eagle MP, confirmed that the new UK Government intend to retain the no recourse to public funds policy. The Minister for Border Security and Asylum stated that “the best way to deal with the issue of destitution, in my view, is to decide asylum claims quickly and accurately so that those who are entitled to work can do so and can have such recourse, and those who are not can be swiftly removed”.<sup>1816</sup>

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<sup>1810</sup> Section 9, Illegal Migration Act 2023.

<sup>1811</sup> British Red Cross, ‘At Risk: Exploitation and the UK Asylum System’. Available at: <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/at-risk-exploitation-and-the-uk-asylum-system>.

<sup>1812</sup> *In the Matter of an Application by NI Human Rights Commission for Judicial Review* [2024] NIKB 35.

<sup>1813</sup> *Ibid*, at para 178.

<sup>1814</sup> NI Human Rights Commission, ‘Response to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI’ (NIHRC, 2021).

<sup>1815</sup> *Ibid*.

<sup>1816</sup> House of Commons Hansard, ‘Oral Question on Asylum Seekers: Government Support - Carla Denyer - Column 1013 - 900105’, 29 July 2024.

## Recommendations

The Commission recommends the Home Office ensures the level of financial support provided to people seeking asylum reflects the cost of living in NI and that no individual is exposed to destitution, including if their application has been rejected and they face a genuine obstacle to leaving the UK or they are subject to the no recourse to public funds rule.

The Commission continues to call on the Home Office to review the restrictions placed on people seeking asylum in the UK, including NI, which prevent the taking up of work while claims are being processed.

The Commission recommends that the Home Office ensures that support payments to people seeking asylum in NI can be used online.

The Commission advises the Home Office to embed consideration of Windsor Framework Article 2 with respect to financial support for people seeking asylum in NI to ensure there is no diminutions of rights, including the provisions set out in the EU Reception Directive, and monitor any proposed changes by the EU to the six Annex 1 Equality Directives, as well as relevant CJEU case law.

## Carers

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “strengthen measures to enable... caregivers to balance their professional and family responsibilities”.<sup>1817</sup> The UN CRC Committee also recommended that the UK Government and NI Executive “train professionals working with and for children, including teachers, to identify ‘young carers’, and provide their families with the support necessary to relieve such children of their responsibilities”.<sup>1818</sup>

<sup>1817</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 36(a).

<sup>1818</sup> Ibid, at para 36(c).

Furthermore, the UN CRC Committee recommended that the UK Government and NI Executive “develop adequately funded mental health services that are tailored to the specific needs of... ‘young carers’, including through sufficient investments in specialist services”.<sup>1819</sup>

In 2019, the UN CEDAW Committee noted with concern “that reductions in social care services increase the burden on primary caregivers, who are disproportionately women”.<sup>1820</sup> The UN CEDAW Committee recommended that UK Government and NI Executive “undertake a comprehensive assessment on the impact of austerity measures on the rights of women and adopt measures to mitigate and remedy the negative consequences without delay”.<sup>1821</sup>

## Statistics

In 2022, there were more than 290,000 unpaid carers in NI, with it estimated that one in five adults in NI have some form of unpaid caring role.<sup>1822</sup> It was further estimated that women represented nearly two thirds of the NI carer population. Additionally, it was reported that 30 per cent of unpaid carers in NI lived in poverty.<sup>1823</sup> This was higher than individuals without caring responsibilities and was the highest rate of carer poverty in the UK.<sup>1824</sup> It was further estimated that at least 44 per cent of carers in NI were concerned they would not be able to heat their homes safely because of growing costs.<sup>1825</sup> Furthermore, in 2022, UK-wide data showed that one in five households receiving Carers Allowance were living in food insecurity.<sup>1826</sup>

Before the COVID-19 pandemic, the care provided by unpaid carers in NI was worth £4.6 billion per year.<sup>1827</sup>

<sup>1819</sup> Ibid, at para 43(e).

<sup>1820</sup> 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 17.

<sup>1821</sup> Ibid, at para 18.

<sup>1822</sup> Carers NI, ‘Unpaid Carers, Poverty and the Cost of Living Crisis in NI’ (CNI, 2022), at 5.

<sup>1823</sup> Ibid.

<sup>1824</sup> Joseph Rowntree Foundation, ‘Poverty in NI 2022’ (JRF, 2022), at 31.

<sup>1825</sup> Carers NI, ‘Unpaid Carers, Poverty and the Cost of Living Crisis in NI’ (CNI, 2022), at 8.

<sup>1826</sup> Ibid, at 11.

<sup>1827</sup> Ibid, at 5.



During the COVID-19 pandemic, it is estimated that this increased to £6.9 billion per year.<sup>1828</sup> In 2022, it was estimated that there is a fifty per cent chance of an individual in NI providing unpaid care by the time they are fifty years old.<sup>1829</sup>

In 2022, approximately 3.5 per cent of young adults aged up to 24 years old in NI were unpaid carers.<sup>1830</sup> In 2021/2022, young carers were in the top five applicants for Action for Children’s Crisis Fund.<sup>1831</sup> Some young carers miss education opportunities due to the pressure to get a job and contribute to their household’s income.<sup>1832</sup> This also limits young carers opportunities for social interaction.<sup>1833</sup>

In 2023, research found that carers in NI were unable to access support or take the breaks and respite that they need.<sup>1834</sup> Consequently, carers in NI are particularly susceptible to mental ill-health, loneliness, deteriorating health and burnout.<sup>1835</sup>

## Policies

In 2022, the Department of Health consulted on proposals to reform adult social care, including evaluating the current carers strategy and introducing an independent Carers’ Champion.<sup>1836</sup> The Commission responded to the consultation highlighting the need for legislative provision for access to respite care services.<sup>1837</sup>

In 2022, the Independent Advisory Panel recommended that Carer’s Allowance is reformed “including an additional carers recognition payment, a young carer’s recognition payment, a payment where more than one child is being cared for,

<sup>1828</sup> Carers UK, ‘Unseen and Undervalued: The Value of Unpaid Care During the COVID-19 Pandemic’ (CUK, 2020), at 4.

<sup>1829</sup> Carers NI, ‘Unpaid Carers, Poverty and the Cost of Living Crisis in NI’ (CNI, 2022), at 11.

<sup>1830</sup> Ibid.

<sup>1831</sup> Action for Children, ‘Families In Crisis: A Vital Lifeline’ (AfC, 2022), at 8.

<sup>1832</sup> Carers NI, ‘Unpaid Carers, Poverty and the Cost of Living Crisis in NI’ (CNI, 2022), at 12.

<sup>1833</sup> Ibid.

<sup>1834</sup> Carers NI, ‘State of Caring 2023’ (CNI, 2023), at 5-14.

<sup>1835</sup> Ibid.

<sup>1836</sup> Department of Health, ‘Reform of Adult Social Care NI Consultation Document’ (DoH, 2022), at 70.

<sup>1837</sup> NI Human Rights Commission, ‘Response to Consultation on Reform of Adult Social Care in NI’ (NIHRC, 2022), at 30.



a relaxation of the earnings rules which when exceeded, end entitlement to benefit”.<sup>1838</sup> In 2024, the Social Security Benefits Up-rating Order (NI) 2024 increased carers’ allowance by 6.7 per cent to £81.90 per week. However, it has been noted that:

we must not overlook the fact that carers... continue to struggle to meet their daily needs. The increase in carers allowance... are welcome, yet they may fall short of providing the necessary support for those groups. Carers who dedicate their life to looking after a loved one... require more robust support to cope with rising costs and the financial pressures that they face daily.<sup>1839</sup>

In 2024, the Department for the Economy consulted on an Employment Rights Bill, which included consideration of carers’ leave.<sup>1840</sup> However, the Minister for the Economy, Conor Murphy MLA, has warned that:

the cost of providing paid carer’s leave would be considerable and would have to be fully funded by the [NI] Executive. In addition to the cost of providing paid carer’s leave, there are other possible implications, such as the availability of funding for any HMRC system changes that would be required.<sup>1841</sup>

## Recommendations

The Commission recommends that the Department of Health promptly develops, implements and monitors an up-to-date Carers Strategy and measurable action plan for NI. Carers and their representative organisations should be involved at every stage of this process. The strategy should also include concrete steps for providing accessible support to unpaid carers, taking into account specific needs, such as for young or older carers.

<sup>1838</sup> Independent Advisory Panel, ‘Welfare Mitigation Review: Independent Advisory Panel Report’ (DfC, 2022), at 8.

<sup>1839</sup> NI Assembly Hansard, ‘Official Report: Social Security Benefits Up-rating Order (NI) 2024 – Colm Gildernew’, 25 June 2024.

<sup>1840</sup> Department for the Economy, ‘The “Good Jobs” Employment Rights Bill: Public Consultation’ (DfE, 2024), at 106-114.

<sup>1841</sup> NI Assembly Hansard, ‘Official Report: Carer’s Leave – Conor Murphy MLA’, 24 June 2024.

The Commission recommends that the UK Government takes into account the wider costs of providing care and ensures any financial support provided is proportional to additional costs for carers and the rising cost of living. This includes providing a proportional uplift to the Carers' Allowance; introducing an additional carers recognition payment; introducing a young carer's recognition payment; introducing a payment where more than one child is being cared for; and introducing a relaxation of the earnings rules which when exceeded, end entitlement to benefit.

## Child poverty

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

develop or strengthen existing policies, with clear targets, measurable indicators and robust monitoring and accountability mechanisms, to end child poverty and ensure that all children have an adequate standard of living;<sup>1842</sup> and

ensure that measures to combat poverty comply with a child rights-based approach and include a particular focus on children in disadvantaged situations, especially children of single parents, children with disabilities, Roma, Gypsy and Traveller children and children belonging to other minority groups, asylum-seeking and refugee children, children in large families, and children leaving care.<sup>1843</sup>

In 2016, the UN ICESCR Committee urged the UK Government and NI Executive “to develop a comprehensive child poverty strategy and reinstate the targets and reporting duties on child poverty. In that regard, the [UN ICESCR] Committee draws the attention of the... [UK Government] to its statement on poverty and the UN ICESCR”.<sup>1844</sup>

<sup>1842</sup> 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(a).

<sup>1843</sup> Ibid, at para 46(d).

<sup>1844</sup> 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.

In 2022/2023, there were approximately 109,000 children in NI (24 per cent) living in relative poverty, while approximately 86,000 children (19 per cent) were recorded as living in absolute poverty.<sup>1845</sup> The long-term trend shows that children are at a higher risk of living in poverty than the overall NI population.<sup>1846</sup> The estimated percentage of children in combined low income and material deprivation was 9 per cent in 2022/2023.<sup>1847</sup>

## Strategy

In 2020, the NI Executive committed to publishing an updated Child Poverty Strategy.<sup>1848</sup> In 2022, an extension to the most recent Child Poverty Strategy for NI came to an end.<sup>1849</sup> In 2024, the Department for Communities continued to intend that child poverty is dealt with under the pending anti-poverty strategy for NI.<sup>1850</sup> There is currently no anti-poverty strategy in place in NI, however the Minister for Communities, Gordon Lyons MLA, has identified it as a priority.<sup>1851</sup>

In March 2024, the NI Audit Office published a report considering the effectiveness of the previous child poverty strategy and its impact on outcomes for children in NI.<sup>1852</sup> The NI Audit Office found a lack of significant progress on the main child poverty indicators.<sup>1853</sup> The NI Audit Office identified

<sup>1845</sup> Department for Communities, 'NI Poverty and Income Inequality Report 2022/2023' (DfC, 2024), at Figures 6 and 7.

<sup>1846</sup> Ibid, at Figure 6.

<sup>1847</sup> 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.

<sup>1848</sup> NI Office, 'New Decade, New Approach' (NIO, 2020).

<sup>1849</sup> NI Executive, 'The Executive's Child Poverty Strategy' (NIE, 2016); Department for Communities, 'Press Release: Minister announces extension to Child Poverty Strategy', 11 September 2020.

<sup>1850</sup> NI Assembly Hansard, 'Written Question: New Child Poverty Strategy - Nick Mathison MLA - AQW 9773/22-27', 22 April 2024.

<sup>1851</sup> Anti-Poverty Strategy Expert Advisory Panel, 'Recommendations for an Anti-Poverty Strategy' (DfC, 2021); Anti-Poverty Strategy Co-Design Group, 'A Position Paper on the Development of an Anti-poverty Strategy for NI From Members of the Anti-poverty Strategy Co-Design Group' (NICVA, 2022); Equality Coalition, 'Seminar on Progressing an Anti-Poverty Strategy in NI', 28 June 2023; NI Assembly Hansard, 'Written Question: Anti-Poverty Strategy - Sian Mulholland MLA - AQW 13375/22-27', 8 July 2024; Letter from Minister for Communities, Gordon Lyons MLA, to Gender Equality Co-design Group Members, 11 October 2024.

<sup>1852</sup> NI Audit Office, 'Child Poverty in NI' (NIAO, 2024).

<sup>1853</sup> Ibid, at 11-16.

gaps in the NI Executive Departments' understanding of accountability arrangements and a lack of joined-up working in the delivery of the strategy.<sup>1854</sup> The NI Audit Office's findings also support existing research, that "children who grow up in poverty are more likely to experience health inequalities, have lower levels of educational attainment and are more likely to experience poverty as adults".<sup>1855</sup> In 2024, the Department for Communities considered the NI Audit Office report, with a formal response awaited.<sup>1856</sup>

### Uniform grants and guidance

While uniform grants are available to families in NI who meet certain qualifying criteria, this has proved insufficient in making school uniforms affordable.<sup>1857</sup>

In 2022, the Department of Education commenced a review of the eligibility criteria for uniform grants.<sup>1858</sup> In 2024, proposals for improving uniform grants were consulted on, with the outcome awaited.<sup>1859</sup> In June 2024, the Minister for Education, Paul Givan MLA, stated that:

severe budgetary pressures means that it has not been possible to allocate additional funding to the Education Authority NI to implement a further rise in the rate of the uniform grant for the 2024/2025 academic year. I recognise that higher rates of uniform grant are available in other parts of the UK. I would obviously like to be able to allocate additional funding to the Education Authority NI that would enable a rise in the uniform grant. However, that can only be done when the funding is available to do so.<sup>1860</sup>

<sup>1854</sup> Ibid.

<sup>1855</sup> NI Audit Office, 'Press Release: Child Poverty in NI', 12 March 2024.

<sup>1856</sup> NI Assembly Hansard, 'Written Question: NI Audit Office Report on Child Poverty in NI - Kate Nicholl MLA - AQW 9019/22-27', 29 March 2024.

<sup>1857</sup> 'School uniforms 'number one financial burden'', *BBC News NI*, 20 June 2024; Rebecca McGirr, 'Cost of living: Minister urged to 'step up' over uniform costs', *BBC News NI*, 6 August 2022.

<sup>1858</sup> NI Assembly Hansard, 'Written Question: Cost of School Uniforms - Alan Chambers MLA - AQW 447/22-27', 24 May 2022; Email correspondence from Department of Education to NI Human Rights Commission, 26 July 2023.

<sup>1859</sup> Department of Education, 'School Uniform Policy Consultation' (DoE, 2024).

<sup>1860</sup> NI Assembly Hansard, 'Official Report: School Uniform Grant - Paul Givan MLA', 3 June 2024.

The Minister for Education further stated that:

while recognising that the rate of the uniform grant is one way to reduce the impact of uniform costs on low-income families, I believe that schools seeking to minimise the costs of their uniform can potentially be of even greater benefit.<sup>1861</sup>

In 2021, legislation was introduced in England and Wales to create statutory guidance for schools on acceptable uniform costs.<sup>1862</sup> In 2024, there is Department of Education guidance that encourages schools to keep school uniform costs to a minimum, but unlike in the rest of the UK, uniform costs remain unregulated.<sup>1863</sup> In June 2024, the Minister for Education confirmed plans to introduce statutory guidance that will require all school governing bodies to review their school uniform policy and ensure costs are manageable for parents/guardians/carers.<sup>1864</sup> In 2024, the proposals were publicly consulted on.<sup>1865</sup> The Commission provided a response and the outcome of the consultation process is awaited.<sup>1866</sup>

## Recommendations

The Commission recommends that the Department for Communities promptly develops, implements, monitors and adequately resources an anti-poverty strategy for NI that contains specific actions to eradicate child poverty in NI, including by establishing concrete and time-limited targets with measurable indicators, and regular monitoring and reporting on the reduction of child poverty in NI. This includes meaningfully engaging with affected individuals and their representative organisations at every stage of the process.

<sup>1861</sup> Ibid.

<sup>1862</sup> Education (Guidance about Costs of School Uniforms) Act 2021.

<sup>1863</sup> Department of Education, 'Circular 2011/04 Guidance to Schools on School Uniform Policy (Revised 5 June 2018)' (DoE, 2018).

<sup>1864</sup> Department of Education, 'School Uniform Policy Consultation' (DoE, 2024).

<sup>1865</sup> Ibid.

<sup>1866</sup> NI Human Rights Commission, 'Submission to the Department of Education on the School Uniform Policy Consultation' (NIHRC, 2024).

The Commission recommends that the Department of Education ensures that uniform costs are regulated and that education support grants in NI, including the uniform grant, are sufficient and proportional to costs.

## **Crisis fund**

In 2016, the UN ICESCR Committee called on the UK Government and NI Executive to:

take steps to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty, in particular persons with disabilities, persons belonging to ethnic, religious or other minorities, single-parent families and families with children, and adopt an anti-poverty strategy in NI.<sup>1867</sup>

In 2016, it was reported that UK Government and NI Executive practices make refugees extremely vulnerable in the transition from asylum support “as they have to negotiate a confusing range of government agencies that do not always consult with each other”.<sup>1868</sup>

The Crisis Fund, which is managed by the Racial Equality Unit in the Executive Office, aims “to help minority ethnic individuals with no other means of support through emergency situations, such as vulnerable migrants, refugees and people seeking asylum and other vulnerable groups”.<sup>1869</sup> It is not a permanent arrangement, but has proved to be “critical in alleviating short-term hardships for destitute people seeking asylum and refugees”.<sup>1870</sup>

<sup>1867</sup> 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.

<sup>1868</sup> NI Community of Refugees and Asylum Seekers, ‘The Effects of Destitution on Refugees in NI’ (NICRAS, 2016), at 6.

<sup>1869</sup> NI Executive, ‘Press Release: Junior Ministers Jennifer McCann and Jonathan Bell today outlined the benefits of the new Crisis Fund for vulnerable minority ethnic people,’ 4 February 2015.

<sup>1870</sup> Fiona Murphy and Ulrike Vieten, ‘Asylum Seekers’ and Refugee’s Experiences of Life in NI: Report of the First Study on the Situation of Asylum Seekers and Refugees in NI - 2016’ (QUB, 2017).

In 2023/2024, the Crisis Fund budget was £182,000.<sup>1871</sup> During this period, the fund supported 862 principal beneficiaries and 794 secondary beneficiaries, including children and spouses, from 57 countries of origin.<sup>1872</sup>

In response to calls to put the Crisis Fund on a permanent footing with guaranteed funding,<sup>1873</sup> the Executive Office has stated that:

the Crisis Fund is not intended to address indefinite gaps in welfare coverage but is there to support individual cases such as a refugee waiting for their benefit payment or a person seeking asylum facing destitution through an unexpected and necessary expense.<sup>1874</sup>

## Recommendations

The Commission recommends that the Executive Office places the Crisis Fund on a permanent footing, with guaranteed funding.

The Commission recommends that the UK Government and NI Executive address the causes of destitution in the first instance, rather than rely on a discretionary fund to address destitution when it emerges. This includes introducing measures to guarantee targeted support to all individuals living in poverty or at risk of poverty, including people seeking asylum, refugees, migrants and other groups at particular risk.

<sup>1871</sup> Email correspondence from the Executive Office to the NI Human Rights Commission, 24 July 2024.

<sup>1872</sup> Ibid.

<sup>1873</sup> NI Human Rights Commission, 'Response to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI' (NIHRC, 2021); NI Human Rights Commission, 'Response to Public Consultation on Draft Refugee Integration Strategy' (NIHRC, 2022), at para 2.15; NI Human Rights Commission, 'Submission to the CoE Advisory Committee on the Framework Convention for the protection of National Minorities – Parallel Report to the CoE Advisory Committee on the Fifth Monitoring Report of the UK' (NIHRC, 2022), at 34-35.

<sup>1874</sup> The Executive Office, 'Draft Refugee Integration Strategy 2022-2027' (TEO, 2021), at 32.



## Homelessness

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

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

ensure that the best interests of the child are given primary consideration in all eviction matters, that evictions are not targeted at families belonging to minority groups and that any evictions are always subject to adequate alternatives.<sup>1875</sup>

In 2023, the UN Working Group on the Universal Periodic Review recommended that the UK Government and NI Executive “take concrete measures to ensure the fulfilment of the right to adequate housing for all without discrimination to prevent homelessness”.<sup>1876</sup>

In 2016, the UN ICESCR Committee, noting the “exceptionally high levels of homelessness in England and NI” urged the UK Government and NI Executive to take immediate measures, including allocating appropriate funds to local authorities, adequate provision of reception facilities and social rehabilitation centres.<sup>1877</sup> The UN ICESCR Committee also recommended that the private rental sector is effectively regulated through tenure protection and accountability mechanisms, and specific measures taken to tackle issues arising from constraints imposed by housing allowance.<sup>1878</sup> The UN ICESCR Committee further recommended that the UK Government and NI Executive adopt all necessary measures to avoid the criminalisation of ‘rough sleeping’ and develop appropriate policies and programmes to facilitate the social reintegration of homeless persons.<sup>1879</sup>

<sup>1875</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 46(b) and 46(c).

<sup>1876</sup> A/HRC/52/10, ‘Report of the UN Working Group on the Universal Periodic Review UK of Great Britain and NI’, 9 January 2023, at para 43.145.

<sup>1877</sup> 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 52.

<sup>1878</sup> Ibid, at para 50(b).

<sup>1879</sup> Ibid, at para 52.

In 2023/2024, 16,943 presented as homeless to the NI Housing Executive and 11,537 households were accepted as statutorily homeless, an increase from 10,349 in 2022/2023.<sup>1880</sup> This figure does not include the unknown number of homeless that do not apply in the first place. Civil society organisations refer to such cases as the ‘hidden homeless’ and have raised specific concerns about the lack of support for this category of homelessness.

Reasons for homelessness in NI include accommodation not reasonable; sharing breakdown/family dispute; loss of rented accommodation; marital/relationship breakdown; neighbourhood harassment; domestic violence; and no accommodation in NI.<sup>1881</sup>

In 2022, a revised homelessness strategy was published that focuses on a range of principles including the steps taken being person centred, based on evidence and through partnership working.<sup>1882</sup> In 2022/2023, there was notable progress regarding the homelessness strategy’s commitments concerning lived experience, undertaking a street needs audit, raising awareness and implementing a severe weather protocol.<sup>1883</sup> In 2024, the Department for Communities was also reviewing the housing supply strategy, with a view to this being a “whole-[NI] Executive strategy”.<sup>1884</sup> This work is on-going.<sup>1885</sup>

In 2023, research by the NI Commissioner for Children and Young People found that “the right to family life and an adequate standard of living is the basic minimum a child should expect... [but] for too many NI has a long way to go to achieve the basic minimum for its children”.<sup>1886</sup> The Simon Community NI also published a report about mental health and homelessness in

<sup>1880</sup> NI Statistics and Research Agency, ‘NI Housing Statistics 2023-2024’ (DfC, 2024); NI Statistics and Research Agency, ‘NI Housing Statistics 2022-2023’ (DfC, 2023).

<sup>1881</sup> NI Statistics and Research Agency, ‘NI Housing Statistics 2022-2023’ (DfC, 2023); NI Statistics and Research Agency, ‘NI Housing Statistics 2021-2022’ (DfC, 2022).

<sup>1882</sup> NI Housing Executive, ‘Ending Homelessness Together – Homelessness Strategy 2022-2027’ (NIHE, 2022).

<sup>1883</sup> NI Housing Executive, ‘Ending Homelessness Together: Homelessness Strategy 2022-2027 – Year One Annual Progress Report’ (NIHE, 2024), at 5-7.

<sup>1884</sup> NI Assembly Hansard, ‘Housing Supply Strategy – Gordon Lyons’, 18 June 2024.

<sup>1885</sup> Ibid.

<sup>1886</sup> Mary Louise Corr et al, ‘A Place to Call Home: A Rights Based Approach to Understanding the Lived Experience of Children and Families Facing Homelessness or Housing Insecurity’ (NICCY, 2023), at 5.

NI, which found difficulties in people accessing mental health support and registering with a General Practitioner.<sup>1887</sup>

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

our statutory obligation is to provide solutions for homelessness, when it has occurred. However, demands for services meant that too often we are in 'emergency' or 'response' mode. A holistic approach to homelessness requires a strategic shift towards prevention. Widening NI Housing Executive's statutory obligations to 'prevention' of homelessness would enable use to focus and invest more in preventative measures.<sup>1888</sup>

In September 2024, the NI Executive committed to focusing "on preventing homelessness, making it brief, rare and non-recurrent by working collaboratively, prioritising housing solutions for those most in need and developing innovative funding models with third sector partners to purchase homes".<sup>1889</sup> This includes the Department of Communities, Department of Health, Department of Justice and NI Housing Executive working together to "embed permanent systems change to prevent homelessness among young people coming out of care", which involves "bringing forward a pilot programme that will support young people leaving care and help to prevent this group from the risk of homelessness".<sup>1890</sup>

### **Private Tenancies Act (NI)**

The Private Tenancies Act (NI) 2022 amends the Private Tenancies Order (NI) 2006, giving enhanced safety standards and restrictions on the frequency of rent increases. One immediate change provides for minimum lengths of notices to quit by both landlord and tenant.<sup>1891</sup>

<sup>1887</sup> Simon Community NI, 'Mental Health and Homelessness' (SCNI, 2023), at 11-15.

<sup>1888</sup> NI Housing Executive, 'Press Release: NI Housing Executive calls for legislation to prevent homelessness', 24 February 2023.

<sup>1889</sup> NI Executive, 'Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027' (NIE, 2024), at 41.

<sup>1890</sup> Ibid.

<sup>1891</sup> Article 11, Private Tenancies Act (NI) 2022.

The 2022 Act also committed the Department for Communities to holding a consultation on rent decreases and controls within six months of the legislation coming into force.<sup>1892</sup> In 2023, following a consultation on the new intermediate rent policy,<sup>1893</sup> the Department for Communities released a new housing policy.<sup>1894</sup> The new policy aims to increase the availability of affordable rented homes, with a specific focus on generating a fresh supply of ‘intermediate rent’ homes.<sup>1895</sup>

Despite these measures, in 2023/2024, homelessness due to loss of private rented accommodation due to property sale was a persisting issue.<sup>1896</sup>

In September 2024, the NI Executive committed to continuing its “programme of reform of the private rented sector” and to “review the NI Housing Executive Private Sector Grants, including the Disabled Facilities Grant, to ensure they effectively meet the needs of those they aim to help”.<sup>1897</sup>

## Vagrancy Act

In 2024, concerns remained that the Vagrancy Act 1824 and Vagrancy (Ireland) Act 1847 criminalise homelessness.<sup>1898</sup> For example, section 3 of the 1847 Act provides that “every person... placing themselves in any public place, street, highway, court or passage to beg or gather alms shall be guilty of an offence”.

<sup>1892</sup> Article 5C(6), Private Tenancies Act (NI) 2022.

<sup>1893</sup> Department for Communities, ‘Consultation on Intermediate Rent Development of Policy and Model’ (DfC, 2021).

<sup>1894</sup> Department for Communities, ‘Press Release: New housing policy to deliver more affordable rented homes’, 30 March 2023.

<sup>1895</sup> Intermediate Rent introduces a novel housing rental approach within the local housing market. Its primary aim is to offer a supplementary rental option for lower to moderate-income households, granting them access to well-maintained, high-quality homes with extended lease terms at rents lower than the market rates. This model serves as a viable solution for households facing challenges in affording the prevailing rental prices in the open market, as well as for those aspiring to venture into affordable homeownership in the long run.

<sup>1896</sup> NI Statistics and Research Agency, ‘NI Housing Statistics 2023-2024’ (DfC, 2024).

<sup>1897</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 41.

<sup>1898</sup> NI Policing Board, ‘Question to the Chief Constable – Vagrancy Offences – John Blair’, 1 April 2021; NI Assembly Hansard, ‘Official Report: Vagrancy Laws – Repeal – Naomi Long MLA’, 20 May 2024.

In 2021, the then Chief Constable of the Police Service of NI, Simon Byrne, confirmed that:

police officers do not, as a matter of course, use powers under the Vagrancy Act [1847] to address the general issue of homelessness... [For example, regarding begging] it is important to recognise that not all rough sleepers are involved in anti-social behaviour and criminality, such as begging or aggressive begging, and not all street beggars are homeless or rough sleepers. It is however, recognised that issues may be interrelated in some cases.<sup>1899</sup>

In May 2024, the Minister for Justice, Naomi Long MLA, stated that:

it had been my intention to... [repeal the provisions of Vagrancy Act 1824 and the Vagrancy (Ireland) Act 1847 that apply in NI] in the previous [NI Assembly] mandate. However, the limitations of the then re-scoped Justice (Sexual Offences and Trafficking Victims) Bill and the subsequent engagement of the Department [of Justice]'s policy and legislative resources in the delivery of that meant that it was not possible to do that. However, I hope that we will be able to do it on this occasion. I do not believe that being homeless, in and of itself, should be punished. The police should not be the lead agency in tackling it. There are many people who should engage with those who do not have shelter and accommodation before the issue finds its way to the police.<sup>1900</sup>

In 2024, work on reviewing the 1824 Act and 1847 Act was ongoing, with a view to the provisions that apply to NI being repealed.<sup>1901</sup>

<sup>1899</sup> NI Policing Board, 'Question to the Chief Constable – Vagrancy Offences – John Blair', 1 April 2021.

<sup>1900</sup> NI Assembly Hansard, 'Official Report: Vagrancy Laws – Repeal – Naomi Long MLA', 20 May 2024.

<sup>1901</sup> Ibid.

## Recommendations

The Commission recommends that the Department for Communities leads a collaborative cross-departmental approach with the goal of eliminating all forms of homelessness in NI. This should include working with representative organisations and housing support organisations to identify effective early intervention models and to address the causes and impacts of homelessness.

The Commission recommends that the Department for Communities and Department of Health take immediate, gender-sensitive steps to identify and address factors contributing to deaths of rough sleepers in NI.

The Commission recommends that the Department of Justice ensures that homelessness is not criminalised in NI, including through measures such as promptly repealing NI-applicable provisions of the Vagrancy Act 1824 and the Vagrancy (Ireland) Act 1847.

## Poverty and debt vulnerability

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

adopt effective measures necessary to combat persistent poverty, which disproportionately affects ethnic minorities, especially children, including by adopting a cross-government strategy against poverty, and by effectively addressing unemployment, occupational segregation, and discriminatory practices with regard to recruitment, salaries, promotions and other conditions of employment.<sup>1902</sup>

<sup>1902</sup> 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, at para 38.

The UN CERD Committee also recommended that the UK Government and NI Executive “abolish policies that adversely impact ethnic-minority households, such as the two-child limit and benefit cap”.<sup>1903</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

develop or strengthen existing policies, with clear targets, measurable indicators and robust monitoring and accountability mechanisms, to end child poverty and ensure that all children have an adequate standard of living, including by increasing social benefits to reflect the rising cost of living.<sup>1904</sup>

In 2016, the UN ICESCR Committee, recommended that an anti-poverty strategy was adopted in NI.<sup>1905</sup>

### **Anti-poverty Strategy**

In 2015, the High Court of Justice in NI ruled that the NI Executive had failed to adopt an identifiable strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need in furtherance of its obligation to do so under section 28E of the NI Act 1998.<sup>1906</sup>

In 2020, the NI Executive renewed its commitment to develop an anti-poverty strategy for NI.<sup>1907</sup> In 2021, an Expert Advisory Panel for the Anti-poverty Strategy published a report setting out key recommendations about the themes and key actions the strategy should include.<sup>1908</sup> In 2021/2022, work was undertaken by a Co-Design Group for the Anti-poverty Strategy to guide the drafting of the strategy.

<sup>1903</sup> Ibid.

<sup>1904</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 22 June 2023, at para 46(a).

<sup>1905</sup> 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.

<sup>1906</sup> *Brian Gormally’s Application* [2015] NIQB 59.

<sup>1907</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 9.

<sup>1908</sup> Anti-Poverty Strategy Expert Advisory Panel, ‘Recommendations for an Anti-poverty Strategy’ (DfC, 2021).



In 2022, an updated report by the Co-Design Group was published for the Department for Communities to consider.<sup>1909</sup> In 2023, a draft anti-poverty strategy was ready for ministerial consideration, with a public consultation to follow.<sup>1910</sup> Members of the Co-Design Group expressed concerns at the Department of Education’s confirmation that it is not intending to provide the Co-Design Group with an opportunity to consider the draft anti-poverty strategy, in advance of a public consultation.<sup>1911</sup> In 2024, an anti-poverty strategy was still awaited.

In October 2024 the Minister for Communities, Gordon Lyons MLA, confirmed that the Department for Communities was moving “forward on development of the Social Inclusion Strategies on a phased basis”.<sup>1912</sup> An anti-poverty strategy for NI was identified as a priority, with “work commencing immediately”.<sup>1913</sup> However, “final decisions on the content and implementation of the Anti-Poverty Strategy will be at the [NI] Executive’s discretion”.<sup>1914</sup>

## Cost of living

In 2024, the Bank of England expected UK inflation “to be lower and more stable” than it had been since 2022.<sup>1915</sup> In 2022, UK inflation had increased to 11 per cent.<sup>1916</sup> In September 2024, UK inflation had decreased to 2.6 per cent.<sup>1917</sup> However, the effects of increased costs and financial uncertainty continue to be felt by individuals and families in NI.<sup>1918</sup>

<sup>1909</sup> Anti-Poverty Strategy Co-Design Group, ‘A Position Paper on the Development of an Anti-poverty Strategy for NI From Members of the Anti-poverty Strategy Co-Design Group’ (NICVA, 2022).

<sup>1910</sup> Equality Coalition, ‘Seminar on Progressing an Anti-Poverty Strategy in NI’, 28 June 2023.

<sup>1911</sup> Ibid.

<sup>1912</sup> Letter from Minister for Communities, Gordon Lyons MLA, to Gender Equality Co-design Group Members, 11 October 2024.

<sup>1913</sup> Ibid.

<sup>1914</sup> NI Assembly Hansard, ‘Written Question: Anti-Poverty Strategy – Sian Mulholland MLA – AQW 13375/22-27’, 8 July 2024.

<sup>1915</sup> Bank of England, ‘What Will Happen to Inflation?’. Available at: [What will happen to inflation? | Bank of England](#)

<sup>1916</sup> Bank of England, ‘What Will Happen to Inflation?’. Available at: [What will happen to inflation? | Bank of England](#)

<sup>1917</sup> Office for National Statistics, ‘Inflation and Price Indices’. Available at: [Inflation and price indices - Office for National Statistics](#)

<sup>1918</sup> Isabella McRae, ‘Is the cost of living crisis over and will prices in the UK ever come down?’, *Big Issue*, 14 August 2024; Howden Insurance, ‘Press Release: When Will the Cost of Living Crisis End?’, 20 March 2024.

In 2022/2023, 349,000 people (18 per cent) were in relative poverty and 271,000 people (14 per cent) were in absolute poverty in NI.<sup>1919</sup> The Department for Communities reports that “with the exception of pensioners, poverty estimates have increased in NI in 2022/2023 from some historic lows in [2021/2022]”.<sup>1920</sup> There have been particular “increases in children in relative poverty (before housing costs) and working age adults in absolute poverty (after housing costs)”.<sup>1921</sup> The Department for Communities reported that “poverty rates in NI seem to be returning to pre-pandemic levels”, however:

in 2022/2023 median household income in NI fell by 5 per cent, compared to one per cent fall in the UK as a whole. As poverty rates are based on household incomes below 60 per cent of the UK median income, this disparity is one of the main drivers behind the increase in poverty levels experienced in NI.<sup>1922</sup>

In 2023, cost of living support payments for individuals on means tested benefits ceased.<sup>1923</sup> These were three payments across the year amounting to £900 paid to most people in receipt of social security benefits.<sup>1924</sup> An additional disability payment of £150 was also available for eligible individuals under this scheme.<sup>1925</sup>

In 2023/2024, the use of foodbanks and ‘warm banks’ increased in NI.<sup>1926</sup> Additionally, food costs rose, particularly for individuals

<sup>1919</sup> Department for Communities, ‘NI Poverty and Income Inequality Report 2022/2023’, (DfC, 2024).

<sup>1920</sup> Department for Communities, ‘Press Release: NI Poverty and Income Inequality Report (2022-2023) is release’, 27 March 2024.

<sup>1921</sup> Ibid.

<sup>1922</sup> Ibid.

<sup>1923</sup> NI Direct, ‘Cost of Living Payments’. Available at: <https://www.nidirect.gov.uk/articles/cost-living-payments>

<sup>1924</sup> Ibid.

<sup>1925</sup> Ibid.

<sup>1926</sup> Trussell Trust, ‘Emergency Food Parcel Distribution in NI: 1 April 2023 to 31 March 2024’ (TT, 2024), at 1; Thea Graham, ‘Belfast’s “warm banks” to help those struggling to stay warm this winter’, *Belfast Live*, 16 January 2024; Will Grimond, ‘Almost a dozen “warm banks” open in Ards and North Down’, *NI World*, 8 December 2022; ‘Urgent ‘warm banks’ demand’, *The Irish News*, 18 October 2022; Richard Vernalls, ‘More councils looking at ‘warm banks’ for residents amid rising energy bills’, *Belfast Telegraph*, 30 August 2022; Sherie Ryder and Rozina Sini, ‘Cost of living: ‘We started up a warm bank’, *BBC News*, 20 October 2022

with specific dietary requirements.<sup>1927</sup> In 2024, education costs, such as school uniforms, were another contributor to the rising cost of living.<sup>1928</sup>

## Fuel poverty

In 2011, the Fuel Poverty Strategy in NI was published.<sup>1929</sup> In September 2024, the NI Executive committed that “by 2025... [it] will launch a new fuel poverty strategy to support those struggling with the cost of living”.<sup>1930</sup> In April 2024, the Minister for Communities, Gordon Lyons MLA, stated that “a key principle of the fuel poverty strategy will be long-term sustainable support that tackles the root causes of fuel poverty”.<sup>1931</sup> It will also include measures that recognise “at times, people experience financial crises and need short-term financial support”.<sup>1932</sup>

In 2024, a fuel poverty reference panel was established by the Department for Communities and is “working closely with academics, colleagues across government and the community and voluntary sector to inform and advise on the new fuel poverty strategy”.<sup>1933</sup> A cross-departmental project board was also established to “oversee the [fuel poverty] strategy development”.<sup>1934</sup>

<sup>1927</sup> Food Standards Agency, ‘NI Food Advisory Committee (NIFAC) Update from Director of Regulatory Compliance, People and NI to NI Food Advisory Committee 18 January 2023’. Available at: <https://www.food.gov.uk/our-work/northern-ireland-food-advisory-committee-nifac-update-from-director-of-regulatory-compliance-people-and-northern-ireland-to-1>; Trussell Trust, ‘Emergency food parcel distribution in NI: April 2022 – March 2023’ (Trussell Trust, 2023); Trussell Trust and Ipsos, ‘Hunger in NI’ (TT and Ipsos, 2023), at 26; NI Commissioner for Children and Young People, ‘A Place to Call Home – Report Launch’, 23 February 2023; Sara Neill, ‘Cost of Living: NI woman with coeliac disease says food bill has doubled’, *BBC News*, 24 July 2023; NI Assembly Hansard, ‘Written Answers: Free School Meals – Minister of Education, Michelle McIlveen MLA – AQW 974/22-27’, 21 June 2022.

<sup>1928</sup> NI Assembly Hansard, ‘Official Report: School Uniform Grant – Paul Givan MLA’, 3 June 2024; Rebecca McGirr, ‘Cost of living: Minister urged to ‘step up’ over uniform costs’, *BBC News*, 6 August 2022; UK Government, ‘Press Release: New law to make school uniform costs affordable for all’, 29 April 2021; NI Human Rights Commission Engagement with Civil Society Organisations on the UN ICESCR, 11 October 2022; NI Assembly Hansard, ‘Official Report: School Uniform Grant – Paul Givan MLA’, 3 June 2024.

<sup>1929</sup> Department for Communities, ‘A New Fuel Poverty Strategy for NI’ (DfC, 2011).

<sup>1930</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 41.

<sup>1931</sup> NI Assembly Hansard, ‘Official Report: Fuel Poverty – Gordon Lyons MLA’, 16 April 2024.

<sup>1932</sup> *Ibid.*

<sup>1933</sup> *Ibid.*

<sup>1934</sup> NI Assembly Hansard, ‘Official Report: Fuel Poverty – Gordon Lyons MLA’, 16 April 2024.

In 2024, the Department for Communities continued to provide for an affordable warmth scheme for owner-occupiers and individuals in the private rented sector most at risk of fuel poverty.<sup>1935</sup> This is an application-based scheme that provides low-income households with a range of heating and insulation measures to improve the thermal efficiency of the applicant's home.<sup>1936</sup> The Department for Communities was developing a new fuel poverty intervention to replace the existing affordable warmth scheme when it is due to come to an end in March 2026.<sup>1937</sup> The proposed new scheme will aim to “be a more comprehensive and ambitious scheme that supports the principles of the new fuel poverty strategy and helps to decarbonise homes”.<sup>1938</sup>

In 2024, Winter Fuel Payments continued for individuals in NI born before 25 September 1957.<sup>1939</sup> Eligible applicants were provided with between £250 and £600 to help with heating bills.<sup>1940</sup> However, this became means tested for the first time, which was recognised by the Minister for Communities, Gordon Lyons MLA, as “disappointing news” that was “unwelcome for some and intolerable for many”.<sup>1941</sup> Even prior to this new development, the need for ‘warm banks’, a place for individuals to go to stay warm without having to spend money on heating, was increasing across NI.<sup>1942</sup> In October 2024, the Minister for Communities confirmed that the Department for Communities was continuing to explore the introduction of a one-off hardship payment for individuals in receipt of state pension who are no longer entitled to Winter Fuel Payment due to the changes.<sup>1943</sup>

<sup>1935</sup> Ibid.

<sup>1936</sup> Ibid.

<sup>1937</sup> Ibid.

<sup>1938</sup> Ibid.

<sup>1939</sup> NI Direct, ‘Winter Fuel Payment’. Available at: [Winter Fuel Payment | nidirect](#)

<sup>1940</sup> Ibid

<sup>1941</sup> Department for Communities, ‘Press Release: Communities Minister statement on Winter Fuel Payment’, 30 July 2024.

<sup>1942</sup> Thea Graham, ‘Belfast’s “warm banks” to help those struggling to stay warm this winter’, *Belfast Live*, 16 January 2024; Will Grimond, ‘Almost a dozen “warm banks” open in Ards and North Down’, *NI World*, 8 December 2022; ‘Urgent ‘warm banks’ demand’, *The Irish News*, 18 October 2022; Richard Vernalls, ‘More councils looking at ‘warm banks’ for residents amid rising energy bills’, *Belfast Telegraph*, 30 August 2022; Sherie Ryder and Rozina Sini, ‘Cost of living: ‘We started up a warm bank’, *BBC News*, 20 October 2022.

<sup>1943</sup> James Martin McCarthy, ‘MLA seeks clarity as Minister reveals he is exploring “hardship payment” for those who will miss out on Winter Fuel Payment’, *Belfast Live*, 28 October 2024.

## Debt vulnerability

In 2022, 25 per cent of adults in NI had low financial resilience, with 14 per cent of adults in NI finding it hard to keep up with bills and loans and six per cent of adults in NI in financial difficulty.<sup>1944</sup> Additionally, 37 per cent of adults in NI were coping financially, but their financial situation had worsened.<sup>1945</sup> In 2024, debt vulnerability continued to have an added dimension with paramilitary groups often operating as illegal lenders.<sup>1946</sup> The rising cost of living likely increases such exploitation.<sup>1947</sup>

In 2023, research by the Women’s Support Network and Ulster University identified that the rising cost of living was having a disproportionate effect on women in NI.<sup>1948</sup> The research attributed this to rising costs affecting low-income households in NI more, with women more likely to live in poverty across their lifetime.<sup>1949</sup> The research also identified that women can act as “shock absorbers” of poverty in the home, meaning they are more likely to go without essentials to protect other family members from the effects of poverty.<sup>1950</sup>

## Recommendations

The Commission recommends that the Department for Communities promptly develops, implements, monitors and adequately resources an anti-poverty strategy for NI, with a measurable action plan, that is guided by meaningful engagement with affected individuals and their representative organisations at every stage of the process.

<sup>1944</sup> Financial Conduct Authority, ‘Financial Lives 2022: Key Findings from the Financial Conduct Authority Lives May 2022 Survey’ (FCA, 2023), at 35 and 124.

<sup>1945</sup> Ibid, at 151.

<sup>1946</sup> House of Commons NI Affairs Committee, ‘The Effect of Paramilitary Activity and Organised Crime on Society in NI: Second Report of Session 2023-2024’ (NIAC, 2024), at para 30; Jordan Moats, ‘Fears energy payments could be taken by paramilitary loan sharks in NI’, *ITV News*, 24 January 2023; Consortium for the Regional Support for Women in Disadvantaged and Rural Areas ‘Women Living with Debt’ (CRSWDRA, 2022); ‘Spotlight: Paramilitary loan sharks targeting food bank users’, *BBC News*, 13 December 2022.

<sup>1947</sup> Consortium for the Regional Support for Women in Disadvantaged and Rural Areas ‘Women Living with Debt’ (CRSWDRA, 2022).

<sup>1948</sup> Women’s Support Network and Ulster University, ‘Women’s Experiences of the Cost of Living Crisis in NI’ (WSN and UU, 2023).

<sup>1949</sup> Ibid.

<sup>1950</sup> Ibid.

The Commission recommends that the Department for Communities incorporates measures to comprehensively combat fuel poverty, including introducing, implementing and monitoring an up-to-date effective and adequately resourced long-term strategy that includes a comprehensive action plan.

The Commission recommends that the Department of Communities, working with the NI Executive, takes concrete steps to provide the necessary financial support, debt relief and education to ensure individuals in NI are financially resilient and not at risk from illegal lenders. This includes supporting individuals in NI to safely extract themselves from illegal lending and to prosecute the illegal lenders.

## Social housing

In 2024, the UN CERD Committee recommended that the UK Government and NI Executive “adopt all measures necessary to ensure the availability of affordable and adequate housing for ethnic minority households, including social housing, and to tackle the persistent inequalities in housing that affect them”.<sup>1951</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “significantly increase the availability of adequate and long-term social housing for families in need, with a view to ensuring that all children have access to affordable quality housing”.<sup>1952</sup>

In 2023, the UN Working Group on the Universal Periodic Review recommended that the UK Government and NI Executive “elaborate and implement an emergency poverty strategy that addresses the impact of rising costs on child poverty targets and on access to affordable, accessible and culturally appropriate social housing”.<sup>1953</sup>

<sup>1951</sup> 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, at para 40.

<sup>1952</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 46(b) and 46(c).

<sup>1953</sup> A/HRC/52/10, ‘Report of the UN Working Group on the Universal Periodic Review UK of Great Britain and NI’, 9 January 2023, at para 43.147.



In 2016, the UN ICESCR Committee urged the UK Government and NI Executive to:

adopt all necessary measures to address the housing deficit by ensuring a sufficient supply of housing, in particular social housing units, especially for the most disadvantaged and marginalised individuals and groups, including middle-and-low-income individuals and households, young people and persons with disabilities.<sup>1954</sup>

In addition, the UN ICESCR Committee urged the NI Executive to “intensify its efforts to address the challenges to overcome persistent inequalities in housing for Catholic families in North Belfast, including through meaningful participation of all actors in decision-making processes related to housing”.<sup>1955</sup>

### Social housing supply

On 31 March 2024, there were 47,312 applications on the social housing waiting list in NI, an increase from 45,105 applicants on 31 March 2023.<sup>1956</sup> Of these applicants, 35,464 were in housing stress, an increase from 32,633 on 31 March 2023.<sup>1957</sup>

In 2015, the NI Housing Executive reported that an overall requirement of 190,000 new dwellings was required in NI between 2008 and 2025, an annual figure of 11,200.<sup>1958</sup> Current targets fall short of this. In 2024, the total housing stock in NI was 835,988, an increase of only 7,159 dwellings from 2023.<sup>1959</sup> In 2023/2024, there were 2,746 new dwelling completions in the social sector, which is an increase from 1,449 in 2022/2023.<sup>1960</sup>

<sup>1954</sup> 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 50(a).

<sup>1955</sup> Ibid, at 50(e).

<sup>1956</sup> Department for Communities, ‘NI Housing Statistics 2023-2024’ (DfC, 2024); Department for Communities, ‘NI Housing Statistics 2022-2023’ (DfC, 2024).

<sup>1957</sup> Ibid.

<sup>1958</sup> NI Housing Executive, ‘NI Housing Market Review and Perspectives 2015-2018’ (NIHE, 2015), at 23.

<sup>1959</sup> Department for Communities, ‘NI Housing Statistics 2023-2024’ (DfC, 2024); Department for Communities, ‘NI Housing Statistics 2022-2023’ (DfC, 2024).

<sup>1960</sup> Ibid.



The Housing (Amendment) Act (NI) 2020 enables housing associations to continue building new social housing and intermediate housing, including the Co-ownership Housing Scheme and ended the statutory right to buy scheme for Housing Associations, which should in practice help to maintain and increase NI's social housing stock.<sup>1961</sup> However, the right to buy scheme continues for the NI Housing Executive.

In 2023, following a public consultation,<sup>1962</sup> the Department for Communities published a new affordable housing policy, which aims to create an additional supply of 'intermediate rent' homes and provide a new affordable housing option.<sup>1963</sup> The intermediate rent policy aims to develop a framework for more high quality, secure and affordable housing in the long-term. However, rising rents and insecure rental arrangements continue to be a cause for concern.<sup>1964</sup>

In 2020, the Department for Communities began work on a new housing supply strategy, which it was intended would be finalised with a published strategy in 2022.<sup>1965</sup> However, in 2024 the strategy was still awaited.<sup>1966</sup> In September 2024, the NI Executive identified providing "more social, affordable and sustainable housing" as an immediate priority and confirmed its commitment to delivering a new housing supply strategy for NI.<sup>1967</sup>

<sup>1961</sup> NI Office, 'New Decade, New Approach' (NIO, 2020).

<sup>1962</sup> Department for Communities, 'Consultation on the New Housing Supply Strategy Call For Evidence' (DfC, 2022).

<sup>1963</sup> Department for Communities, 'Press Release: New housing policy to deliver more affordable rented homes', 30 March 2023.

<sup>1964</sup> Department for Communities, 'NI Housing Statistics 2023-2024' (DfC, 2024); NI Statistics and Research Agency, 'NI Housing Statistics 2022-2023' (DfC, 2023); NI Statistics and Research Agency, 'NI Housing Statistics 2021-2022' (DfC, 2022); NI Housing Executive, 'Ending Homelessness Together: Homelessness Strategy 2022-2027 - Year One Annual Progress Report' (NIHE, 2024), at 5-7.

<sup>1965</sup> Department for Communities, 'A New Housing Supply Strategy'. Available at: [A new housing supply strategy | Department for Communities \(communities-ni.gov.uk\)](https://www.communities-ni.gov.uk/a-new-housing-supply-strategy)

<sup>1966</sup> NI Assembly Hansard, 'Housing Supply Strategy - Gordon Lyons', 18 June 2024.

<sup>1967</sup> NI Executive, 'Our Plan: Doing What Matters Most - Draft Programme for Government 2024-2027' (NIE, 2024), at 40.

## Housing selection scheme

Social housing in NI is allocated through a points-based system, which uses common criteria to assess the housing needs of all social housing applicants.<sup>1968</sup> The housing selection scheme is approved by the Department for Communities and implemented by the NI Housing Executive for all social housing, including housing provided for and managed by housing associations. Under this scheme applicants are assessed and awarded points according to their housing need. The level of points awarded determines the applicant's position on the social housing waiting list. Applicants may qualify for points under four categories – intimidation, insecurity of tenure, housing conditions and health or social well-being.<sup>1969</sup>

Since 2022, the Commission assisted several individuals who have not been awarded intimidation points, despite being victims of intimidation. Intimidation points are awarded to applicants whose home has been destroyed or seriously damaged or they are in serious and imminent risk of being killed or seriously injured as a result of a terrorist, racial or sectarian attack, or because of an attack motivated by hostility because of an individual's disability or sexual orientation or result of an attack due to neighbourhood nuisance or other similar forms of anti-social behaviour.<sup>1970</sup> Yet, the definition of intimidation for this purpose excludes other common scenarios of intimidation such as domestic violence, coercive control or being intimidated on other grounds, such as nationality, gender, political opinion and other grounds. The effect of this is that no matter how at risk a person is, they will not receive the points. There is no official appeals mechanism, with only an informal complaints procedure available. The Commission has found that the complaints procedure is lengthy, the effects of which is exacerbated given the vulnerability of the individuals and households involved, many of whom remain at risk of death or serious injury whilst the complaint is being determined.

<sup>1968</sup> Article 22, Housing (NI) Order 1981.

<sup>1969</sup> NI Housing Executive, 'Housing Selection Scheme Rules' (NIHE, 2014).

<sup>1970</sup> *Ibid*, at Rule 23.

In 2024, independent research initiated by the NI Housing Executive was ongoing for the purposes of establishing options to reform the housing selection scheme.<sup>1971</sup> The NI Housing Executive intends that a revised scheme is implemented by mid-2026.<sup>1972</sup>

In 2024, the Commission initiated a judicial review challenging the operation and interpretation of the housing selection scheme on the grounds that, in some circumstances, it breaches Articles 2 (right to life), 3 (freedom from torture), 6 (right to a fair hearing), and 8 (right to respect for private and family life) of the ECHR. In October 2024, the leave hearing commenced. The High Court of Justice in NI indicated that several steps should be taken and further evidence provided before a decision on leave is made. The leave hearing is due to continue in February 2025.

## Segregation

Across NI, 90 per cent of NI Housing Executive estates are segregated.<sup>1973</sup> The NI Housing Executive's Community Cohesion Strategy addresses segregation, with several actions aimed at supporting research into segregation and encouraging mixed housing schemes.<sup>1974</sup> Yet, intimidation continues.<sup>1975</sup> The NI Housing Executive has acknowledged that "political and sectarian displays are prevalent within housing estates and symbols such as murals, flags, kerb painting, bonfires and paramilitary memorials can create a 'chill factor' for visitors".<sup>1976</sup> It has also been reported that emblems and flags are being erected within new housing estates to demark territory.<sup>1977</sup> Yet, public authorities have been criticised for not addressing the root of the problem and not having a strategy in place that offers mitigating

<sup>1971</sup> Email from the NI Housing Executive to the Racial Equality Subgroup, 18 October 2024.

<sup>1972</sup> Ibid.

<sup>1973</sup> Department for Communities, 'Housing Supply Strategy 2022 - 2037: Call for Evidence Summary Report' (DfC, 2021), at 28.

<sup>1974</sup> NI Housing Executive, 'Community Cohesion Strategy 2015-2020' (NIHE, 2015).

<sup>1975</sup> NI Assembly Hansard, 'Written Answers: Housing Stock - Minister for Communities, Deirdre Hargey MLA - AQW 2764/22-27', 16 August 2022; Jayne McCormack, 'Paramilitaries: Housing intimidation "rife" in NI', *BBC News*, 23 November 2023.

<sup>1976</sup> Commission on Flags, Identity, Culture and Tradition, 'Final Report' (CFICT, 2021), at para 14.12.

<sup>1977</sup> Alliance Party, 'Press Release: Bradshaw submits Private Member's Bill to tackle unwanted flags and banners on public property', 26 June 2024.

measures.<sup>1978</sup> For example, in 2024, the Cohesion Strategy, which expired in 2020, has not been updated.

In 2024, there was a rise in intimidation tactics being used against racial and ethnic minorities within housing estates in NI.<sup>1979</sup> This has included racist and xenophobic posters, graffiti and physical attacks on property and individuals.<sup>1980</sup> The posters indicate that the purpose of these actions is to ensure “no multiculturalism” and to promote segregation.<sup>1981</sup> Several families have been intimidated from their homes as a result.<sup>1982</sup>

In 2024, a Private Members Bill was being explored that aims to clarify the requirement for public authorities to remove flags, banners and markings placed on public property in support of paramilitary groups, while also “enabling the reasonable and time-bound display of emblems placed for the purposes of legitimate commemoration or celebration”.<sup>1983</sup>

## Data collection

In 2015, the Equality Commission for NI found that, despite monitoring guidance for public authorities, there is a lack of robust housing and communities data relating to several equality grounds.<sup>1984</sup> In 2019, the Equality Commission for NI reiterated its calls for improved data collection to address gaps and for data to be disaggregated, noting that “these shortfalls limit the ability to draw robust conclusions about inequalities, and/or progress in addressing the same, across the full range of equality categories and groups”.<sup>1985</sup> In 2024, these issues remained.

<sup>1978</sup> Brett Campbell, ‘Belfast families living in fear on mixed estate where Catholics forced to flee’, *Belfast Telegraph*, 29 September 2017; Alliance Party, ‘Press Release: Bradshaw submits Private Member’s Bill to tackle unwanted flags and banners on public property’, 26 June 2024.

<sup>1979</sup> Ita Dungan, ‘Eight families forced from homes by racist attacks’, *BBC News*, 4 July 2024; Jessica Rice, ‘Man forced out of Belfast home after racist graffiti calls for public’s support: “This is a time for action”’, *Belfast Telegraph*, 4 July 2024.

<sup>1980</sup> Ibid.

<sup>1981</sup> Ibid.

<sup>1982</sup> Ibid.

<sup>1983</sup> Alliance Party, ‘Press Release: Bradshaw submits Private Member’s Bill to tackle unwanted flags and banners on public property’, 26 June 2024.

<sup>1984</sup> Equality Commission for NI, ‘Investigation Report under Schedule 9 of the NI Act 1998: Department for Social Development - Housing Policy Proposals’ (ECNI, 2015).

<sup>1985</sup> Equality Commission for NI, ‘Equality in Housing and Communities: Policy Recommendations’ (ECNI, 2019).

## Recommendations

The Commission recommends that the Department for Communities promptly designs, implements, monitors and adequately resources an up-to-date housing supply strategy for NI through meaningful consultation with individuals that are affected and their representative organisations. This should include consideration of individuals or groups with specific needs.

The Commission recommends that the Executive Office, Department for Communities and Department of Justice take concrete steps to promptly and robustly eradicate paramilitary and sectarian intimidation that cause families to be forced out of their homes. This requires a collaborative approach with housing providers, Police Service of NI and community representatives.

The Commission recommends that the Department for Communities, in cooperation with the NI Housing Executive, revises the housing selection scheme to ensure that it considers properly an applicant's circumstances and reflects up-to-date common challenges faced by individuals and households in NI, particularly in relation to intimidation points. This requires meaningful consultation with individuals affected and their representative organisations.

The Commission recommends that the Department for Communities, in cooperation with the NI Housing Executive, ensures that an official mechanism to appeal housing selection decisions is in place, which is effectively implemented and monitored.

The Commission recommends that the Department for Communities ensures that comprehensive equality data on housing in NI is regularly gathered, monitored, evaluated and published. This data should be disaggregated in a way that reflects NI society. The Department for Communities in cooperation with housing providers, Police Service of NI and community representatives should take prompt, effective steps to address and eradicate any inequalities that are identified.

## Social security

In 2023, the UN CRC Committee recommended that the UK Government:

assess the impact of welfare changes on children with disabilities and their families, and increase social welfare payments accordingly to ensure that policies do not have a discriminatory effect on them and that such payments are sufficient in ensuring their right to an adequate standard of living.<sup>1986</sup>

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

develop or strengthen existing policies, with clear targets, measurable indicators and robust monitoring and accountability mechanisms, to end child poverty and ensure that all children have an adequate standard of living, including by increasing social benefits to reflect the rising cost of living and abolishing the two-child limit and benefit cap for social security benefits.<sup>1987</sup>

In 2019, the UN CEDAW Committee recommended that the UK Government “take effective measures to ensure that women in vulnerable situations have effective access to... social security so that they do not need to resort to prostitution or ‘sex for rent’”.<sup>1988</sup> The UN CEDAW Committee further recommended that the UK Government “repeal the two-child tax credit limit”.<sup>1989</sup>

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive should:

<sup>1986</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 40(a).

<sup>1987</sup> Ibid, at para 46(a).

<sup>1988</sup> 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 36(a).

<sup>1989</sup> Ibid, at para 52(b).

carry out a cumulative impact assessment, with disaggregated data, about the recent and coming reforms on the social protection for persons with disabilities, and in close collaboration with organisations of persons with disabilities define, implement and monitor measures to tackle retrogression in their standard of living and use it as a basis for policy development across the State party.<sup>1990</sup>

The UN CRPD Committee further recommended that the UK Government and NI Executive:

ensure that public budgets take into account the rights of persons with disabilities, that sufficient budget allocations are made available to cover the extra costs associated with living with a disability and that appropriate mitigation measures, with appropriate budget allocations, are in place for persons with disabilities affected by austerity measures.<sup>1991</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government:

- a) review the entitlement conditions and reverse the cuts in social security benefits introduced by the Welfare Reform Act 2012 and the Welfare Reform Work Act 2016;
- b) restore the link between the rates of State benefits and the costs of living and guarantee that all social benefits provide a level of benefit sufficient to ensure an adequate standard of living, including access to health care, adequate housing and food;
- c) review the use of sanctions in relation to social security benefits and ensure that they are used proportionately and are subject to prompt and independent dispute resolution mechanisms; [and]

<sup>1990</sup> CRPD/C/15/4, 'UN CRPD Committee Inquiry Concerning the UK of Great Britain and NI Carried Out By the Committee Under Article 6 of the Optional Protocol to the UN CRPD: Report of the UN CRPD Committee', 24 October 2017, at para 114(a).

<sup>1991</sup> Ibid, at para 114(d).



- d) provide in its next report disaggregated data on the impact of the reforms to social security on women, children, persons with disabilities, low-income families and families with two or more children.<sup>1992</sup>

The UN ICESCR Committee also recommended that the UK Government and NI Executive:

conduct a comprehensive assessment of the cumulative impact of these measures on the enjoyment of economic, social and cultural rights by disadvantaged and marginalised individuals and groups, in particular women, children and persons with disabilities, that is recognised by all stakeholders.<sup>1993</sup>

### Mitigation package

In 2022, the Department for Communities published a review of social security mitigations by an Independent Advisory Panel.<sup>1994</sup> The review made several recommendations to further mitigate the adverse effects of tax and social security changes, targeting need at individuals who had been most negatively impacted by these changes.<sup>1995</sup> These recommendations included offsetting the two-child limit in Universal Credit, Child Tax Credit and Housing Benefit.<sup>1996</sup>

In 2024, the existing mitigation package is due to expire on 31 March 2025.<sup>1997</sup> The Department for Communities undertook a public survey and a statutory review to consider the future of mitigation payments post March 2025.<sup>1998</sup> However, concerns

<sup>1992</sup> 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 paras 41-42.

<sup>1993</sup> Ibid, at para 19.

<sup>1994</sup> Independent Review Panel, 'Welfare Mitigations Review: Independent Advisory Panel Report' (DfC, 2022).

<sup>1995</sup> Ibid.

<sup>1996</sup> Ibid.

<sup>1997</sup> NI Assembly Hansard, 'Official Report: Benefit Cap (Annual Limit) (Amendment) Regulations (NI) 2024 - Gordon Lyons', 10 June 2024.

<sup>1998</sup> Ibid; Department for Communities, 'Engagement Survey on Welfare Supplementary Payment Schemes' (DfC, 2024).

remain that the mitigations are not “regularised”<sup>1999</sup> and do not address the five-week wait for Universal Credit and the two-child tax limit.<sup>2000</sup>

### Five-week wait for Universal Credit

In 2024, there continues to be a five-week wait for applicants to receive their first Universal Credit Payment.<sup>2001</sup> In 2022, the Independent Advisory Panel recommended an interim solution to deal with the five-week wait by “increasing the Universal Credit Contingency Fund budget for paying grants during the five week wait to at least £5million”.<sup>2002</sup> The Advisory Panel made several additional recommendations to mitigate the impact of the wait.<sup>2003</sup> The Advisory Panel also proposed a longer-term solution “through urgently setting up a Departmental led working party to examine alternative solutions”.<sup>2004</sup>

In June 2024, the Cliff Edge Coalition emphasised to the NI Assembly Committee for Communities that the five-week wait in universal Credit needed to be resolved.<sup>2005</sup> This continued to be a concern.

### Two-child tax limit

Since 2017, new claimants to Universal Credit have generally not been able to claim Child Tax Credit for third or subsequent children or qualifying young persons born on or after 6 April 2017, save in limited circumstances.<sup>2006</sup>

Concerns have been raised with one of the exemptions, namely a child being born as a result of rape, where the mother no longer

<sup>1999</sup> NI Assembly Hansard, ‘Official Report: Budget (No 2) Bill - Second Stage - Matthew O’Toole’, 10 June 2024.

<sup>2000</sup> NI Assembly Hansard, ‘Official Report: Budget (No 2) Bill - Second Stage - Mark Durkan’, 10 June 2024.

<sup>2001</sup> Gov.UK, ‘Universal Credit’. Available at: <https://www.gov.uk/universal-credit/how-youre-paid>

<sup>2002</sup> Independent Advisory Panel, ‘Welfare Mitigation Review: Independent Advisory Panel Report’ (DfC, 2022), at 15.

<sup>2003</sup> Ibid.

<sup>2004</sup> Ibid.

<sup>2005</sup> Law Centre NI, ‘Press Release: Cliff Edge Coalition representatives present key asks to the Communities Committee’, 17 June 2024.

<sup>2006</sup> Gov.UK, ‘Child Tax Credits: Support for a Maximum of 2 Children’. Available at: <https://www.gov.uk/guidance/child-tax-credit-exceptions-to-the-2-child-limit>

lives with the perpetrator.<sup>2007</sup> This exemption risks stigmatising the child. Women’s Aid Federation NI has also stated “this ill-thought out law will be devastating and re-traumatising for victims of rape who need to access child tax credits”.<sup>2008</sup>

In 2022, the Universal Credit (Removal of Two Child Limit) Bill, sponsored by Lord Bishop of Durham, was introduced to the House of Lords. This Bill aimed to remove the limit on the number of children or qualifying young persons included in the calculation of an award of universal credit. In 2023, the Universal Credit (Removal of Two Child Limit) Bill stalled at the Third Reading Stage in the House of Lords. In 2024, the Bill failed to progress any further prior to the dissolution of the UK Parliament.

In June 2024, the Cliff Edge Coalition emphasised to the NI Assembly Committee for Communities that the two child tax limit needs to be repealed.<sup>2009</sup> This continued to be a concern.

### **Personal Independence Payment**

In 2017, the England and Wales High Court ruled that changes to the Personal Independence Payment mobility descriptors violated Articles 8 and 14 of the ECHR on the grounds that they unlawfully discriminated against claimants with poor mental health.<sup>2010</sup>

In 2023, the NI Public Services Ombudsman welcomed the work done to progress its original recommendations regarding the Personal Independence Payment, but noted further work was required.<sup>2011</sup> In the follow-up report, the NI Public Services Ombudsman recommended that the Department of Communities should liaise with Capita to revise the initial

<sup>2007</sup> Ibid.

<sup>2008</sup> Women’s Aid Federation NI, ‘Press Release: Women’s Aid NI statement on 2-child tax credit rule and ‘rape clause’, 30 March 2017.

<sup>2009</sup> Law Centre NI, ‘Press Release: Cliff Edge Coalition representatives present key asks to the Communities Committee’, 17 June 2024.

<sup>2010</sup> *RF v Secretary of State for Work and Pensions and Others* [2017] EWHC 3375.

<sup>2011</sup> NI Public Services Ombudsman, ‘Personal Independence Payment and the Value of Further Evidence: A Follow-up Report on the Progress of Personal Independence Payment Recommendations by the NI Public Services Ombudsman’ (NIPSO, 2023), at 19.

information pack for claimants, to ensure that claimants are correctly informed as to whether or not health professionals have been contacted, and the specific details of health professionals who have been contacted when processing their claims. The follow-up report identified that this recommendation has not been met, and claimants “continue to not be adequately informed at the assessment stage whether, or not, their health professionals have been contacted”.<sup>2012</sup>

## Work Capabilities Assessment

In 2023, the previous UK Government set out plans to introduce conditionality and increase sanctions regarding the Work Capability Assessment.<sup>2013</sup> The Work Capability Assessment is used to determine what work-related conditions a d/Deaf or disabled person must meet to keep getting Employment and Support Allowance and Universal Credit.

There are concerns that the intended reforms will reduce income or increase financial and psychological harm for individuals that will no longer qualify as an individual with limited capability for work-related activity.<sup>2014</sup>

In 2024, a judicial review was initiated at the High Court of England and Wales regarding the UK Government’s consultation process on the proposed reforms to the Work Capability Assessment.<sup>2015</sup> The challenge specifically raises issue with the lack of transparency on the cost saving benefits of the reforms, the timeframe and accessibility of the consultation.

## Separate payments

Household payments are the default for Universal Credit.

<sup>2012</sup> Ibid, at 32.

<sup>2013</sup> Department for Work and Pensions, ‘UK Government Response to the Work Capability Assessment: Activities and Descriptors Consultation’ (DWP, 2023).

<sup>2014</sup> Institute for Fiscal Studies, ‘Institute for Fiscal Studies Response to Changes to Department for Work and Pensions Work Capability Assessments’ (IFS, 2023); Letter from NI Human Rights Commission and Equality Commission for NI to Secretary of State for Work and Pensions, Mel Stride MP, 26 October 2023.

<sup>2015</sup> Disability Rights UK, ‘Press Release: Government to be taken to court over Work Capability Assessment reforms’, 7 May 2024.

Separate Universal Credit payments are permitted in exceptional circumstances. However, the burden is on the claimant to declare their circumstances. Separate payments are not available for online applicants, as you can only provide one bank account per application. The Department for Communities has responsibility for managing social security in NI, but it must use the computer system provided by the UK Department for Work and Pensions. The review of this computer system is currently included in the Department of Work and Pensions backlog of IT changes for its Universal Credit system, but a delivery date is yet to be confirmed.<sup>2016</sup> However, until this is completed, claimants wishing for separate payments must apply in person.<sup>2017</sup> There is a lack of awareness among staff and the wider community that separate payments are an option and when applying in person new claimants may be automatically directed to apply online.

## Recommendations

The Commission recommends that the Department of Work and Pensions and Department for Communities ensure that social security is accessible, promptly available and guarantees an adequate standard of living to recipients, which is guided by a cumulative impact assessment that is regularly monitored. This includes ensuring that any delay in access, such as the five week wait for Universal Credit, is immediately remedied.

The Commission calls on the Department of Work and Pensions to review the entitlement conditions and reverse the cuts in social security benefits introduced by the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016. In the interim, the Commission recommends that the Department for Communities, with support from the NI Executive, implements a comprehensive, regularised mitigation package that is secure for as long as necessary in NI.

<sup>2016</sup> Email correspondence from the Department for Communities to the NI Human Rights Commission, 6 September 2022.

<sup>2017</sup> NI Direct, 'How and when you get paid Universal Credit'. Available at: <https://www.nidirect.gov.uk/articles/how-and-when-you-get-paid-universal-credit>.

The Commission recommends that the Department of Work and Pensions repeals the two-child tax credit limit/Universal Credit limit and that separate Universal Credit payments are made the primary option.

The Commission recommends that the Department of Work and Pensions and Department for Communities ensure that the accessibility and assessment issues with Personal Independence Payment are promptly and effectively remedied in line with the NI Public Service Ombudsman's recommendations.

The Commission recommends that the Department of Work and Pensions and Department for Communities ensure that d/Deaf and disabled people in NI are not disadvantaged by the introduction of conditionality and increased sanctions within the Work Capability Assessment, and that sufficient supports are in place for d/Deaf and disabled people and employers regarding the provision of necessary reasonable adjustments in the workplace in NI.

## ● Travellers' accommodation

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive “ensure that provision of adequate and culturally appropriate accommodation for Gypsy, Traveller and Roma communities and create more sites and stopping places for these communities”.<sup>2018</sup> The UN CERD Committee further recommended that the UK Government and NI Executive “repeal or review legislative or policy measures that have an adverse impact on [Gypsy, Traveller and Roma communities’] lifestyle”.<sup>2019</sup>

<sup>2018</sup> CERD/C/GBR/CO/24-26, ‘UN CERD Committee Concluding Observations on the Combine Twenty-fourth to Twenty-sixth Periodic Reports of the UK of Great Britain and NI’, 23 August 2024, at para 42.

<sup>2019</sup> Ibid.

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive ensure “the provision of sufficient, adequate and secure” accommodation.<sup>2020</sup> This includes ensuring “adequate access to culturally appropriate accommodation and stopping sites”.<sup>2021</sup>

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive “adopt a UK-wide strategy specific to the Gypsy, Roma and Traveller communities, after appropriate consultation with representatives of the Gypsy, Roma and Traveller communities themselves, relevant civil society organisations and equality bodies, accompanied by sufficient funding for implementing the strategy and regulate independent evaluations of it”.<sup>2022</sup>

Articles 2 and 13 of the Windsor Framework require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the EU Racial Equality Directive which protects against discrimination in access to goods and services, including housing.<sup>2023</sup>

In 2018, the Commission identified thirteen systemic issues related to Travellers’ accommodation in NI.<sup>2024</sup> These included that existing law and practice did not provide for sufficient, habitable and culturally adequate Travellers’ accommodation; inadequacy of current Travellers’ sites; evidence of discrimination; the general lack of disaggregated data on Travellers’ accommodation; insufficient resources available for developing and maintaining Traveller-specific accommodation;

<sup>2020</sup> E/C.12/GBR/CO/5, ‘UN ICESCR Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 22 May 2009, at para 30; 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 50.

<sup>2021</sup> 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 50(d).

<sup>2022</sup> CoE European Commission Against Racism and Intolerance, ‘Report on the UK (Sixth Monitoring Cycle)’ (ECRI, 2024), at para 101.

<sup>2023</sup> Article 3, Directive 2000/43/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000.

<sup>2024</sup> NI Human Rights Commission, ‘Out of Sight, Out of Mind: Travellers’ Accommodation in NI’ (NIHRC, 2018).



and ineffective and inadequate efforts made for participation of Travellers in decision-making processes.<sup>2025</sup> In 2024, despite some previous progress,<sup>2026</sup> many of these issues remained.

In 2024, Travellers' accommodation was moved back under the good relations business area within the NI Housing Executive.<sup>2027</sup> A new team has been established with four strategic objectives aimed at improving Travellers' accommodation in NI – to conduct a Traveller-specific accommodation needs assessment; to provide safe and culturally appropriate accommodation; to support Travellers to remain in their accommodation of choice; and to establish mechanisms to foster good relations.<sup>2028</sup> The Travellers' accommodation needs assessment is due to be conducted by end of 2024.<sup>2029</sup> Noting that Travellers' support is concentrated and not meeting need, consideration is being given as to how to address this and how best to raise awareness of Travellers within the wider communities in NI.<sup>2030</sup> A review of NI Housing Executive owned Travellers' sites has been undertaken and applications to improve two Travellers' sites in NI are moving forward.<sup>2031</sup> Yet, there has been a notable reduction in Traveller-specific accommodation, particularly Travellers' sites.<sup>2032</sup>

In 2018, there were seven NI Housing Executive managed Travellers' sites in NI.<sup>2033</sup> In 2024, this had decreased to four Travellers' sites.<sup>2034</sup> One Travellers' site in Belfast was sold for the purposes of creating a private Travellers' site and two Travellers sites (one in Belfast and one in Derry/Londonderry)

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<sup>2025</sup> Ibid.

<sup>2026</sup> NI Human Rights Commission, 'Implementation of Travellers' Accommodation Recommendations' (NIHRC, 2019); Department for Communities, 'Design Guide for Travellers' Sites in NI' (DfC, 2020); NI Housing Executive, 'Irish Traveller Accommodation Strategy 2021-2026' (NIHE, 2021).

<sup>2027</sup> NI Housing Executive, 'Irish Traveller Accommodation Strategy 2021-2026' (NIHE, 2021); Meeting of the Executive Office Traveller Thematic Subgroup, 26 June 2024.

<sup>2028</sup> Ibid.

<sup>2029</sup> Ibid.

<sup>2030</sup> Ibid.

<sup>2031</sup> Ibid.

<sup>2032</sup> Ibid.

<sup>2033</sup> NI Human Rights Commission, 'Out of Sight, Out of Mind: Travellers' Accommodation in NI' (NIHRC, 2018).

<sup>2034</sup> Meeting of the Executive Office Traveller Thematic Subgroup, 26 June 2024.

were decommissioned.<sup>2035</sup> Planning was being sought for one Travellers' site in Mid Ulster and there are plans to seek planning for a Travellers' site in Belfast, but identifying land for the site was proving difficult.<sup>2036</sup>

In 2021, the Department of Communities consulted on a draft Housing Supply Strategy, which acknowledged access to appropriate accommodation for Irish Travellers is limited.<sup>2037</sup> In its response to the consultation, the Commission recommended that any housing strategy should ensure sufficient sites for Travellers to set up accommodation, recognising the cultural rights of Traveller communities to live their traditional lifestyle, and that these sites have sufficient access to essential utilities.<sup>2038</sup> In 2024, publication of the Housing Supply Strategy continued to be awaited.<sup>2039</sup>

In 2022, the NI Housing Executive Travellers' Forum, of which the Commission is a member, was established. The forum has a consultative and advisory role to inform the NI Housing Executive's work. The forum has only had two meetings.<sup>2040</sup> In 2024, the NI Housing Executive Travellers' Forum was being reviewed to ensure it is effective, including regarding the meaningful participation of Travellers.<sup>2041</sup>

## Recommendations

The Commission recommends that the Executive Office, Department for Communities, the Department for Infrastructure, local councils, NI Housing Executive and housing associations to ensure the full implementation of the remaining recommendations in the Commission's Travellers' accommodation investigation report.

<sup>2035</sup> Ibid.

<sup>2036</sup> Ibid.

<sup>2037</sup> Department for Communities, 'Consultation on the New Housing Supply Strategy Call For Evidence' (DfC, 2021), at 24.

<sup>2038</sup> NI Human Rights Commission, 'Response to Public Consultation on New Housing Supply Strategy Call for Evidence' (NIHRC, 2021).

<sup>2039</sup> NI Assembly Hansard, 'Housing Supply Strategy - Gordon Lyons', 18 June 2024.

<sup>2040</sup> NI Housing Executive, 'Irish Traveller Accommodation Strategy 2021-2026' (NIHE, 2021); Meeting of the Executive Office Traveller Thematic Subgroup, 26 June 2024.

<sup>2041</sup> NI Housing Executive, 'Irish Traveller Accommodation Strategy 2021-2026' (NIHE, 2021); Meeting of the Executive Office Traveller Thematic Subgroup, 26 June 2024.

This includes developing long-term strategies to ensure that implemented recommendations continue to be adhered to.

The Commission recommends that the Department for Communities embeds consideration of Windsor Framework Article 2 in its housing supply strategy and monitor any proposed changes by the EU to the six Annex 1 Equality Directives, as well as relevant CJEU case law, and pays particular attention to the ongoing consultation by the EU on the Racial Equality Directive.

### **Unauthorized Encampments (NI) Order 2005**

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive “repeal or review legislative or policy measures that have an adverse impact on [Gypsy, Traveller and Roma communities’] lifestyle, such as... the Unauthorized Encampments (NI) Order 2005”.<sup>2042</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive repeal the 2005 Order.<sup>2043</sup>

In 2018, use of the Unauthorized Encampments (NI) Order 2005 was considered by the Commission as part of its Travellers’ accommodation investigation, which confirmed that the 2005 Order “has a disproportionate impact on the Traveller communities and threatens their nomadic culture”.<sup>2044</sup>

The Department for Communities accepts that the powers under the 2005 Order have a particular effect on Travellers in NI, but has stated that annual monitoring of the impact of the 2005 Order “indicates that the provisions of the 2005 Order have been applied sensitively, pragmatically and proportionately

<sup>2042</sup> 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, at para 42.

<sup>2043</sup> 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 50(d).

<sup>2044</sup> NI Human Rights Commission, ‘Out of Sight, Out of Mind: Travellers’ Accommodation in NI’ (NIHRC, 2018), at 288.

and are effective in balancing the rights of the Irish Travellers, landowners and the settled community”.<sup>2045</sup> For example, the NI Housing Executive operates a co-operation policy permitting Travellers to set up an unauthorised encampment on public land, if certain circumstances and safeguards have been met.<sup>2046</sup> The NI Housing Executive emphasises that the policy is intended to act as a way of dealing with a humane requirement.<sup>2047</sup> However, there are reports that there is no evidence of the co-operation policy in practice. In 2024, there were several cases reported where Traveller families were ordered under the 2005 Order to leave property with no alternative location indicated by public authorities.<sup>2048</sup> The notable reduction in Travellers sites in NI is also having an effect with no pitches available to accommodate growing Traveller families or nomadic Travellers.<sup>2049</sup>

In 2024, the NI Executive had no plans to repeal the 2005 Order.<sup>2050</sup>

## Recommendations

The Commission recommends that Department for Communities, supported by the NI Executive and NI Assembly, ensures that the Unauthorised Encampments (NI) Order 2005 is promptly repealed.

<sup>2045</sup> Letter from Permanent Secretary of Department for Communities, Leo O'Reilly, to the NI Human Rights Commission, 18 May 2018.

<sup>2046</sup> NI Housing Executive, 'Irish Travellers Accommodation Strategy 2021-2026' (Housing Executive, 2021), at page 43.

<sup>2047</sup> NI Housing Executive, 'Our Cooperation Policy for Travellers'. Available at: [http://www.nihe.gov.uk/index/advice/advice\\_for\\_travellers/co-operation\\_policy.htm](http://www.nihe.gov.uk/index/advice/advice_for_travellers/co-operation_policy.htm).

<sup>2048</sup> Email correspondence with Craigavon Travellers Support Committee, 25 July 2024; Email correspondence with Craigavon Travellers Support Committee, 1 July 2024; Meeting of the Executive Office Traveller Thematic Subgroup, 26 June 2024.

<sup>2049</sup> Meeting of the Executive Office Traveller Thematic Subgroup, 26 June 2024.

<sup>2050</sup> Oral evidence provided to the UN CERD Committee by the UK Government, 14 August 2024.

# Right to Health

## Access to healthcare for migrants

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

take effective measures to address structural inequalities and discriminatory barriers in social determinants of health... improve the health outcomes and ensure the accessibility and availability of culturally acceptable and gender responsive quality healthcare services for persons belonging to ethnic minorities, throughout its jurisdiction.<sup>2051</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive take steps to ensure that undocumented migrants and persons belonging to ethnic minorities have access to all necessary health services.<sup>2052</sup>

In 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive ensure that women from marginalised groups are provided with “sufficient support... to access basic services [including health care]”.<sup>2053</sup>

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive set up “work towards... setting up ‘firewalls’ formally prohibiting... healthcare providers from sharing data on the legal status of migrants with the immigration authorities”.<sup>2054</sup>

<sup>2051</sup> 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, at para 44(a).

<sup>2052</sup> 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.

<sup>2053</sup> 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.

<sup>2054</sup> CoE European Commission Against Racism and Intolerance, ‘Report on the UK (Sixth Monitoring Cycle)’ (ECRI, 2024), at para 40.

The CoE European Commission against Racism and Intolerance also recommended that the UK Government and NI Executive:

carry out an in-depth review of initial and in-service training of healthcare professionals as well as standard operating procedures and codes of conduct applicable to them with a view to preventing effectively any racial prejudice in attitudes and behaviours of healthcare staff and any form of racial discrimination in the provision of healthcare in hospitals and other public health institutions, with a particular emphasis being placed on the situation of Black female patients, and ensure that any healthcare staff found to have displayed racist attitudes and behaviours or to have committed or condoned discriminatory action in the provision of healthcare are held accountable.<sup>2055</sup>

Everyone in NI is entitled to free emergency healthcare at the point of service, including undocumented migrants.<sup>2056</sup> People seeking asylum who have made an application to be granted temporary protection, asylum or humanitarian protection (including people who have exhausted the appeals process and remain in NI), are also entitled to free primary and secondary healthcare,<sup>2057</sup> as well as to initial health assessments, health promotion advice and health information.<sup>2058</sup> After the UK's withdrawal from the EU, EU, EEA and Swiss citizens living in the UK prior to 31 December 2021 had to apply to the EU Settlement Scheme to demonstrate they had leave to remain in the UK and full entitlement to healthcare in the UK.<sup>2059</sup>

<sup>2055</sup> Ibid, at para 95.

<sup>2056</sup> NI Direct, 'Health and Medical Emergencies Services for Visitors to NI'. Available at: <https://www.nidirect.gov.uk/articles/health-and-medical-emergencies-services-visitors-northern-ireland>

<sup>2057</sup> Provision of Health Services to Persons Not Ordinarily Resident Regulations (NI) 2015; Health and Personal Services (General Medical Services Contracts) (Amendment) Regulations (NI) 2015.

<sup>2058</sup> Several of the health and social care trusts in NI offer these services via the NI New Entrants Service. See Belfast Health and Social Care Trust, 'Press Release: Screening Service for new entrants to NI', 24 May 2012.

<sup>2059</sup> UK Government, 'Stay in the UK ('Settled Status'): Step by Step'. Available at: <https://www.gov.uk/eusetledstatus>. Department of Health and Social Care 'Healthcare for EU citizens living in or moving to the UK' (DHSC, 2024)

Many barriers have been identified regarding migrants' access to healthcare in NI. There have been reports of a lack of access to information, translation and interpretation services.<sup>2060</sup> There are concerns regarding delays in issuing asylum registration cards and HC2 certificates in NI.<sup>2061</sup> There are reports of people seeking asylum in temporary and contingency hotel accommodation in NI lacking access to healthcare information.<sup>2062</sup> There are reports of inadequate provision for medical needs and significant delays in health assessments in NI.<sup>2063</sup> There are also concerns about lack of healthcare provision for migrants who are traumatised or have complex needs in NI.<sup>2064</sup> There is further evidence of difficulties in accessing mental health services and reports of declining mental health amongst disabled migrants in NI.<sup>2065</sup> The Commission is also aware of instances where migrants in NI have been questioned about immigration status at point of contact with health services.<sup>2066</sup>

Specific to the EU Settlement Scheme, in 2022, the Commission reported that frontline health staff lacked clear information about the law applicable to patients accessing healthcare in NI post-Brexit.<sup>2067</sup> In 2024, independent research commissioned by the Equality Commission for NI reported that some migrant and minority ethnic women had been given incorrect advice on their

<sup>2060</sup> NI Human Rights Commission, 'Submission to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI' (NIHRC, 2021); Equality Commissions for NI, 'Shadow Report from the Equality Commission for Northern Ireland to the Advisory Committee for the Framework Convention for the Protection of National Minorities on the Fifth Monitoring Report of the UK' (ECNI, 2022).

<sup>2061</sup> HC2 certificates provide full health with health costs and are issued to successful applicants to the National Health Service Low Income Scheme. See House of Commons NI Affairs Committee, 'Inquiry into the Experience of Minority Ethnic and Migrant People in NI - Oral Evidence', 8 September 2021, at Question 22. In 2022, the Home Office published guidance on HC2 applications. See Home Office, 'Guidance to Support HC2 Applications for Asylum Seekers' (HO, 2022).

<sup>2062</sup> Children's Law Centre and South Tyrone Empowerment Programme, 'Joint Submission to Framework Convention on the Protection of National Minorities Advisory Committee: Rights of Asylum Seeker Children Living in Contingency Accommodation (Hotel Buildings) in NI, Run by Mears Group PLC' (CLC and STEP, 2022).

<sup>2063</sup> Ibid.

<sup>2064</sup> House of Commons NI Affairs Committee, 'Inquiry into the Experience of Minority Ethnic and Migrant People in NI - Oral Evidence', 8 September 2021, at Question 19.

<sup>2065</sup> Independent Mechanism in NI Disability Forum Meeting, 2 August 2022.

<sup>2066</sup> Roundtable on Access to Healthcare and Protocol Article 2 hosted by the NI Human Rights Commission, 6 June 2022.

<sup>2067</sup> Tamara Hervey, 'Brexit, Health and Its Potential Impact on Article 2 of the Ireland/NI Protocol' (NIHRC, 2022).



eligibility to healthcare in NI.<sup>2068</sup> The research noted that “the disproportionate impact on women of the changing health policy context as a result of Brexit has meant that women with different types of immigration status, who are eligible for healthcare, do not have guaranteed access to that care”.<sup>2069</sup>

Furthermore, there are examples of EU migrants in NI with settled or pre-settled status being wrongfully charged for National Health Service treatment, or incorrectly refused access to healthcare because their residency information had not been updated.<sup>2070</sup> There are also examples of issues with proving residency, which disproportionately affects women, young people and older people.<sup>2071</sup> This includes EU migrants in NI being charged for healthcare services, despite being exempt from charges, including for maternity and neo-natal care.<sup>2072</sup>

In 2023, the Home Office tightened the criteria for late applications to the EU Settlement Scheme.<sup>2073</sup> There are concerns that this change might lead to further delays in issuing a Certificate of Application and inhibit further access to healthcare for EU Settlement Scheme applicants.<sup>2074</sup>

In May 2024, following a previous legal challenge,<sup>2075</sup> the previous UK Government extended the duration of pre-settled status

<sup>2068</sup> Katharine Wright, Ruth McAreavey and Rebecca Donaldson, ‘The Impact of Brexit on Women in NI’ (ECNI, 2024).

<sup>2069</sup> Ibid, at 14.

<sup>2070</sup> Independent Monitoring Authority, ‘Press Release: EU citizens may have been wrongfully charged for National Health Service treatment’, 10 May 2023; Independent Monitoring Authority, ‘An Inquiry by the Independent Monitoring Authority for the Citizens’ Rights Agreements into Certificates of Application’ (IMA, 2023), at para 117; Pivotal, ‘The Impact of Brexit on Minority Ethnic and Migrant People in NI’ (ECNI, 2023); Tamara Hervey, ‘Brexit, Health and Its Potential Impact on Article 2 of the Ireland/NI Protocol’ (NIHRC, 2022); NI Human Rights Commission, ‘Briefing Paper and Recommendations on Brexit, Health and Its Potential Impact on Article 2 of the Windsor Framework’ (NIHRC, 2023); Committee on Administration of Justice, ‘Frontline Lessons for the Future Collaborative Research on the Impact of Immigration Law and Policy in Post-Brexit NI’ (CAJ, 2022), at 49.

<sup>2071</sup> Pivotal, ‘The Impact of Brexit on Minority Ethnic and Migrant People in NI’ (ECNI, 2023).

<sup>2072</sup> Ibid.

<sup>2073</sup> Home Office, ‘EU Settlement Scheme: EU, Other EEA and Swiss Citizens and their Family Members. Version 23.0’ (HO, 2024),

<sup>2074</sup> Engagement meeting with the Home Office Future Borders and Immigration System Advisory Group, 18 July 2023.

<sup>2075</sup> Independent Monitoring Authority, ‘Press Release: Independent Monitoring Authority welcomes confirmation that Home Office will not pursue appeal in EU Settlement Scheme case’, 16 February 2022.

extensions under the EU Settlement Scheme from two years to five years.<sup>2076</sup> The pre-settled status expiry date was also removed from the digital profiles shown to third parties in the online checking services for right to work, and view and prove.<sup>2077</sup> The Independent Monitoring Authority welcomed the changes to the EU Settlement Scheme as a “a pragmatic way of ensuring the principles of the [High Court of Justice in NI’s] judgment are upheld”.<sup>2078</sup>

## Recommendations

The Commission recommends that the Department of Health takes effective steps to identify and address structural inequalities and discriminatory barriers to migrants, particularly migrant women, accessing healthcare in NI. This includes ensuring there is comprehensive training and guidance for healthcare professionals in NI on providing non-discriminatory, culturally appropriate, gender responsive and fully accessible quality healthcare for everyone, including migrants, refugees, people seeking asylum or people granted humanitarian protection.

The Commission recommends that the Department of Health issues an amendment or policy direction to ensure that the full set of General Practitioner services, including access to a General Practitioner list (subject to discretion), is genuinely available to any person. This includes strengthening communication between General Practitioners and health and social care trusts and ensuring that patients are not wrongly charged for services in NI.

The Commission recommends that the Department of Health and the Home Office minimise any procedural or informational barriers to accessing healthcare services for people seeking asylum that are in temporary and contingency accommodation in NI.

<sup>2076</sup> Home Office, ‘Press Release: Home Office confirms changes to the EU Settlement Scheme’, 21 May 2024.

<sup>2077</sup> Ibid.

<sup>2078</sup> Independent Monitoring Authority, ‘Press Release: Independent Monitoring Authority welcomes Home Office decisions on measures to implement landmark judgment’, 18 June 2024.

The Commission recommends that the Home Office provides further guidance on the rights of people with pending and late applications to the EU Settlement Scheme and to healthcare professionals to ensure no diminution of provision and to protect the right to the highest attainable standard of healthcare.

The Commission recommends that the UK Government and Government of Ireland clarify and communicate existing rules on accessing cross-border and all-island health services for EU and third-country nationals living in NI; ensure there are no immigration or visa recognition barriers impeding their access to these services; and guarantee that any new all-island or shared services are future-proofed to ensure there are no immigration or visa recognition barriers impeding access to these services.

## Access to reproductive healthcare

In May 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive:

strengthen its efforts to remove barriers currently impeding access to abortion care in Northern Ireland, including by ensuring adequate, long-term funding in every Health and Social Care Trust and access to telemedicine for early medical abortions; [and]

take measures to prevent the stigmatisation and intimidation of those who seek abortion, including by implementing awareness-raising policies and legislation guaranteeing safe access zones in all relevant health service facilities in a timely manner, ensuring that such legislation is in line with articles 19 and 21 of the [UN ICCPR].<sup>2079</sup>

<sup>2079</sup> CCPR/C/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 3 May 2024, at paras 23(b)-23(c).

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

ensure access for adolescent girls to age-appropriate family planning services, affordable contraceptives and safe abortion and post-abortion care services, particular in NI... with a view to ensuring that no adolescent girl has to travel to other jurisdictions of the [UK]... to access reproductive healthcare.<sup>2080</sup>

In 2019, the UN CAT Committee recommended that the UK Government and NI Executive:

ensure that all women and girls in the [UK]... including in NI, have effective access to termination of pregnancy in situations in which its continuation is likely to result in severe pain and suffering, such as when the pregnancy is the result of rape or incest or in cases of fatal foetal impairment, in addition to cases in which the life or health of the pregnant person is at risk. The [UK]... should also ensure that women and girls in NI have effective access to post-abortion health care and that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.<sup>2081</sup>

In 2018, in addition to recommending the adoption of legislation to decriminalise termination of pregnancy in NI and to legalise access to termination services in certain circumstances,<sup>2082</sup> the UN CEDAW Committee recommended that the UK Government and NI Executive:

<sup>2080</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 44(a).

<sup>2081</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 47.

<sup>2082</sup> CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at paras 85(a), 85(b) and 85(c).

adopt evidence-based protocols for healthcare professionals on providing legal abortions particularly on the grounds of physical and mental health and ensure continuous training on the protocols...

provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion services;

ensure the accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral and emergency, long term or permanent and adopt a protocol to facilitate access at pharmacies, clinics and hospitals; [and]

provide women with access to high-quality abortion and post-abortion care in all public health facilities and adopt guidance on doctor-patient confidentiality in that area.<sup>2083</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive “amend the legislation on termination of pregnancy in NI to make it compatible with other fundamental rights, such as women’s rights to health, life and dignity”.<sup>2084</sup>

## Legalisation and commissioning

Despite legal challenge,<sup>2085</sup> in 2020, abortion was legalised in NI on request up to 12 weeks and where there is a risk of injury to the physical or mental health of the pregnant woman up to 24 weeks.<sup>2086</sup> Abortion is also permitted in NI on the grounds of immediate necessity, a risk to life or grave permanent injury to physical or mental health of the pregnant woman, a diagnosis of a severe foetal impairment or fatal foetal abnormality.<sup>2087</sup>

<sup>2083</sup> Ibid, at paras 85(d), 86(a), 86(b) and 86(c).

<sup>2084</sup> E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 62.

<sup>2085</sup> *Society for the Protection of Unborn Children Pro-Life Ltd’s Application* [2022] NIQB 9.

<sup>2086</sup> Regulations 3 and 4, Abortion (NI) (No 2) Regulations 2020.

<sup>2087</sup> Regulations 5, 6 and 7, Abortion (NI) (No 2) Regulations 2020.

In 2022, after a prolonged process,<sup>2088</sup> the previous UK Government commissioned abortion services in NI.<sup>2089</sup> However, it remains the responsibility of the Department of Health to administer the funding provided by the UK Government.<sup>2090</sup> While funding for abortion services in NI is now ring-fenced within the block grant, this is within existing resources and no additional funding has been provided to deliver abortion services in NI.<sup>2091</sup>

## Provision

In 2023, the Commission's monitoring indicated that provision of abortion services in NI was subject to change and could result in an inconsistent implementation of the Abortion (NI) Regulations.<sup>2092</sup> This is gradually being resolved, however long-term resilience of the services remains a concern.<sup>2093</sup>

In 2024, medical abortion services were available up to 23 weeks and 6 days in all five Health and Social Care Trusts in NI.<sup>2094</sup> Surgical abortion under local anaesthetic up to 11 weeks and 6 days was also available across all five Health and Social Care Trusts in NI, with the Northern Trust also offering surgical abortion up to 11 weeks and 6 days under conscious sedation.<sup>2095</sup>

<sup>2088</sup> *Re NI Human Rights Commission for Judicial Review* [2021] NIQB 91; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021); NI Office, 'Press Release: Secretary of State issues updated direction to NI's Department of Health to make abortion services available', 21 July 2021; NI Office, 'Press Release: Secretary of State issues updated direction to NI's Department of Health to make abortion services available', 26 May 2022; NI Human Rights Commission, 'Press Release: NI Human Rights Commission's Chief Commissioner Responds to UK Government Abortion Regulations', 19 May 2022.

<sup>2089</sup> Amy Cochrane, 'Secretary of State to commission abortion services in NI – three years after legalisation', *Belfast Telegraph*, 24 October 2022.

<sup>2090</sup> *Ibid.*

<sup>2091</sup> Department of Health, 'Press Statement: Department of Health Statement', 2 December 2022.

<sup>2092</sup> Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021); Email correspondence from Department of Health to NI Human Rights Commission, 9 November 2023.

<sup>2093</sup> NI Abortion and Contraception Task Group, 'Report on the Sexual and Reproductive Health in NI' (NIACT, 2024); NI Abortion and Contraception Task Group Conference, Parliament Buildings, 25 April 2024.

<sup>2094</sup> Email correspondence from the Department of Health to the NI Human Rights Commission, 21 August 2024.

<sup>2095</sup> NI Abortion and Contraception Task Group, 'Report on the Sexual and Reproductive Health in NI' (NIACT, 2024), at 14.

Regarding surgical abortion from 12 weeks onwards, the South Eastern Health and Social Care Trust was funded to provide a regional surgical abortion service up to 23 weeks and 6 days.<sup>2096</sup> However, this provision was limited to 20 weeks due to training delays, with work ongoing to establish a full service for pregnancies up to 24 weeks.<sup>2097</sup> Additionally, the regional surgical abortion service in NI was limited to one consultant, and therefore provision of surgical abortion up to 20 weeks in NI remained fragile.<sup>2098</sup> After 20 weeks gestation, travel to England continued to be required for anyone that required a surgical abortion.<sup>2099</sup>

Abortions in cases of immediate necessity were available in all Health and Social Care Trusts in NI.<sup>2100</sup> Additionally, abortions were available in all Health and Social Care Trusts in NI on the grounds of risk to life or grave permanent injury to the physical or mental health of the individual or severe fetal impairment and fatal fetal abnormality.<sup>2101</sup> Furthermore, the Belfast Health and Social Care Trust offers a regional feticide service for all patients in NI requiring access to this service.<sup>2102</sup> However, complex surgical cases continued to be referred for treatment in England, with the diagnosis and aftercare carried out in NI.<sup>2103</sup>

In 2024, concerns continued to be raised about having to travel to England, as this takes individuals away from their support network and trusted healthcare providers.<sup>2104</sup> There were also concerns for individuals with caring, work-related, education or other commitments in such scenarios.<sup>2105</sup>

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<sup>2096</sup> Ibid.

<sup>2097</sup> Ibid.

<sup>2098</sup> Ibid, at 16.

<sup>2099</sup> Ibid, at 14.

<sup>2100</sup> Email correspondence from the Department of Health to the NI Human Rights Commission, 9 November 2023.

<sup>2101</sup> Ibid.

<sup>2102</sup> Ibid.

<sup>2103</sup> Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

<sup>2104</sup> Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and Alliance for Choice, 27 February 2024.

<sup>2105</sup> Ibid.



## Referral pathways

In 2023, the Department of Health instructed all Health and Social Care Trusts in NI to have referral pathways for the regional services in place, as well as contingency measures in the event of any period of non-availability of any element of the regional service.<sup>2106</sup> Initially it was difficult to implement this direction with no pathways existing between Health and Social Care Trusts in NI for non-regional services.<sup>2107</sup> However, in 2024, a pathway was introduced for individuals to access non-regional services in a Health and Social Care Trusts outside the Trust where an individual lived, which included being offered a choice of which Trust in NI to access abortion services.<sup>2108</sup>

In 2024, the British Pregnancy Advisory Service remained the central booking system for abortion services in NI.<sup>2109</sup> A replacement service was under discussion.<sup>2110</sup> The proposals are for the new referral system to provide open access across all Trusts in NI, regardless of postcode.<sup>2111</sup>

## Data collection

The Department of Health publishes annual statistics on hospital-based abortions in NI and the number of individuals travelling to other parts of the UK for abortion services.<sup>2112</sup> However, in 2023, there was “no framework in place to report on all terminations of pregnancy carried out in NI”.<sup>2113</sup>

<sup>2106</sup> Letter from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

<sup>2107</sup> Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

<sup>2108</sup> Email correspondence from the Department of Health to the NI Human Rights Commission, 8 August 2024.

<sup>2109</sup> Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Alliance for Choice, 27 February 2024; Email correspondence from the Department of Health to the NI Human Rights Commission, 8 August 2024.

<sup>2110</sup> Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

<sup>2111</sup> Ibid; Email correspondence from Department of Health to NI Human Rights Commission, 9 November 2023.

<sup>2112</sup> Information Analysis Directorate, ‘NI Hospital Based Termination of Pregnancy Statistics: 2021/2022’ (DoH and NISRA), at 6.

<sup>2113</sup> Ibid.

Disaggregation of the data was limited to recording medical abortions and termination of pregnancies,<sup>2114</sup> age of the individual that had an abortion and the trust area in which the abortion was performed.<sup>2115</sup> Many civil society organisations viewed the available statistics as uninformative and lacking in context.<sup>2116</sup> In 2024, there was improvement in the terminology used in the data published.<sup>2117</sup> However, how the data was disaggregated continued to be limited.<sup>2118</sup>

## Telemedicine

For the first two weeks of April 2020, the only abortion services available in NI were where it was necessary to preserve the life of the woman, or there was a risk of real and serious adverse effect on her physical or mental health, which was either long term or permanent.<sup>2119</sup> In response to the lacuna, the British Pregnancy Advisory Service extended its ‘telemedicine option’ to NI.<sup>2120</sup> This option was quickly withdrawn following correspondence from the Department of Health.<sup>2121</sup>

In 2024, telemedicine was unavailable in NI, unlike the rest of the UK.<sup>2122</sup> A lack of access to telemedicine in NI particularly affects people who are experiencing domestic abuse, have certain health conditions, have limited access to transport, are concerned about confidentiality, have insecure employment, or who fear intimidation.<sup>2123</sup> It is possible that the Department of Health will consider implementation of telemedicine in 2025, but this is subject to Ministerial approval.<sup>2124</sup>

<sup>2114</sup> The data makes an arbitrary and unclear distinction between medical abortions and terminations of pregnancy. See *ibid.*

<sup>2115</sup> *Ibid.*

<sup>2116</sup> Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between the NI Human Rights Commission and civil society organisations, 25 July 2023.

<sup>2117</sup> Department of Health, ‘NI Abortion Statistics, 2020/2021-2022/2023’ (NISCRA, 2024).

<sup>2118</sup> *Ibid.*

<sup>2119</sup> Meeting between NI Human Rights Commission and Informing Choices, 7 August 2020.

<sup>2120</sup> British Pregnancy Advisory Service, ‘Pills by Post - Remote Abortion Pill Treatment’. Available at <https://www.bpas.org/abortion-care/abortion-treatments/the-abortion-pill/remote-treatment/> Meeting between NI Human Rights Commission and Informing Choices, 7 August 2020.

<sup>2121</sup> *Ibid.*

<sup>2122</sup> Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

<sup>2123</sup> NI Abortion and Contraception Taskgroup, ‘Report on the Sexual and Reproductive Health in NI’ (NIACT, 2024), at 13.

<sup>2124</sup> Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; NI Abortion and Contraception Taskgroup Conference, Parliament Buildings, 25 April 2024.

In 2024, individuals in NI continued to obtain telemedicine through unregistered websites.<sup>2125</sup> Support for individuals that faced complications in such scenarios was lacking, with reports of individuals being informed by their General Practitioners Surgery to contact the drug provider for assistance.<sup>2126</sup> The reason(s) for this happening require further investigation, however some civil society organisations reported cases where significant trauma resulted and the affected individual's life was put at risk due to the lack of a clear care pathway in cases of unregulated telemedicine.<sup>2127</sup>

### Guidance and training

In 2024, there was no statutory, department-led guidance on abortion services specific to NI. The Department of Health directed the Health and Social Care Trusts in NI, Royal College of Obstetricians and Gynaecologists, the Royal College of Midwives and Royal College of Nursing to ensure there is effective training, support and guidance for all relevant healthcare staff regarding abortion services in NI.<sup>2128</sup>

In 2024, the Department of Health was content that sufficient guidance already existed and did not plan to introduce specific guidance on conscientious objection regarding abortion services in NI.<sup>2129</sup> Instead, individual Trusts in NI were expected to provide training on conscientious objection to their staff, this training was not mandatory.<sup>2130</sup>

<sup>2125</sup> NI Abortion and Contraception Taskgroup, 'Report on the Sexual and Reproductive Health in NI' (NIACT, 2024), at 13.

<sup>2126</sup> Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

<sup>2127</sup> Ibid; Meeting between NI Human Rights Commission and Alliance for Choice, 27 February 2024.

<sup>2128</sup> Letter from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

<sup>2129</sup> Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

<sup>2130</sup> NI Abortion and Contraception Taskgroup, 'Report on the Sexual and Reproductive Health in NI' (NIACT, 2024), at 17.

Based on reports of frequent misuse or misunderstanding of conscientious objection in the context of abortion services, several stakeholders are of the view that regional guidance on what does and does not constitute conscientious objection is required.<sup>2131</sup>

Several civil society organisations have recommended that values clarification training should be given to all staff, not only staff directly involved with abortion services.<sup>2132</sup> The Department of Health has acknowledged that the training and recruitment necessary to enable comprehensive provision of abortion services in NI remained a challenge.<sup>2133</sup> In 2024, the Department of Health was taking steps to progress the necessary recruitment and training.<sup>2134</sup> However, healthcare professionals in NI expressed frustration at how long the process was taking.<sup>2135</sup>

## Monitoring

In 2024, the Abortion Services Implementation Board continued to meet.<sup>2136</sup> The Oversight Board is tasked with managing any challenges to implementing abortion services in NI.

<sup>2131</sup> Operationally, staff that apply for posts within abortion services all have a conscientious commitment to the provision of those services. Other staff that work in sexual and reproductive health are required to follow-up on complications from abortions and to direct patients to abortion services, even if they claim a conscientious objection to providing treatment. It is reliant on staff to express their conscientious objection to their line manager so that this can be accommodated. However, there have been reports of some pharmacists refusing to dispense early medical abortion medication to an abortion service in NI. It has also been reported that abortion services previously collapsed in a Trust area because the doctor providing the service was not provided with necessary administrative support due to other staff conscientiously objecting. See Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; Email correspondence from Royal College of Nursing NI to NI Human Rights Commission, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; Meeting between NI Human Rights Commission and Alliance for Choice, 27 February 2024; NI Abortion and Contraception Taskgroup Conference, Parliament Buildings, 25 April 2024.

<sup>2132</sup> Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

<sup>2133</sup> Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

<sup>2134</sup> Email correspondence from Department of Health to NI Human Rights Commission, 9 November 2023; NI Abortion and Contraception Task Group Conference, Parliament Buildings, 25 April 2024.

<sup>2135</sup> NI Abortion and Contraception Task Group Conference, Parliament Buildings, 25 April 2024.

<sup>2136</sup> Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

Issues can also be escalated to Abortion Services Oversight Board, the Permanent Secretaries of the Department of Health or NI Office.<sup>2137</sup> The Implementation Board has no set term, but is expected to be operational until at least 2025.<sup>2138</sup>

In the long-term, it is intended that the Regulation and Quality Improvement Authority<sup>2139</sup> will monitor and review commissioned abortion services in NI.<sup>2140</sup> The Regulation and Quality Improvement Authority was willing, but unable to do so without specific funding.<sup>2141</sup> The Regulation and Quality Improvement Authority's mandate may also need to be revisited to ensure it can monitor all doctors involved in delivering abortion services in NI.<sup>2142</sup>

### **Accessibility and affordability of services and products**

Contraception is provided as part of regional sexual and reproductive health services, which other Health and Social Care Trusts in NI can make referrals to.<sup>2143</sup> The service also provides homes testing kits for sexually transmitted infections and has been expanded to include long acting reversible contraception in the form of a hormonal injection.<sup>2144</sup> In 2024, recurrent funding for the regional service was confirmed, following a successful pilot scheme.<sup>2145</sup>

<sup>2137</sup> Ibid.

<sup>2138</sup> Ibid.

<sup>2139</sup> The Regulation and Quality Improvement Authority is the independent body responsible for monitoring and inspecting the availability and quality of health and social care services in NI. It also ensures that health and social care services in NI are accessible, well managed and meet the required standards. Trust hospital services in NI are not required to be registered with Regulation Quality Improvement Authority, unlike its counterparts in the UK where hospitals are inspected at defined intervals. The Regulation and Quality Improvement Authority does not therefore have an annual programme of inspections of NI's hospital services more broadly. The Regulation and Quality Improvement Authority also undertakes specific reviews and intelligence-led inspections under the direction of the Department of Health or in response to specific intelligence or concerns. This means that abortion services provided by Trust hospitals in NI are not automatically subject to annual inspection with the key means of monitoring and assurance being internal assurance arrangements within Trusts.

<sup>2140</sup> Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

<sup>2141</sup> Meeting between NI Human Rights Commission and the Regulation and Quality Improvement Authority, 5 June 2023.

<sup>2142</sup> Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

<sup>2143</sup> Belfast Health and Social Care Trust, 'Sexual and Reproductive Healthcare Service'. Available at: [Sexual and Reproductive Healthcare Service | Belfast Health & Social Care Trust website \(hscni.net\)](https://www.hscni.net/sexual-and-reproductive-healthcare-service)

<sup>2144</sup> Ibid.

<sup>2145</sup> NI Abortion and Contraception Task Group, 'Report on the Sexual and Reproductive Health in NI' (NIACT, 2024), at 9.

In 2024, there remained “significant regional variation” in accessibility to Trust-based contraception services in NI.<sup>2146</sup> Cuts to funding reduced the provision of gynaecological services within General Practitioner’s elective care services. Consequently, it remained difficult to access emergency intrauterine contraception in some Trusts in NI and the primary care vasectomy service remained suspended.<sup>2147</sup>

In 2024, there remained only two sexual and reproductive health consultants in NI.<sup>2148</sup> Recruitment was underway to appoint a sexual and reproductive health consultant in all Trusts in NI.<sup>2149</sup> However, there was frustration among healthcare professionals at how long the process was taking.<sup>2150</sup>

## Recommendations

The Commission recommends that the UK Government, working with the Department of Health, ensures that sufficient, long-term, ring-fenced funding is available and fully utilised to maintain consistent and stable abortion services in line with the Abortion (NI) Regulations in every Health and Social Care Trust area in NI. Also, that the necessary funding for abortion services in NI is an addition to the Department of Health’s broader budget, to ensure existing healthcare services can be delivered in full.

The Commission recommends that the Department of Health ensures that disaggregated data which is gathered to report on and monitor abortion services in NI is regularly reviewed to ensure that it is comprehensive and effective, including through effective engagement with representative organisations.

<sup>2146</sup> Ibid, at 10.

<sup>2147</sup> Ibid.

<sup>2148</sup> Email correspondence from Department of Health to NI Human Rights Commission, 8 August 2024.

<sup>2149</sup> Ibid.

<sup>2150</sup> NI Abortion and Contraception Task Group Conference, Parliament Buildings, 25 April 2024.

The Commission recommends that the Department of Health ensures telemedicine is introduced as an option for early medical abortions in NI under certain circumstances, as in other parts of the UK, and that a clear pathway to care and after care is in place for telemedicine abortions, including for individuals using unregistered sources.

The Commission recommends that the Department of Health ensures that there is regional, abortion-specific, non-stereotyping guidance in NI and that all associated healthcare staff undertake related training that is informed by service users and periodically refreshed, particularly regarding conscientious objection.

The Commission recommends that the Department of Health ensures that there is effective staff planning and sufficient specialised pathways to ensure that sexual health and abortion services are consistently available across NI.

The Commission recommends that the Department of Health ensures that sufficient long-term, ring-fenced funding is provided to the Regulation and Quality Improvement Authority, or an appropriate alternative, for the purposes of ensuring that abortion services in NI are consistently monitored and reviewed at regular intervals.

The Commission recommends that the Department of Health ensures that consistent, accessible and effective contraception services and information, providing access to a full range of contraceptive methods, are available across all Health and Social Care Trust areas in NI, with particular consideration of rurality and utilising online pathways.



## ● Emergency healthcare and National Health Service and waiting lists

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

strengthen measures aimed at ensuring the availability of quality, child-sensitive and age-appropriate paediatric primary and specialist health care services to all children, and ensure that children’s perspectives are included in the development and implementation of all health services, health and social care commissioning, and policy and practice reviews; [and]

develop a strategy to address health inequalities, including the underlying causes, and in particular in respect of children in disadvantaged situations including children with disabilities, children belonging to ethnic minorities, socioeconomically disadvantaged children, children living in rural areas and transgender children.<sup>2151</sup>

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive:

develop a targeted, measurable and financed plan of action aiming at eliminating barriers in access to healthcare and services, and monitor and measure its progress, especially in relation to persons with intellectual and/or psychosocial disabilities and those with neurological and cognitive conditions.<sup>2152</sup>

In 2024, the national health care system, particularly in NI, continued to be in unprecedented crisis.<sup>2153</sup> For example, hospital departments closing or subject to intermittent suspensions,

<sup>2151</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 41(a) and 41(b).

<sup>2152</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 55(a).

<sup>2153</sup> British Medical Association, ‘From Bad to Worse: NI’s Care Crisis’. Available at: <https://www.bma.org.uk/news-and-opinion/from-bad-to-worse-northern-irelands-care-crisis>

patients being treated and accommodated within ambulances or corridors for excessive periods, rural healthcare services being centralised, patients spending years awaiting diagnosis or life-changing surgery, and General Practitioners being difficult to access.<sup>2154</sup> Challenging work conditions, poor terms of employment and reduced funding were also affecting the National Health Service in NI's existing workforce, recruitment and training.<sup>2155</sup> This all contributed to the broader issue of excessive waiting times at emergency departments and National Health Service waiting lists in NI.

### Emergency healthcare

In 2015, the Commission published its inquiry report into emergency healthcare in NI. The report made 26 recommendations, which included that the Department of Health develop dedicated Emergency Department minimum care standards rooted in human rights and provide a benchmark for patient experience within Emergency Departments.<sup>2156</sup> In 2024, many of these recommendations remained unaddressed.

In 2023/2024, 121,043 patients spent over 12 hours in an emergency department in NI, an increase from 106,990 in 2022/2023.<sup>2157</sup> This was also a significant increase from 45,401 in 2019/2020.<sup>2158</sup>

<sup>2154</sup> Ibid; 'Ambulance wait times: Inquiry into deaths after delays', *BBC News*, 4 January 2023; Allan Preston, 'Councillor speaks of urgent need for health reform after "horrendous" hospital stay', 9 January 2023; 'South West Acute Hospital: Hundreds protest at cuts rally', *BBC News*, 22 February 2023; 'Northern Trust maternity services "fragile, vulnerable and unsustainable"', *BBC News*, 21 November 2022; Aileen Moynagh and Marie-Louise Connolly, 'Specialist GP clinics in NI to have services cut in half', *BBC News*, 28 July 2023; Regulation and Quality Improvement Authority, 'Inspection Report 8 November 2022-3 February 2023: Emergency Department, Royal Victoria Hospital' (RQIA, 2023); Marie-Louise Connolly, 'Royal Victoria Hospital: Emergency Department staff "disappointed" by patient safety report', *BBC News*, 22 August 2023; Lyndsey Telford, 'Mum fears her son could die waiting for life changing surgery', *BBC News*, 3 October 2023; Dean McLaughlin, 'Altnagelvin hospital: Midwife-led unit unable to reopen', *BBC News*, 4 October 2023.

<sup>2155</sup> House of Commons NI Affairs Committee, 'The Funding and Delivery of Public Services in NI - Oral Evidence: Dr Tom Black (NI Council Chair at British Medical Association), Dolores McCormick (Associate Director, Employment Relations and Member Services at Royal College of Nursing), and Professor Mark Taylor (NI Director at Royal College of Surgeons)', 24 May 2023; Eimear Flanagan, 'Doctors: Almost one fifth of new GP trainee places in NI not filled', *BBC News*, 31 July 2023.

<sup>2156</sup> NI Human Rights Commission, 'Press Release: A and E Inquiry Findings Published', 27 May 2015.

<sup>2157</sup> Information Analysis Directorate, 'NI Statistics: Emergency Care 2023/2024' (DoH, 2024), at Table 6.

<sup>2158</sup> Ibid.

In 2020, the NI Executive committed to making improvements to “urgent and emergency care” in NI.<sup>2159</sup> In 2022, the Department of Health consulted on its review of urgent and emergency care service in NI.<sup>2160</sup> In 2024, the Department of Health also consulted on creating a network of hospitals for better outcomes, which included consideration of emergency healthcare.<sup>2161</sup> The outcomes of these consultation processes are awaited.

In 2023, the Regulation and Quality Improvement Authority reported several issues within the Royal Victoria Hospital’s emergency department which were affecting the provision of safe, effective patient care, including staffing, crowding, infection prevention control/environmental issues, patient care, medicines management and governance.<sup>2162</sup> However, while agreeing that the Royal Victoria Hospital’s emergency department was “unsafe”, staff at the hospital stated that the Regulation and Quality Improvement Authority’s report is “wholly unsatisfactory” with a lack of “explicit focus on patient safety”.<sup>2163</sup>

### National Health Service waiting lists

In recent years, there has been an “alarming growth in both the number of patients on elective care waiting lists, and the length of time they wait for assessment and treatment [in NI]”.<sup>2164</sup> In March 2023, 696,000 patients were on waiting lists in NI, with 197,345 (49 per cent) waiting over a year for an initial outpatient appointment, 64,513 (54 per cent) waiting over a year for inpatient treatment and 46,511 (27 per cent) waiting over 26 weeks for a diagnostic test.<sup>2165</sup> Furthermore, available information suggested waiting list performance levels were “significantly worse in NI compared with the other UK regions”.<sup>2166</sup>

<sup>2159</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020).

<sup>2160</sup> Department of Health, ‘Review of Urgent and Emergency Care Services in NI: Consultation Report and Strategic Priorities’ (DoH, 2022).

<sup>2161</sup> Department of Health, ‘Hospitals – Creating a Network for Better Outcomes’ (DoH, 2024).

<sup>2162</sup> Department of Health, ‘Review of Urgent and Emergency Care Services in NI: Consultation Report and Strategic Priorities’ (DoH, 2022).

<sup>2163</sup> Marie-Louise Connolly, ‘Royal Victoria Hospital: Emergency Department staff “disappointed” by patient safety report’, *BBC News*, 22 August 2023.

<sup>2164</sup> NI Audit Office, ‘Press Release: Tackling waiting lists’, 10 October 2023.

<sup>2165</sup> Ibid; NI Audit Office, ‘Tackling Waiting Lists’ (NIAO, 2023), at para 1.4.

<sup>2166</sup> NI Audit Office, ‘Press Release: Tackling waiting lists’, 10 October 2023; NI Audit Office, ‘Tackling Waiting Lists’ (NIAO, 2023), at para 1.6.

The rise in waiting lists has been attributed to “a growing gap between rising population demand for care and available funding has significantly contributed to lengthy waiting times”.<sup>2167</sup> While “the COVID-19 pandemic exacerbated the challenges”, it was noted “that the deterioration in waiting times has been longstanding”.<sup>2168</sup> In 2023, the NI Public Services Ombudsman found that there was “systemic maladministration” regarding waiting list communications in NI.<sup>2169</sup>

In 2023, the House of Commons NI Affairs Committee found that the length of time some people are having to wait for healthcare in NI means they may never be treated.<sup>2170</sup> The House of Commons NI Affairs Committee found that the delays are affecting the person’s day-to-day life, not just their condition.<sup>2171</sup> Furthermore, it was stated that the situation is creating “moral distress” for healthcare workers in NI.<sup>2172</sup> It is also believed that there is not capacity within the private or public health services in NI to address waiting lists.<sup>2173</sup>

Waiting list initiatives have been trialled in NI, some of which have been successful in cutting waiting lists, but these are typically brought to an end due to budget cuts.<sup>2174</sup> The former NI Director of the Royal College of Surgeons, Mark Taylor, stated that “in order to transform and deal with the firefighting, we need much more resource and we need it to be recurrent over three to five years so that you can plan, rather than on a yearly basis with temporary contracts and temporary solutions”.<sup>2175</sup>

<sup>2167</sup> NI Audit Office, ‘Press Release: Tackling waiting lists’, 10 October 2023; NI Audit Office, ‘Tackling Waiting Lists’ (NIAO, 2023), at paras 1.7; 1.8; 5.31; 5.23.

<sup>2168</sup> NI Audit Office, ‘Press Release: Tackling waiting lists’, 10 October 2023; NI Audit Office, ‘Tackling Waiting Lists’ (NIAO, 2023), at para 3.19.

<sup>2169</sup> NI Public Services Ombudsman, ‘Forgotten: An Investigation into Healthcare Waiting List Communications’ (NIPSO, 2023), at 5.

<sup>2170</sup> House of Commons NI Affairs Committee, ‘The Funding and Delivery of Public Services in NI – Oral Evidence: Dr Tom Black (NI Council Chair at British Medical Association), Dolores McCormick (Associate Director, Employment Relations and Member Services at Royal College of Nursing), and Professor Mark Taylor (NI Director at Royal College of Surgeons)’, 24 May 2023, at 2-3.

<sup>2171</sup> Ibid.

<sup>2172</sup> Ibid.

<sup>2173</sup> Ibid, at 13.

<sup>2174</sup> Ibid, at 7 and 20.

<sup>2175</sup> Ibid, at 8.

The former NI Director of the Royal College of Surgeons suggested that surgical hubs would be beneficial, but warned that:

we are also going to need the independent sector and waiting list initiative work to deal with the backlog. We cannot use a new, transformed system to start off first with this massive backlog and then start to try to develop capacity.<sup>2176</sup>

In 2024, commitments for March 2026 regarding waiting lists continued to not be met.<sup>2177</sup> This included that no-one should wait more than 52 weeks for a first outpatient appointment and inpatient/day case treatment or 26 weeks for a diagnostics appointment.<sup>2178</sup> Also that the gap between demand and capacity for elective care would have been eradicated.<sup>2179</sup> The Department of Health previously stated that funding is an issue,<sup>2180</sup> which remained the case.<sup>2181</sup> The Department of Health also previously stated that “the deficit between demand and capacity has been going on for too long and the waiting list backlog has been exacerbated by the impact of COVID-19”.<sup>2182</sup>

In 2023, the Comptroller and Auditor General for NI, Dorinnia Carville, noted that:

despite the remarkable efforts of health and social care staff [in NI] over recent years in trying to cope with rising patient demand, the deterioration in elective waiting time performance is stark... Lengthy waits place patients at risk of developing debilitation and complex conditions, potentially requiring more expensive treatment.

<sup>2176</sup> Ibid, at 15.

<sup>2177</sup> Department of Health, ‘Press Release: Progress report on five-year Elective Care Framework’, 6 July 2023.

<sup>2178</sup> Department of Health, ‘Elective Care Framework: Restart, Recovery and Redesign’ (DoH, 2021).

<sup>2179</sup> Ibid.

<sup>2180</sup> Department of Health, ‘Press Release: Progress report on five-year Elective Care Framework’, 6 July 2023.

<sup>2181</sup> Ibid; NI Assembly Hansard, ‘Official Report: Cross-border Healthcare – Mike Nesbitt MLA’, 18 June 2026.

<sup>2182</sup> Department of Health, ‘Press Release: Progress report on five-year Elective Care Framework’, 6 July 2023.

Patients' mental health and quality of life can also suffer to a point where many risk developing serious conditions. As a result, reduced waiting times are essential to improve both patient health and public finances. The health system has been operating within mainly tight and short-term financial environments... Unless and until a longer-term, sustainable funding framework to enable health service transformation is established, the Department [of Health] will likely have to address the most pressing clinical waits through available short-term funding. This approach is totally unsuitable and almost certainly stores up huge problems for the future.<sup>2183</sup>

In 2023, applications for a judicial review of National Health Service waiting times in NI were dismissed by the High Court of Justice in NI and Court of Appeal in NI.<sup>2184</sup> Both courts deemed it was for government and medical professionals, not the courts, to consider how best to address waiting lists in NI.<sup>2185</sup> The Court of Appeal in NI specifically stated that:

the forum for debate, inquiry, investigation and proposals for improvement and resolution of the issues raised in these proceedings – fundamentally, the single issue of hospital waiting lists in NI and its offshoots – belongs to government Ministers, politicians, economists, sociologists, doctors, academics and doubtless other experts and many interested persons and agencies. The subject is one of much controversy and obviously broad and substantial dimensions. It is manifestly inappropriate for judicial intervention.<sup>2186</sup>

<sup>2183</sup> NI Audit Office, 'Press Release: Tackling waiting lists', 10 October 2023.

<sup>2184</sup> *Wilson (Eileen) Application for Judicial Review and Kitchen (May) Application for Judicial Review and Eileen Wilson and (1) Department of Health for NI (2) South Eastern Health and Social Care Trust (3) The Health and Social Care Board the Commissioner for Older People for NI* [2023] NIKB 2, at para 101; *Wilson (Eileen) Application for Judicial Review and Kitchen (May) Application for Judicial Review and Eileen Wilson and (1) Department of Health for NI (2) South Eastern Health and Social Care Trust (3) The Health and Social Care Board the Commissioner for Older People for NI* [2023] NICA 54.

<sup>2185</sup> *Ibid.*

<sup>2186</sup> *Wilson (Eileen) Application for Judicial Review and Kitchen (May) Application for Judicial Review and Eileen Wilson and (1) Department of Health for NI (2) South Eastern Health and Social Care Trust (3) The Health and Social Care Board the Commissioner for Older People for NI* [2023] NICA 54, at para 78.



In September 2024, the NI Executive acknowledged that NI has “the longest hospital waiting times in the UK, with people struggling to get the treatment they need”.<sup>2187</sup> The NI Executive stated that:

in recent years, pressure has increased due to both a rise in demand, but also the impact of the pandemic on the health and social care system. These combined adding to the backlog of patients awaiting care. This backlog is unacceptable.<sup>2188</sup>

The NI Executive identified “cut health waiting times” as an immediate priority.<sup>2189</sup> The NI Executive acknowledges that long-term solutions and addressing health inequalities are required.<sup>2190</sup> This includes “the need to improve performance, increase productivity, and improve the quality and consistency of care”.<sup>2191</sup> There is a focus on investing in addressing waiting lists and reforming health and social care in NI.<sup>2192</sup>

## Recommendations

The Commission recommends that the Department of Health immediately develops, implements and monitors a targeted, measurable and appropriately financed plan of action aimed at eradicating unreasonable emergency healthcare waiting times and National Health Service waiting lists, and eliminating barriers in access to healthcare and services in NI. This includes ensuring that the resources and finances available are ring-fenced and sufficient to satisfy need on a long-term basis and to ensure effective communication with patients. This also includes ensuring consideration of specific needs, such as gender, age, disability, race or ethnicity, and rurality.

<sup>2187</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 26.

<sup>2188</sup> Ibid.

<sup>2189</sup> Ibid.

<sup>2190</sup> Ibid.

<sup>2191</sup> Ibid.

<sup>2192</sup> Ibid, at 28-29.



## ● Mental capacity

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

ensure the right of all children, including younger children, children with disabilities and children in care, to express their views and to have them taken into account in all decisions affecting them, including in courts and relevant judicial proceedings and regarding domestic violence, custody, placement in alternative care, health, including mental health treatment, education, justice, migration and asylum.<sup>2193</sup>

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive:

abolish all forms of substituted decision-making concerning all spheres and areas of life by reviewing and adopting new legislation in line with the Convention to initiate new policies in both mental capacity and mental health laws. It further urges the State party to step up efforts to foster research, data and good practices of, and speed up the development of supported decision-making regimes.<sup>2194</sup>

The Mental Capacity (NI) Act 2016 provides a single legislative framework governing situations where a decision needs to be made in relation to the care, treatment (for a physical or mental illness) or personal welfare of a person aged 16 years or over. The 2016 Act is a welcomed development and has been described as innovative in its emphasis on supported decision making. However, it continues to make provision for substitute decision making. It also does not apply to children under 16 years old.

<sup>2193</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2024, at para 23(a).

<sup>2194</sup> CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 29 August 2017.

The majority of the 2016 Act is yet to be commenced. In 2019, the first phase of the 2016 Act came into operation with the commencement of the research provisions and provisions in relation to deprivation of liberty, offences and money and valuables in residential care and nursing homes.

In 2022, the Department of Health indicated its intention to implement the 2016 Act in full.<sup>2195</sup> In April 2024, the former Minister of Health, Robin Swann MP, stated that “[some] provisions [of the 2016 Act] have yet to be commenced and an implementation date [for further phases of commencement] remains unknown”.<sup>2196</sup> In June 2024, the Minister of Justice, Naomi Long MLA, also indicated that progress on commencement of the 2016 Act “is likely to remain slow given the severe financial pressures facing the [NI] Executive”.<sup>2197</sup> In 2024, the Department of Health initiated the next stage of commencement by consulting on provisions relating to acts of restraint.<sup>2198</sup>

## Recommendations

The Commission recommends that the Department of Health ensures that the Mental Capacity (NI) Act 2016 is commenced in full without further delay.

The Commission recommends that the Department of Health, working with the NI Executive and NI Assembly, ensures that the required legislative steps are taken to address issues with substitute decision making in NI.

The Commission recommends that the Department of Health, working with the NI Executive and NI Assembly, ensures that similar legislative protections concerning mental capacity are introduced for under 16-year-olds in NI, subject to recognition of evolving capacity.

<sup>2195</sup> Department of Health, ‘Reform of Adult Social Care NI Consultation Document’ (DoH, 2022), at 47.

<sup>2196</sup> NI Assembly Hansard, ‘Written Answer: Mental Capacity Act (NI) 2016 – Robin Swann MLA – AQW 9831/22-27’, 24 April 2024.

<sup>2197</sup> NI Assembly Hansard, ‘Written Answer: Progression of Legislation to Create a Legally Binding Lasting Power of Attorney – Naomi Long MLA – AQW 13604/22-27’, 25 June 2024.

<sup>2198</sup> Department of Health, ‘Consultation on Commencement of Provision Under the Mental Capacity Act (NI) 2016 Relating to Acts of Restraint’ (DoH, 2024).

## Mental health

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “develop adequately funded mental health services that are tailored to the specific needs of lesbian, gay, bisexual, transgender and intersex children, migrant children, children with disabilities and ‘young carers’, including through sufficient investments in specialist services” and “strengthen measures to address the underlying causes of poor mental health, eating disorders and other self-harming behaviours among children, and invest in preventive measures”.<sup>2199</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive ensure that “sufficient resources are allocated to the mental health sector”.<sup>2200</sup>

NI is reported to have the highest prevalence of mental health problems in the UK.<sup>2201</sup> In 2022/2023, 1,146 (32 per cent) of survey respondents reported having concerns about their own mental health and 716 (20 per cent) had a high GHQ12 score, which could indicate a mental health problem.<sup>2202</sup>

Between 2015 to 2022, the number of people waiting longer than the maximum standard waiting time to access mental health services increased by almost 400 per cent.<sup>2203</sup> In 2023, it was reported that mental health services in NI were “struggling” as waiting lists grew.<sup>2204</sup> In 2024, the Mental Health Champion NI, Sioban O’Neill, stated that long waiting lists for mental health services in NI were “unacceptable, and are the result of decades of under-investment”.<sup>2205</sup>

<sup>2199</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 43(e) and 43(g).

<sup>2200</sup> 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.

<sup>2201</sup> NI Audit Office, ‘Mental Health Services in NI’ (NIAO, 2023), at 10.

<sup>2202</sup> Information Analysis Directorate, ‘Health Survey (NI) First Results 2022/2023’ (DoH, 2023).

<sup>2203</sup> NI Audit Office, ‘Mental Health Services in NI’ (NIAO, 2023), at 44.

<sup>2204</sup> ‘Mental health services “struggling” as waiting lists grow’, *BBC News*, 15 February 2023.

<sup>2205</sup> Garrett Hargan, ‘Mental health waiting times “unacceptable” as 10,000 NI children seek support in 2023’, *Belfast Telegraph*, 8 February 2024.

## Mental Health Strategy

In 2021, a new ten-year mental health strategy was launched setting the strategic direction for mental health in NI.<sup>2206</sup> In 2023, the NI Audit Office found that the mental health strategy will require sustained additional investment throughout its lifetime, and that without dedicated long-term funding, the delivery of the strategy was at risk.<sup>2207</sup> The NI Audit Office further noted that “mental Health funding in NI represents around six per cent of the overall health and social care budget and, over time, has not kept pace with increases in the wider health budget”<sup>2208</sup> and that “bringing funding levels in NI closer to that elsewhere in the UK would require substantial additional investment of £80 [to] £190 million per annum”.<sup>2209</sup>

In 2023, the NI Mental Health Champion, Siobhán O’Neill, advised that “poor mental health costs NI £3.4 billion annually. A piecemeal or reduced implementation cannot achieve the necessary reform. People in NI will wait longer or never receive the treatments and support they urgently need”.<sup>2210</sup>

## Suicide prevention

In 2023, the Department of Health extended the most recent suicide prevention strategy until the end of 2027, with the potential for an additional extension to 2029.<sup>2211</sup> The Department of Health stated that:

it was recognised that whilst solid progress has been made in delivering on the strategy’s objectives since it was published in September 2019, challenges in relation to the budget and the impact of the COVID-19 pandemic have prevented full delivery.

<sup>2206</sup> Department of Health, ‘Press Release: Minister of Health publishes new 10 year Mental Health Strategy’, 29 June 2021.

<sup>2207</sup> NI Audit Office, ‘Mental Health Services in NI’ (NIAO, 2023), at 10.

<sup>2208</sup> Ibid, at 11.

<sup>2209</sup> Ibid.

<sup>2210</sup> Mental Health Champion, ‘Press Release: NI mental health strategy funding needs tenfold increase to meet demand, says Professor Siobhán O’Neill’, 15 March 2023.

<sup>2211</sup> Public Health Agency, ‘Review of Protect Life Two – Action Plan: Report and Recommendations’ (DoH, 2024), at 5.

The three-year extension is to allow more time for fuller implementation and for the existing actions to be delivered.<sup>2212</sup>

In 2024, the Department of Health published a review of the suicide prevention strategy and action plan, which will inform its implementation.<sup>2213</sup> The review made several recommendations, which included the need for clear lines of responsibility, sufficient funding and public-facing monitoring regarding the strategy and action plan.<sup>2214</sup>

In 2024, a draft Private Members Bill on suicide prevention training to the NI Assembly was being explored.<sup>2215</sup> The proposed Bill aims to create a statutory requirement for public bodies and government Departments in NI to provide basic suicide prevention training to all frontline staff who have not already received such training, equivalent training, or training to a higher level.

### Children and mental health

In NI, it is estimated that 12.6 per cent of children and young people have an emotional disorder such as anxiety or depression.<sup>2216</sup> Similar to the adult population, it is estimated that children and young people in NI have a 25 per cent higher rate of common mental health disorders than the rest of the UK.<sup>2217</sup>

At 31 March 2024, 1,990 children and young people in NI waiting for a mental health assessment, with 1,026 (52 per cent) waiting for more than nine weeks.<sup>2218</sup>

<sup>2212</sup> Ibid.

<sup>2213</sup> Ibid.

<sup>2214</sup> Ibid, at Chapter 6.

<sup>2215</sup> NI Assembly Hansard, 'North/South Ministerial Council: Health and Food Safety – Órlaithí Flynn', 1 July 2024.

<sup>2216</sup> Youth Wellbeing NI, 'Mental Health of Children and Parents in NI: Results of the Youth Wellbeing Prevalence Survey' (YWNI, 2020), at 11.

<sup>2217</sup> Ibid.

<sup>2218</sup> Department of Health, 'Child and Adolescent Mental Health Service Waiting Time Statistics for NI: At 31 March 2024' (DoH, 2024), at Table 1.

## Perinatal and postnatal mental health

In 2021, funding was approved by the Department of Health for a new perinatal mental health delivery model for the development of a new specialist perinatal mental health service for NI.<sup>2219</sup> In 2023, all Health and Social Care Trusts in NI had fully operational community perinatal mental health team in place, offering a referral and consultancy service for mothers experiencing mental health issues during the perinatal period.<sup>2220</sup> Additionally, a regional implementation team, hosted by the Public Health Agency has been established to oversee implementation and to ensure regional consistency.<sup>2221</sup> In 2024, the Department of Health was working to embed the new provision into existing services and to develop clear and consistent referral pathways.<sup>2222</sup>

In 2022/2023, there was a commitment to progress scoping work for a Mother and Baby Unit.<sup>2223</sup> In 2023, the Department of Health commissioned an independent team to develop a detailed report outlining recommendations for a suitable model for a Mother and Baby Unit in NI that aimed to best meet the needs of the population, as well as to identify the Trust in NI best placed to deliver this service.<sup>2224</sup> In 2024, following the review's findings, the Belfast Trust was progressing a business case to introduce a Mother and Baby Unit to Belfast City Hospital, with delivery of the unit subject to funding.<sup>2225</sup>

## Mental Health Review Tribunal

In 2020, the Commission made an amicus curiae intervention in a mental health case before the High Court of Justice in NI, in which it considered the lawfulness of releasing, with conditions,

<sup>2219</sup> Department of Health, 'Press Release: Suicide Prevention Care Pathway launched', 10 September 2021.

<sup>2220</sup> Email correspondence from Department of Health to NI Human Rights Commission, 25 July 2023.

<sup>2221</sup> Ibid.

<sup>2222</sup> Ibid.

<sup>2223</sup> Department of Health, 'Mental Health Strategy Delivery Plan for 2022/2023' (DoH, 2022).

<sup>2224</sup> Email correspondence from Department of Health to NI Human Rights Commission, 25 July 2023.

<sup>2225</sup> Email Correspondence from Department of Health to NI Human Rights Commission, 7 August 2024.

an individual who had been convicted of a criminal offence and subsequently detained due to a Hospital Order under the Mental Health (NI) Order 1986. The High Court of Justice in NI, while recognising the gap in the law, ruled that the Review Tribunal does not have the power to direct a conditional discharge from detention with conditions where the patient has capacity.

## Monitoring

In 2023, a judicial review was brought against the Regulation and Quality Improvement Authority for allegedly failing in its role as an independent watchdog to scrutinise community-based mental health treatment.<sup>2226</sup> The High Court of Justice in NI declared that the Regulation and Quality Improvement Authority has a statutory duty to regulate the provision of mental health services to patients in the community by keeping their care and treatment under review.<sup>2227</sup> The High Court of Justice in NI also declared that there is an obligation under the Mental Health (NI) Order 1986 for the Regulation and Quality Improvement Authority to make inquiries into cases where it appears there may be a deficiency in care or treatment.<sup>2228</sup>

## Recommendations

The Commission recommends that the Department of Health takes effective steps to promptly and fully address the backlog regarding mental healthcare waiting lists in NI and that long-term measures with ring-fenced funding and robust monitoring are in place to ensure that mental healthcare services and support are expeditiously available to all in NI, as required. This includes consideration of the specific needs of specialised services such as Child and Adolescent Mental Health Services and support for suicide prevention.

<sup>2226</sup> Alan Erwin, 'Co Antrim carer's mental health oversight court victory "rectifies long-overdue human rights failing"', *Belfast Telegraph*, 12 May 2023.

<sup>2227</sup> Ibid.

<sup>2228</sup> Ibid.



The Commission recommends that the Department of Health ensures that a Mother and Baby Unit is made operational in NI, with sufficient long-term resources in place to guarantee that this specialised healthcare is expeditiously available as required.

The Commission recommends that the Department of Justice considers the lacuna identified by the High Court of Justice in NI regarding the powers of a Review Tribunal when seeking to release with conditions an individual who had been detained under the Mental Health (NI) Order 1986, but now has capacity.

The Commission recommends that the Department of Health, working with the Regulation and Quality Improvement Authority, ensures that the provision of mental health services to patients in the community is kept under review and that inquiries are made into cases where it appears there may be a deficiency in care or treatment.

## Oral health

In 2013, the Oral health Strategy for NI expired and has not been updated.<sup>2229</sup> In 2019, the House of Commons NI Affairs Committee found that NI has some of the worst children’s dental health outcomes in the UK and that tooth decay is the number one reason for child hospital admissions in NI.<sup>2230</sup> The NI Affairs Committee recommended that the “Department of Health commit to develop a new oral health strategy for NI in collaboration with the dental profession to be published in draft by early 2021”.<sup>2231</sup> In 2024, there is no commitment to introduce an up-to-date oral health strategy for NI.

<sup>2229</sup> Department of Health, Social Services and Public Safety, ‘Oral Health Strategy for NI’ (DHSSPS, 2007).

<sup>2230</sup> NI Statistics and Research Agency, ‘Hospital Statistics: Acute Episode Based Activity 2017/2018’ (NISRA, 2018).

<sup>2231</sup> House of Commons NI Affairs Committee, ‘Health Funding in NI’ (NIAC, 2019), at viii.

In 2023/2024, there were 364 dental practices with 1,195 registered dentists providing health service treatments in NI.<sup>2232</sup> Within NI, approximately 94 per cent of the population live within a five-mile radius of a National Health Service dental practice.<sup>2233</sup> However, in 2023, the British Dental Association raised concerns about the vulnerable state of dental services and warned that budgetary cuts could further undermine National Health Service dentistry in NI.<sup>2234</sup>

In 2024, there were significant delays in individuals, particularly children with specific needs, accessing dental services in NI.<sup>2235</sup>

The British Dental Association reports that poor oral health affects children's participation in education,<sup>2236</sup> affects employment prospects for working-age adults,<sup>2237</sup> and can lead to a higher risk of health problems and malnutrition for older people.<sup>2238</sup> Older people in particular have increasingly complex oral care needs that are not being adequately met, which is a particular issue for older people in care homes.<sup>2239</sup> With the effect of COVID-19 and suspended routine care in care homes a backlog of oral health issues in care settings is expected.<sup>2240</sup> As well as accumulating a debt of oral health problems among children.<sup>2241</sup>

<sup>2232</sup> Department of Health, Press Release: 'Publication of Family Practitioner Services General Dental Statistics for Northern Ireland 2023/2024', 20 June 2024.

<sup>2233</sup> Ibid.

<sup>2234</sup> British Dental Association, 'Press Release: Open Letter to the Permanent Secretary of the Department of Health', 12 May 2023.

<sup>2235</sup> Dean McLaughlin, 'Autistic girl faces "frustrating" one-year wait to get tooth out', *BBC News*, 15 October 2024; Dean McLaughlin, 'Autistic girl waiting in pain set to get tooth out', *BBC News*, 24 October 2024.

<sup>2236</sup> Office of National Statistics, 'Children's Dental Health Survey 2013: NI Report' (ONS, 2015).

<sup>2237</sup> House of Commons NI Affairs Committee, 'Health Funding in NI' (NIAC, 2019), at para 151.

<sup>2238</sup> National Health Service, 'The Health Risks of Gum Disease'. Available at: <https://www.nhs.uk/live-well/healthy-body/health-risks-of-gum-disease/>.

<sup>2239</sup> Letter from the British Dental Association to Permanent Secretary to Department of Health, 18 December 2018.

<sup>2240</sup> British Dental Association, 'Press Release: NI - Building better oral healthcare after COVID', 18 March 2021. Available at: <https://www.bda.org/news-centre/blog/Pages/Northern-Ireland-Building-better-oral-healthcare-after-COVID.aspx>

<sup>2241</sup> Ibid.

In 2023, the Department of Health published children’s and older person’s oral health improvement plans, which were consulted on.<sup>2242</sup> In 2024, the outcome of the consultation process was awaited.

Under the Barnett Formula, the NI Executive receives additional funds through revenue raised from the soft drinks industry levy.<sup>2243</sup> However, these funds are not ring-fenced, for example, for the purpose of improving oral health in NI.<sup>2244</sup> In 2024, the Minister of Health, Mike Nesbitt MLA, stated that:

we could estimate that £10.6 million was raised in NI in the 2022/2023 financial year. The levy is not formally linked by the UK Government to any specific spending, so it is not known how much the [NI] Executive receive as a result of the levy. [The Department of Health]... previously explored the potential to use funds equivalent to those likely to have been raised through the levy in NI for tackling obesity and other public health-related issues, but given that there was no budget line, that did not prove to be possible. It is still my preference that the revenue raised through the levy be targeted at obesity-related purposes.<sup>2245</sup>

The Department of Health, in developing the Healthy Futures strategy, is due to consider how the soft drinks industry levy can be utilised.<sup>2246</sup> The publication of the strategy is awaited.

## Recommendations

The Commission recommends that the Department of Health promptly develops, implements and monitors an up-to-date Oral Health Strategy for NI. Affected individuals and their representative organisations should be meaningfully consulted at every stage.

<sup>2242</sup> Department of Health, ‘Children’s and Older Person’s Oral Health Improvement Plans Consultation’ (DoH 2023).

<sup>2243</sup> NI Assembly Hansard, ‘Soft Drinks Industry Levy’, 10 June 2024.

<sup>2244</sup> Ibid.

<sup>2245</sup> Ibid.

<sup>2246</sup> Ibid.

The Commission recommends that the Department of Health takes effective steps to address inequalities in dental care, including the provision of adequate funding to General Dental Services to ensure National Health Service dentistry is accessible across NI.

The Commission recommends that the Department of Health works with the Department of Finance to ensure that adequate funding for oral health-related measures is ring-fenced, for example, through the Soft Drinks Industry Levy.

### ● Period poverty

In 2019, several UN Special Rapporteurs raised concerns at the global inaccessibility and prohibitive expense of sanitary hygiene products.<sup>2247</sup>

In 2021, 27.5 per cent of pupils surveyed who have a period in NI have had difficulty accessing period products.<sup>2248</sup> Of the pupils surveyed, 83.2 per cent who had difficulty accessing period products experienced this because they did not have what they needed with them in school.<sup>2249</sup> Of the pupils surveyed, 6.5 per cent had difficulty accessing period products because their parents could not afford them, while 11.8 per cent said they themselves could not afford them.<sup>2250</sup> Of the pupils surveyed, 9.7 per cent who menstruate in NI have missed school multiple times because they did not have sufficient period products.<sup>2251</sup>

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

<sup>2247</sup> Officer of the UN High Commissioner for Human Rights, 'Press Release: International Women's Day - Women's menstrual health should no longer be a taboo, say UN human rights experts', 8 March 2019.

<sup>2248</sup> Council for the Curriculum, Examinations and Assessment, 'Period Poverty Survey Findings Report: December 2021' (CCEA, 2021), at 2.

<sup>2249</sup> Ibid.

<sup>2250</sup> Ibid.

<sup>2251</sup> Ibid.

health and education settings. Regulations are required to clarify which public bodies and premises have duties under the 2022 Act.<sup>2252</sup> As of July 2024, regulations had been made by five of the nine NI Executive Departments regarding implementation of the 2022 Act.<sup>2253</sup> Regulations from the remaining four NI Executive Departments were progressing through the NI Assembly.<sup>2254</sup>

In 2023, in response to broader cuts to the Department of Education's budget,<sup>2255</sup> the Department of Education announced that it was reducing funding to schools for the provision of free period products by more than 40 per cent.<sup>2256</sup> In June 2024, the Period Dignity Pilot Scheme, which had been providing free period products in schools in NI since September 2021, concluded to make way for the extended, permanent provision under the 2022 Act.<sup>2257</sup>

In 2024, Libraries NI, partnering with the Executive Office, began distributing free period products through public libraries in NI.<sup>2258</sup>

## Recommendations

The Commission recommends that the Executive Office, in partnership with relevant NI Executive Departments, ensures provision for free period products in NI is as wide as possible to avoid divergence in access, for example, places of detention and civil society organisations that provide essential public services should be included. Steps should be taken to ensure provision does not become an undue burden on the organisations and premises affected.

<sup>2252</sup> Section 2(1), Period Products (Free Provision) Act 2022.

<sup>2253</sup> These were the Department of Education, the Department of Justice, the Department for the Economy, the Department of Agriculture, Environment and Rural Affairs and the Department for Infrastructure. See Email correspondence from the Executive Office to the NI Human Rights Commission, 1 August 2024.

<sup>2254</sup> Email correspondence from the Executive Office to the NI Human Rights Commission, 1 August 2024.

<sup>2255</sup> UK Parliament Hansard, 'Written Statement: NI Finances 2023-2024 - Chris Heaton-Harris - HCWS748', 27 April 2023.

<sup>2256</sup> Robbie Meredith, 'Period Poverty: No free tampons in school "adds stress to families"', *BBC News*, 4 May 2023.

<sup>2257</sup> NI Assembly Hansard, 'Written Answer: Period Products - Paul Givan MLA - AQW 13445/22-27', 26 June 2024.

<sup>2258</sup> The Executive Office, 'Press Release: Junior Ministers welcome introduction of free period products', 13 May 2024.

The Commission recommends that the NI Executive Office, in partnership with relevant NI Executive Departments, effectively monitors levels of period poverty in NI, including through the collection and dissemination of comprehensive disaggregated data, to ensure that potential gaps in provision of free period products in NI are identified and effectively addressed.

The Commission recommends that the UK Government works with the NI Executive to ensure that period products that are not free are not inaccessibly priced and are fully accessible as the need requires.

# Right to Education

## Academic selection

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “end practices, including academic selection and testing measures, which contribute to the high levels of stress felt by students owing to academic pressure, and ensure that children benefit from a creative learning environment”.<sup>2259</sup>

In 2024, unregulated academic selection continued in NI. In 2023/2024, the arrangements for transfer tests changed, a common entrance examination operated by the Schools Entrance Assessment Group replaced the dual testing system.<sup>2260</sup>

Independent research indicates that unregulated post-primary academic selection is damaging children’s mental health and “magnifies inequalities” for specific disadvantaged groups of children.<sup>2261</sup> Ulster University reports that “the current arrangements for school transfer at age 11 contribute to the social and financial costs of a stressful process that serves to benefit a few (generally already privileged) pupils while damaging the life-chances of a large proportion of the school population”.<sup>2262</sup> Queen’s University Belfast found that academic selection perpetuated division in wider society in NI and “disadvantages the already most disadvantaged”.<sup>2263</sup>

<sup>2259</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 47(k).

<sup>2260</sup> ‘Common transfer test: Thousands of children sit first paper’, *BBC News*, 11 November 2023.

<sup>2261</sup> Participation and the Practice of Rights, ‘Could Make Or Break a Child: The State of Human Rights and Academic Selection in NI’ (PPR, 2019).

<sup>2262</sup> Ulster University, ‘Transforming Education in NI - Academic Selection and the Transfer Test’ (IEF, 2021).

<sup>2263</sup> Joanne Hughes and Rebecca Loader, ‘Is Academic Selection in NI a Barrier to Social Cohesion?’ (QUB, 2022).



In 2023, the Independent Review of Education confirmed that the current process of academic selection “perpetuates a socio-economic division between selective and non-selective schools”.<sup>2264</sup> The Independent Panel advised that the current arrangements should not continue and set out a range of recommendation for reform. This included transitioning away from using a single test as a means of selection for transfer to post-primary schools in NI, and instead, using a broader pupil profile.<sup>2265</sup> It also recommended a cap on the number of students transferring to post-primary schools based on academic criteria and that schools using academic criteria must first give priority to pupils receiving Free School Meals.<sup>2266</sup>

In 2024, the Department of Education was developing options for the Minister of Education, Paul Givan MLA, to consider based on the Independent Review’s findings.<sup>2267</sup> The outcome is awaited.

## Recommendations

The Commission recommends that the Department of Education promptly introduces a non-selective system of post-primary school admission and that the two-tier system of education in NI is abolished. This process should be undertaken through meaningful consultation with schools, parents, guardians, carers and children.

<sup>2264</sup> Independent Review of Education, ‘Investing in a Better Future: Volume 1’ (Independent Review of Education, 2023), at para 5.32.

<sup>2265</sup> Ibid, at para 5.34.

<sup>2266</sup> Ibid.

<sup>2267</sup> NI Assembly Hansard, ‘Written Question: Independent Review of Education - Kate Nicholl MLA - AQW 12843/22-27, 10 June 2024.

## Bullying in schools

In August 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

increase efforts to eliminate racial discrimination and racist bullying in schools and adopt adequate measures, including awareness-raising on the harmful effects of bullying, early detection mechanisms, mandatory training for teachers, systematic collection of disaggregated data and compulsory recording and monitoring of bullying behaviour.<sup>2268</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive “ensure that children who experience discrimination, bullying or harassment in relation to their sexual orientation or gender identity receive protection and support, including through targeted anti-bullying measures”.<sup>2269</sup> The UN CRC Committee also recommended that the UK Government and NI Executive:

increase efforts to eliminate discrimination and bullying, including cyberbullying, on the grounds of race, sexual orientation, gender identity or sex characteristics, disability, migration or other status in the school context, and ensure that such measures:

- i) are adequately resourced and developed in consultation with children;
- ii) address the root causes of bullying; and
- iii) encompass prevention, early detection mechanisms, awareness-raising on its harmful effects, the empowerment of children, mandatory training for teachers, intervention protocols and consistent and robust recording and monitoring of bullying behaviour.<sup>2270</sup>

<sup>2268</sup> 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, at para 46(d).

<sup>2269</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 20(e).

<sup>2270</sup> Ibid, at para 47(f).

In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive:

encourage schools to take a robust approach to the recording of racist and anti-lesbian, gay, bisexual, transgender and intersex bullying incidents in order to allow long-term policies aimed at addressing such forms of bullying, including online, to be developed, accompanied by resolute awareness-raising measures, such as campaigns or dedicated weeks or months against particular forms of racism and intolerance.<sup>2271</sup>

In 2023, the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities recommended that the UK Government and NI Executive:

take priority measures to tackle racist bullying in schools, in particular against Gypsies, Roma and Travellers, including through... adding ethnic identifiers on [the recording of racist bullying] in NI, strengthening mechanisms and remedies in cases of racist bullying, and collecting data disaggregated by gender, geographical location and ethnicity on absenteeism.<sup>2272</sup>

Articles 2 and 13 of the Windsor Framework require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the EU Racial Equality Directive which protects against discrimination and harassment on the grounds of race and ethnicity in the area of education.<sup>2273</sup>

<sup>2271</sup> CoE European Commission Against Racism and Intolerance, 'Report on the UK (Sixth Monitoring Cycle)' (ECRI, 2024), at para 28.

<sup>2272</sup> ACFC/OP/V, 'CoE Advisory Committee on the Framework Convention for the Protection of National Minorities: Fifth Opinion on the UK', 25 May 2023, at para 194.

<sup>2273</sup> Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment Between Men and Women in the Access To and Supply of Goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.; Directive 79/7/EEC, 'EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978.

This EU Directive was amended in 2024 by the EU directive on strengthening the role of equality bodies, requiring NI legislation to keep pace.<sup>2274</sup> The obligation also requires compliance with current and future CJEU case-law.<sup>2275</sup>

In 2021, the Addressing Bullying in Schools (NI) Act 2016 came into force.<sup>2276</sup> The 2016 Act places statutory duties on grant-aided schools to take steps to prevent bullying and to record bullying incidents. However, the 2016 Act does not place a requirement on schools to report incidences of bullying to the Department of Education or the Education Authority NI.

There is evidence that specific groups of children in NI feel particularly affected by bullying.<sup>2277</sup> For example, as reported in 2016, of 532 lesbian, gay, bisexual, transgender, queer (or questioning) and intersex+ post-primary pupils surveyed, 255 (48 per cent) had experienced bullying as a result of their sexual orientation or gender identity, with 287 (54 per cent) feeling unsupported by the school and 239 (45 per cent) stating that school was not a safe place to be.<sup>2278</sup> In 2021, the Executive Office published an assessment of the current racial equality strategy, which highlighted that in 2019, 45 per cent of young people said they had witnessed racist bullying or harassment in their school.<sup>2279</sup>

<sup>2274</sup> Directive 2024/1499, 'EU Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC, 7 May 2024. This is one of two EU directives aimed at strengthening equality bodies. See Council of EU, 'Press Release: Strengthening the role of equality bodies across the EU: Council adopts two directives', 7 May 2024. See also for more detail on the Commission's advice and recommendations the NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the implementation of Article 2 of the Windsor Framework 2023-2024', (NIHRC and ECNI, 2024), at para 3.59-3.69.

<sup>2275</sup> See for more detail on the Commission's advice on Windsor Framework Article 2 the 'Human Rights after UK Exit from the EU' in this Annual Statement. See also NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024' (NIHRC and ECNI, 2024).

<sup>2276</sup> Department of Education, 'Press Release: Schools to implement Addressing Bullying Act', 21 April 2021.

<sup>2277</sup> Department for Communities, 'Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations' (DfC, 2021).

<sup>2278</sup> Public and Corporate Economic Consultants, 'Department of Education: Post Primary School Experiences of 16-21 Year Olds' (PACEC, 2016).

<sup>2279</sup> NI Statistics and Research Agency, 'NI Racial Equality Indicators Report: 2014-2019' (TEO, 2021), at 18.

In 2023, despite the Addressing Bullying in Schools (NI) Act 2016 coming into force,<sup>2280</sup> Queen’s University Belfast reported that racist bullying remains prevalent and that schools’ responses to such incidents were often considered inadequate.<sup>2281</sup> The final report recommends several measures to ensure that schools are properly identifying racist bullying, including by strengthening monitoring arrangements and introducing anti-racism and anti-bias training as a core component of initial teacher education and in-service professional development.<sup>2282</sup>

In 2022, the Department of Education established an Addressing Bullying in Schools Implementation Team. Between September 2022 and March 2024, the Implementation Team responded to 577 referrals relating to bullying-type behaviour.<sup>2283</sup> The Implementation Team had provided specific support to schools within regarding to 185 significant bullying-type cases and delivered training to 147 school leadership teams and bespoke training to 110 school governors.<sup>2284</sup> Between January and June 2024, level one foundation training on the 2016 Act had been completed by 3,848 educationalists.<sup>2285</sup>

In 2024, the Minister of Education, Paul Givan MLA, confirmed that the Department of Education was not able to establish the level of compliance with the Addressing Bullying in Schools (NI) Act 2016 in schools in NI due to the lack of reporting requirements.<sup>2286</sup> However, the Minister of Education also confirmed “plans to complete a new research study in order to gather up to date data on the nature and prevalence of bullying type behaviour and to baseline the impact of the Act in all schools”.<sup>2287</sup> The outcome of this research is awaited.

<sup>2280</sup> Department of Education, ‘Press Release: Schools to implement Addressing Bullying Act’, 21 April 2021.

<sup>2281</sup> Rebecca Loader et al, ‘Experiences of Education among Minority Ethnic Groups in NI’ (QUB, 2023), at para 6.3.

<sup>2282</sup> Ibid, at para 9.2.1.

<sup>2283</sup> NI Assembly Hansard, ‘Bullying in Schools’, 3 June 2024.

<sup>2284</sup> Ibid.

<sup>2285</sup> Ibid.

<sup>2286</sup> NI Assembly Hansard, ‘Written Question: Addressing Bullying in Schools - Kate Nicholl MLA - AQW 8153/22-27’, 12 March 2024.

<sup>2287</sup> Ibid.

## Recommendations

The Commission recommends that the Department of Education, in collaboration with the Education and Training Inspectorate, monitors and evaluates the effectiveness of the Addressing Bullying in Schools (NI) Act 2016 at tackling bullying in schools in NI. Consideration should be given to ensuring the reporting, monitoring and accountability mechanisms are comprehensive.

The Commission recommends that the Department of Education and the Education Authority NI take targeted measures to address bullying, including cyberbullying, on the grounds of race, sexual orientation, gender identity or sex characteristics, disability, migration or other status in all NI schools. This includes ensuring that children, all teachers and other education providers are trained on how to identify, address and remedy the effects of bullying.

## Educational needs of specific groups of children

In August 2024, the UN CERD Committee 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”.<sup>2288</sup> Additionally, the UN CERD Committee recommended that the UK Government and NI Executive:

take all measures necessary to reduce the attainment gaps, including by adopting and implementing an action plan to improve education attainment of children belonging to minorities, with specific and tailored measures for pupils belonging to Gypsy, Roma and Traveller communities, pupils of African descent and migrant, asylum-seeking and refugee pupils, and in close consultation with the families of affected communities.<sup>2289</sup>

<sup>2288</sup> 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, at para 46(a).

<sup>2289</sup> Ibid, at para 46(b).



The UN CERD Committee further recommended that the UK Government and NI Executive “review and monitor the use of exclusions, provide for appropriate non-punitive alternatives and effectively address their disproportionate use of exclusions for children belonging to ethnic minorities”.<sup>2290</sup> The UN CERD Committee also recommended that the UK Government and NI Executive “take effective steps to increase the representation of teachers from ethnic minorities in the school system for teaching staff to reflect better the communities they serve”.<sup>2291</sup>

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

strengthen measures to address inequalities in educational attainment and improve educational outcomes for children in disadvantaged situations, including children in socioeconomically disadvantaged situations, children belonging to ethnic minority groups, asylum-seeking, refugee and migrant children, children with disabilities and ‘young carers’, including by:

- i) providing financial and other support for such children to finish school;
- ii) developing guidelines for responding to cases of school absenteeism; and
- iii) collecting and analysing data disaggregated by ethnic origin, educational outcomes and other relevant indicators on completion rates, educational outcomes and exclusions to inform policies and programmes.<sup>2292</sup>

The UN CRC Committee also recommended that the UK Government and NI Executive “remove ‘colonising’ and discriminatory language from textbooks and curricula and develop educative materials that foster respect for and appreciation of racial, cultural, gender and other diversities”.<sup>2293</sup>

<sup>2290</sup> Ibid, at para 46(c).

<sup>2291</sup> Ibid, at para 46(e).

<sup>2292</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 47(a).

<sup>2293</sup> Ibid, at para 47(h).



In October 2024, the CoE European Commission against Racism and Intolerance recommended that the UK Government and NI Executive “in consultation with the relevant stakeholders, conduct research and develop strategies to improve teacher diversity and strengthen the recruitment, career development and retention of Black teachers and teachers of African descent and other ethnic minority backgrounds”.<sup>2294</sup> The CoE European Commission against Racism and Intolerance also recommended that the UK Government and NI Executive “adopt a UK-wide strategy specific to the Gypsy, Roma and Traveller communities, after appropriate consultation with representatives of the Gypsy, Roma and Traveller communities themselves, relevant civil society organisations and equality bodies, accompanied by sufficient funding for implementing the strategy and regulate independent evaluations of it”.<sup>2295</sup>

In 2023, the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities recommended that the UK Government and NI Executive explore “possibilities for sharing education data between the UK and Ireland, in order to ensure continuity in access to education for Gypsies, Roma and Travellers across jurisdictions”.<sup>2296</sup> The CoE Advisory Committee also recommended that the UK Government and NI Executive “introduce training for teachers on Gypsy, Roma and Traveller cultures, their way of life and dealing with instances of anti-gypsyism in schools”.<sup>2297</sup>

Articles 2 and 13 of the Windsor Framework require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the EU Racial Equality Directive which protects against discrimination on the grounds of race and ethnicity in the area of education.<sup>2298</sup>

<sup>2294</sup> CoE European Commission Against Racism and Intolerance, ‘Report on the UK (Sixth Monitoring Cycle)’ (ECRI, 2024), at para 30.

<sup>2295</sup> Ibid, at para 101.

<sup>2296</sup> ACFC/OP/V, ‘CoE Advisory Committee on the Framework Convention for the Protection of National Minorities’, 25 May 2023, at para 195.

<sup>2297</sup> Ibid, at para 196.

<sup>2298</sup> Directive 2000/43/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000.

This EU Directive was amended in 2024 by the EU directive on strengthening the role of equality bodies, requiring domestic legislation to keep pace.<sup>2299</sup> The obligation also requires compliance with current and future CJEU case-law.<sup>2300</sup> Additional EU obligations which underpin the non-diminution commitment of relevance to refugees and people seeking asylum, include the EU Reception Directive,<sup>2301</sup> and the EU Qualification Directive<sup>2302</sup> which set minimum standards requiring States to ensure children seeking asylum and refugee children have access to education.

The EU Race Equality Directive prohibits direct and indirect discrimination, harassment and an instruction to discriminate and applies to all persons in both the public and private sectors, including in relation to education.<sup>2303</sup> The CJEU has affirmed that the EU Directive cannot be interpreted restrictively in light of its objective of promoting equality in respect to racial and ethnic origin, including in respect to education.<sup>2304</sup> For example, the CJEU found that access to education should be considered an essential aspect of education and that “costs related to the participation in a research project or in an educational programme must be considered to be part of the components of access to education”.<sup>2305</sup>

<sup>2299</sup> Directive 2024/1499, ‘EU Council Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in Matters of Employment and Occupation between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC, 7 May 2024. This is one of two EU directives aimed at strengthening equality bodies. See Council of EU, ‘Press Release: Strengthening the role of equality bodies across the EU: Council adopts two directives’, 7 May 2024. See also for more detail on the Commission’s advice and recommendations in the NI Human Rights Commission and Equality Commission for NI, ‘Annual Report on the implementation of Article 2 of the Windsor Framework 2023-2024’, (NIHRC and ECNI, 2024), at para 3.59-3.69.

<sup>2300</sup> See for more detail on the Commission’s advice on Windsor Framework Article 2 in the ‘Human Rights after UK Exit from the EU’ section of this Annual Statement. See also NI Human Rights Commission and Equality Commission for NI, ‘Annual Report on the Implementation of Article 2 of the Windsor Framework 2023-2024’ (NIHRC and ECNI, 2024).

<sup>2301</sup> Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

<sup>2302</sup> Directive 2004/83/EC, ‘EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’, 29 April 2004.

<sup>2303</sup> Article 3(1)(g), Directive 2000/43/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000.

<sup>2304</sup> *Heiko Jonny Maniero*, C-457/17, 15 November 2018, at para 36.

<sup>2305</sup> *Ibid*, at paras 37-38.

In 2023/2024, there were approximately 21,000 pupils that were children of migrants in NI, accounting for 5.9 per cent of the school population.<sup>2306</sup>

In 2019, the Department of Education consulted on the effectiveness of its policy for supporting children of migrants.<sup>2307</sup> In 2024, the outcome of the consultation was still awaited.<sup>2308</sup>

In 2021, the Expert Panel on Educational Underachievement in NI recommended 47 actions to address educational underachievement at all levels, at a cumulative cost of over £180 million across five years.<sup>2309</sup> However, in 2023/2024, the Department of Education continued to be unable to realise the funding level recommended by the Expert Panel due to budgetary pressures.<sup>2310</sup> This limited the scale and pace of change that could be achieved. However, 37 of the 45 actions (82 per cent) identified for action in 2023/2024 had progressed.<sup>2311</sup>

In 2023, in the context of addressing educational underachievement in NI, the Independent Review of Education reiterated the need to fund and deliver the report from the Expert Panel on Educational Underachievement.<sup>2312</sup> Additionally, the Independent Review reiterated findings from Queen's University Belfast in relation to the need to improve the educational experience of minority ethnic groups in NI.<sup>2313</sup> The Independent Review recommended targeted support for learners at risk of disadvantage, investing in early childhood

<sup>2306</sup> Department of Education, 'Annual Enrolments at Schools and in Funded Pre-school Education in NI 2023-2024' (DE, 2024), at 6.1.

<sup>2307</sup> Department of Education, 'Supporting Newcomer Pupils - Public Consultation' (DoE, 2019).

<sup>2308</sup> NI Assembly Hansard, 'Written Question: Supporting Newcomer Pupils Policy - Stephen Dunne MLA - AQW 13577/22-27', 21 June 2024.

<sup>2309</sup> Department of Education, 'Expert Panel on Educational Underachievement: A Fair Start - Final Report and Action Plan' (DE, 2021).

<sup>2310</sup> Department of Education, 'A Fair Start Progress Report Number 5: Actions to Support Educational Underachievement' (DE, 2024), at 3; Department of Education, 'A Fair Start Progress Report: Actions to Support Educational Underachievement' (DE, 2023), at 5.

<sup>2311</sup> Department of Education, 'A Fair Start Progress Report Number 5: Actions to Support Educational Underachievement' (DE, 2024), at 3.

<sup>2312</sup> Independent Review of Education, 'Investing in a Better Future - Volume 1' (Independent Review of Education, 2023), at 28.

<sup>2313</sup> Rebecca Loader et al, 'Experiences of Education Among Minority Ethnic Groups in NI' (QUB, 2023).

education, and prioritising wellbeing.<sup>2314</sup> The Independent Review also recommended equalising the distribution of children from migrant families across the grammar and non-grammar sectors in NI.<sup>2315</sup> In October 2024, the RAISE Programme was introduced, which aims to “deliver a range of education support measures to help address educational underachievement and tackle educational disadvantage through the whole community and place-based approach which will operate in 15 areas across NI”.<sup>2316</sup> Funding for the RAISE Programme is guaranteed until 2026, “with the potential for further funding”.<sup>2317</sup>

In 2024, the Education Authority NI’s Intercultural Education Service continued to provide support to children residing in contingency and dispersal accommodation across NI.<sup>2318</sup> However, refugees, people seeking asylum and representative organisations highlighted that provision was not sufficient to meet demand.<sup>2319</sup> Beyond school placements, this also included access to language supports, uniform grants, free school meals and free school transport.<sup>2320</sup>

In 2024, the Department of Education commenced a review of its Traveller Child in Education Action Framework.<sup>2321</sup> The Framework was published in 2013 and aimed to improve outcomes for Traveller children within a 10-year timeframe.

<sup>2314</sup> Independent Review of Education, ‘Investing in a Better Future – Volume 1’ (Independent Review of Education, 2023), at 28.

<sup>2315</sup> Ibid, at 56.

<sup>2316</sup> Department of Education, ‘Press Release: Ministers announce programme to raise achievements and tackle educational disadvantage’, 16 October 2024.

<sup>2317</sup> Ibid.

<sup>2318</sup> NI Assembly Hansard, ‘Written Question: Children living in temporary accommodation – Kellie Armstrong MLA - AQW 9065/22-27’, 27 March 2024.

<sup>2319</sup> Ita Dungan, ‘My Children Haven’t Been to School Since January’, *BBC News*, 30 May 2024; Meeting between NIHRC and the Horn of Africa People’s Aid NI, 16 April 2024; ‘Northern Ireland: Young asylum seekers face restricted access to education’, *BBC News*, 23 October 2023; Children’s Law Centre and South Tyrone Empowerment Programme, ‘Joint Submission to CoE Framework Convention on the Protection of National Minorities Advisory Committee: Rights of Asylum Seeker Children Living in Contingency Accommodation (Hotel Buildings) in NI, Run by Mears Group PLC’ (CLC and STEP, 2022); NI Assembly Research and Information Service, ‘Newcomer Pupils in NI Briefing Paper’ (NIA, 2022); Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

<sup>2320</sup> Ibid.

<sup>2321</sup> NI Assembly Hansard, ‘Written Question: Traveller Child in Education Action Framework – Daniel McCrossan MLA - AQW 12145/22-27’, 23 May 2024.

However, reports indicate that, “although more Traveller children are achieving better results, most are still leaving school with either poor grades or no qualifications”.<sup>2322</sup> The purpose of the Framework review was to consider the effectiveness of the current framework, identify any remaining actions or gaps, and develop a revised policy framework.<sup>2323</sup> The Department of Education established a Stakeholder Engagement Group to inform this work, which includes members of the Traveller community with lived experience, Traveller support organisations, and statutory and voluntary groups, which includes the Commission.<sup>2324</sup> The outcome of the Framework review is awaited.

## Recommendations

The Commission recommends that the NI Executive, as a matter of priority, provides the necessary funding to implement the actions identified by the Expert Panel on Educational Underachievement. In the interim, the Department of Education should ensure every effort is made to use all resources at its disposal to implement the Expert Panel’s findings and ensure these issues are not exacerbated by further delay.

The Commission recommends that the Department of Education develops, implements and monitors a revised policy and measurable action to improve educational outcomes for children of migrant families. This should take a human rights-based approach in line with international human rights standards and Windsor Framework Article 2, with the aims of ensuring availability, accessibility and quality of education. It should also include reconsidering the use of the term ‘newcomer pupils’.

<sup>2322</sup> Luke Butterly, ‘Three-quarters of Irish Traveller children still leave school with fewer than five GCSEs’, *The Detail*, 13 May 2024; Luke Butterly, ‘Northern Irish plan to improve Traveller children’s school outcomes “isn’t working”’, *The Irish Times*, 12 May 2024.

<sup>2323</sup> NI Assembly Hansard, ‘Written Question: Traveller Child in Education Action Framework – Daniel McCrossan MLA - AQW 12145/22-27’, 23 May 2024.

<sup>2324</sup> Meeting of the Stakeholder Engagement Group for the Traveller Child in Education Action Framework Review, 13 June 2024.

The Commission recommends that the Department of Education reviews the curriculum, initial teacher education and in-service professional development to ensure sufficient representation of racial, cultural, gender and other diversities across education in NI. This should include meaningful consultation with parents, guardians, carers, children and representative organisations at every stage of the process.

The Commission recommends that the Department of Education urgently reviews and adequately funds the Education Authority NI's Intercultural Education Service to ensure the service has sufficient flexibility to ensure all children seeking asylum in NI at any given time have timely access to education and other necessary supports, such as language classes, uniform grants, school meals and transport.

The Commission recommends that the Department of Education promptly updates and sustainably resources the Traveller Child in Education Action Framework to ensure educational outcomes for Traveller children are improved. This includes exploring possibilities for sharing education data between the UK and Ireland to ensure continuity in access to education for Traveller children that are enjoying a nomadic lifestyle.

The Commission recommends that the Department of Education embeds consideration of the Windsor Framework Article 2 in the development of policy and legislation addressing educational needs of minority ethnic children in schools; and monitors the ongoing consultation by the EU on the EU Racial Equality Directive, as well as relevant CJEU case law, in line with the 'keeping pace' obligation under Windsor Framework Article 2.



## Integrated education

In 2023, the CoE Advisory Committee on the Framework Convention on the Protection of National Minorities recommended that the UK Government and NI Executive “increase the share of pupils and students attending integrated schools, and seek to actively motivate parents and provide incentives for pupils and students studying in such schools, with a view to creating a fully integrated education system in NI”.<sup>2325</sup>

The Integrated Education Act 2022 amended the statutory duty on the Department of Education to encourage, facilitate and the development of Integrated Education.<sup>2326</sup> It provides a more inclusive definition for integrated education, relating to the education together pupils of different cultures, religions, socio-economic backgrounds and abilities.<sup>2327</sup>

In 2023/2024, out of 356,450 pupils attending schools in NI, there were 27,700 (7.8 per cent) pupils enrolled in integrated education.<sup>2328</sup> In 2024, there were 72 grant-aided integrated schools in NI, consisting of two integrated nursery schools, 49 integrated primary schools and 21 integrated post-primary schools.<sup>2329</sup> A survey of over 2,300 respondents indicated that 67 per cent of parents in NI support integrated education or believe it should be the main model.<sup>2330</sup> A further survey indicated that 60 per cent of 16 year olds in NI either agreed or strongly agreed, and only 7 per cent either disagreed or strongly disagreed, that the NI Executive should encourage and support integrated education in NI.<sup>2331</sup>

<sup>2325</sup> ACFC/OP/V, ‘CoE Advisory Committee on the Framework Convention for the Protection of National Minorities: Fifth Opinion on the UK’, 25 May 2023, at para 183.

<sup>2326</sup> Section 6, Integrated Education Act 2022.

<sup>2327</sup> Section 1(1), Integrated Education Act 2022.

<sup>2328</sup> Department of Education, ‘Annual Enrolments at Schools and in Funded Pre-school Education in NI 2023-2024’ (NISRA, 2024).

<sup>2329</sup> Education Authority, ‘Integrated Education’. Available at: <https://www.eani.org.uk/parents/integrated-education>.

<sup>2330</sup> Integrated Education Fund, ‘Press Release: LucidTalk NI Attitudinal Poll 2024’. Available at: <https://www.ief.org.uk/our-work/research/northern-ireland-attitudinal-poll-2024/>

<sup>2331</sup> NI Young Life and Times Survey, ‘Summary of Results 2024’ (ARK, 2024), at Figure 6.



In 2023, the Department of Education published an updated strategy for integrated education in NI, as required by the 2022 Act.<sup>2332</sup> However, the strategy does not set specific and measurable targets for increasing pupil or school numbers in integrated education.<sup>2333</sup> In 2024, a further updated strategy for integrated education in NI was awaited.<sup>2334</sup> Following concerns about the complexity of assessing demand for integrated education,<sup>2335</sup> the Department of Education was also considering new ways to collate and monitor data.<sup>2336</sup>

In 2023, the Independent Review of Education recommended a reconfiguration of the network of schools in NI.<sup>2337</sup> The Independent Review specifically recommended an increase in the number of integrated schools in NI.<sup>2338</sup> The Independent Review also recommended a reconfiguration of jointly managed community schools in NI, “with expanded numbers of learners from different communities attending the same school and learning together”.<sup>2339</sup> The Independent Review underscored the importance of all families having such options “within a realistic travelling distance as soon as possible”.<sup>2340</sup>

In 2024, the NI Affairs Committee published the findings of its inquiry into integrated education in NI.<sup>2341</sup> The NI Affairs Committee reiterated the importance of investment in integrated education and highlighted that the Department

<sup>2332</sup> Department of Education, ‘A Strategy for Integrated Education in NI’ (DE, 2023).

<sup>2333</sup> Robbie Meredith, ‘Integrated education expansion plan branded ‘action plan with no action’’, *BBC News*, 27 April 2023.

<sup>2334</sup> NI Assembly Hansard, ‘Written Questions: NI Affairs Committee Integrated Education Inquiry – Nick Mathison MLA – AQW 13730/22-27’, 8 July 2024.

<sup>2335</sup> Letter from Chair of NI Affairs Committee, Sir Robert Buckland, to NI Minister of Education, Paul Givan MLA, 23 May 2024; Erin Early et al, ‘Report on Research Methods for Assessing Demand for Integrated Education in NI’ (IEF and QUB, 2023), at 53.

<sup>2336</sup> NI Assembly Hansard, ‘Written Questions: NI Affairs Committee Integrated Education Inquiry – Nick Mathison MLA – AQW 13730/22-27’, 8 July 2024.

<sup>2337</sup> Independent Review of Education, ‘Investing in a Better Future’ (Independent Review of Education, 2023).

<sup>2338</sup> *Ibid.*

<sup>2339</sup> Independent Review of Education, ‘Investing in a Better Future: Volume 1’ (Independent Review of Education, 2023), at para 8.45.

<sup>2340</sup> *Ibid.*

<sup>2341</sup> Letter from Chair of NI Affairs Committee, Sir Robert Buckland, to NI Minister of Education, Paul Givan MLA, 23 May 2024; Letter from Chair of NI Affairs Committee, Sir Robert Buckland, to Secretary of State for NI, Chris Heaton-Harris, 23 May 2024.

of Education needs to take a more strategic approach to its development, noting that the Department of Education is yet to bring forward any regulations under the 2022 Act.<sup>2342</sup> In 2024, the Minister of Education, Paul Givan MLA, reaffirmed the Department of Education's commitment to addressing the issues identified and that work was ongoing to ensure compliance with the 2022 Act.<sup>2343</sup>

### Recommendations

The Commission recommends that the Department of Education fully utilises the Integrated Education Act 2022 and promptly takes action to ensure integrated education provision in NI meets demand, including providing the necessary support for schools that self-nominate to transition to an integrated school.

### Relationships and sexuality education

In 2023, the UN CRC Committee 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.<sup>2344</sup>

<sup>2342</sup> Letter from Chair of NI Affairs Committee, Sir Robert Buckland, to NI Minister of Education, Paul Givan MLA, 23 May 2024.

<sup>2343</sup> NI Assembly Hansard, 'Written Questions: NI Affairs Committee Integrated Education Inquiry - Nick Mathison MLA - AQW 13730/22-27', 8 July 2024.

<sup>2344</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI', 2 June 2023, at para 44(b).

In 2019, the UN CEDAW Committee reiterated its inquiry recommendations.<sup>2345</sup> In 2018, the UN CEDAW Committee’s Inquiry into the impact of restrictive access to termination of pregnancy for women and girls in NI, found that “young people in NI were denied the education necessary to enjoy their sexual and reproductive health and rights”<sup>2346</sup> and “that access to abortion services and contraceptives are not statutory requirements of the advisory curriculum”.<sup>2347</sup> The UN CEDAW Committee stated that these “factors point to State negligence in pregnancy prevention through a failure to implement its recommended curriculum on relationship and sexuality education and ensure age-appropriate, culturally sensitive, comprehensive and scientifically accurate sexuality education”.<sup>2348</sup>

The UN CEDAW Committee recommended that the UK Government and NI Executive “make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation”.<sup>2349</sup>

In 2023, the Commission published an investigation report into relationships and sexuality education in post-primary schools in NI.<sup>2350</sup> The Commission found that there were some positive examples of post-primary schools providing comprehensive and scientifically accurate relationships and sexuality education. However, in most NI schools this was not the case, where resources were not always considered to be comprehensive, pluralistic and objective and did not comply with the UN CEDAW Committee’s recommendations.

<sup>2345</sup> 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 48.

<sup>2346</sup> CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW’, 6 March 2018, at para 43.

<sup>2347</sup> Ibid, at para 44.

<sup>2348</sup> Ibid.

<sup>2349</sup> Ibid, at para 86(d).

<sup>2350</sup> NI Human Rights Commission, ‘Relationships and Sexuality Education in Post Primary Schools in NI: A Compelling Case for Reform’ (NIHRC, 2023).

The Commission made 13 recommendations that primarily focused on amending the Education (Curriculum Minimum Content) Order (NI) 2007 and proposed steps that are necessary for ensuring the recommended reforms are implemented effectively.<sup>2351</sup>

The Relationships and Sexuality Education (NI) (Amendment) Regulations 2023 amended existing legislation<sup>2352</sup> to make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion, a compulsory component of the curriculum in NI.<sup>2353</sup>

The 2023 Regulations placed a duty on the Department of Education to issue guidance on the content and delivery of relationships and sexuality education by 1 January 2024.<sup>2354</sup> In January 2024, the Department of Education published guidance in the form of a Circular for post-primary schools in NI.<sup>2355</sup> In September 2024, the Department of Education was awaiting Ministerial approval for proposed updated and consolidated guidance in relation to the provision of relationships and sexuality education in all schools and Education Otherwise Than At School centres in NI, which is to be read alongside the most recent Circular.<sup>2356</sup>

The 2023 Regulations also placed a duty on the Department of Education to publish a report on the implementation of relationships and sexuality education by September 2026.<sup>2357</sup> The Commission is to be consulted in the drafting of this report.<sup>2358</sup>

<sup>2351</sup> Ibid.

<sup>2352</sup> Education (NI) Order 2006; Education (Curriculum Minimum Content) Order (NI) 2007.

<sup>2353</sup> Regulation 2(2), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023; Regulation 3, Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

<sup>2354</sup> Regulation 2(3), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

<sup>2355</sup> Department of Education, 'Circular 2024/1: Guidance on Amendments to the Relationships and Sexuality Education Curriculum Content' (DoE, 2024).

<sup>2356</sup> Email from Department of Education to NI Human Rights Commission, 8 September 2024.

<sup>2357</sup> Regulation 4(1), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

<sup>2358</sup> Regulation 4(2)(c), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

The 2023 Regulations further required the Department of Education to make provision about the circumstances in which, at the request of a parent, a pupil may be excused from receiving relationships and sexuality education, or specified elements of that education.<sup>2359</sup> Following a public consultation,<sup>2360</sup> the Curriculum (Circumstances in which a Pupil may be Excused from Sexual and Reproductive Health and Rights Education) Regulations (NI) 2023 were introduced. The 2023 Regulations provide that pupils in between Year Eight and Year 11 may be excused at a parents request, and that Year 12 pupils may be excused at a parent's request subject to confirmation that the pupil does not object to being excused.<sup>2361</sup>

In 2024, the NI Assembly Committee for Education commenced an inquiry into relationships and sexuality education in NI for which the Commission provided evidence.<sup>2362</sup> The Commission also commenced a follow-up review of its investigation into relationships and sexuality education in post-primary schools in NI, with publication awaited.

## Recommendations

The Commission 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.

The Commission recommends that the Secretary of State NI, working with the Department of Education, puts in place ongoing arrangements to monitor the effectiveness of the Relationships and Sexuality Education (NI) (Amendment) Regulations 2023. This includes the collection and publication of disaggregated data on opt-outs in NI, which also aims to provide insight into the reasons for the withdrawals.

<sup>2359</sup> Regulation 2(3), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

<sup>2360</sup> Department of Education, 'Relationships and Sexuality Education Consultation' (DoE, 2023).

<sup>2361</sup> Regulation 3(a) and 3(b), Curriculum (Circumstances in which a Pupil may be Excused from Sexual and Reproductive Health and Rights Education) Regulations (NI) 2023.

<sup>2362</sup> NI Assembly Hansard, 'Committee for Education: Inquiry into Relationships and Sexuality Education in NI - NI Human Rights Commission', 11 September 2024.

The Commission recommends that the Department of Education develops a strategy for NI that aims to raise awareness of the benefits of holistic relationships and sexuality education and to address any myths or misconceptions relating to the provision of relationships and sexuality education that may increase the likelihood of parental withdrawal. This includes developing measures to mitigate against the adverse effects of children and young people in NI being withdrawn from relationships and sexuality education.

## Religious education

In 2023, the UN CRC Committee recommended that that the UK Government and NI Executive repeal “legal provisions for compulsory attendance in collective worship and establishing statutory guidance to ensure the right of all children, including children under 16 years of age, to withdraw from religious classes without parental consent”.<sup>2363</sup> The UN CRC Committee also recommended that the UK Government and NI Executive revise “the religious education syllabus in NI to include education on and respect for a diversity of religion”.<sup>2364</sup>

Article 11 of the Education (NI) Order 2006, as implemented through Article 3 of the Education (Core Syllabus for Religious Education) Order (NI) 2007, enables the Department of Education to “specify a core syllabus for the teaching of religious education in grant-aided schools”.

In 2022, a case was brought to the High Court of Justice in NI by non-religious parents that were concerned that, by the time their daughter was seven years old, she had “absorbed and adopted a religious (specifically Christian) worldview which was not consistent with their own views and beliefs”.<sup>2365</sup>

<sup>2363</sup> CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 26(d).

<sup>2364</sup> Ibid, at para 26(e).

<sup>2365</sup> *In the Matter of an Application by JR87 and Her Father for Judicial Review* [2022] NIQB 53, at para 7.



The parents' specific concern was that their daughter was "learning Christianity and not learning 'about' Christianity in a school context that effectively assumes its absolute truth and which, whether intentionally or otherwise, encourages her to do the same".<sup>2366</sup> Considering the domestic law and the provisions for religious education teaching in the child's primary school, the High Court of Justice in NI ruled that the core religious education syllabus in NI is not of an objective, pluralist and critical manner, as required by Article 2 of Protocol No 1 of the ECHR.<sup>2367</sup> However, the High Court of Justice in NI stressed that "the school is statutorily obliged to adhere to... [the] syllabus and has no powers to amend it... The school's hands are tied in terms of its mandatory obligation to deliver the core syllabus in accordance with the relevant legislation".<sup>2368</sup>

Regarding guidance provided by the Department of Education, the High Court of Justice in NI stated that:

there can be no doubt that the guidelines demonstrate an awareness of the types of criticism identified by the applicants in terms of the core syllabus. Guidelines seek to guide teachers away from any risk of religious instruction or indoctrination. However, these efforts ultimately flounder on the mandatory obligation to teach the core curriculum which by statute requires that religious education must be based upon the Holy Scriptures. The guidelines, whilst helpful, do not take away from the court's analysis of what the core curriculum and collective worship requires.<sup>2369</sup>

In 2024, the Religious Education Advisory Committee, which was established by the Department of Education, was continuing to work with the Council for the Curriculum Examinations and Assessment to produce guidance for schools on ensuring that religious education is inclusive.<sup>2370</sup>

<sup>2366</sup> Ibid.

<sup>2367</sup> Ibid.

<sup>2368</sup> Ibid, at para 16.

<sup>2369</sup> Ibid, at para 97.

<sup>2370</sup> Meeting between NI Human Rights Commission and Department of Education, 17 August 2023.



In 2024, the Court of Appeal in NI upheld the High Court of Justice in NI's finding that the curriculum is not conveyed in an objective, critical and pluralistic manner.<sup>2371</sup> However, the Court of Appeal in NI held that there was no breach of Article 2 of Protocol 1 of the ECHR, as parents have an unqualified statutory right to have their child excused wholly or partly from attendance at religious education or collective worship, or both. The Court of Appeal in NI noted that, in the present case, the parents chose not to exercise this right.<sup>2372</sup> The Court of Appeal in NI further noted that “policy makers in this area are clearly minded to consider a refresh to the NI curriculum and that will inevitably include consideration of religious instruction to take into account the complexion and changing needs of our modern society”.<sup>2373</sup>

## Recommendations

The Commission recommends that the Department of Education ensures that the core religious education syllabus in NI is objective, pluralist and critical in nature. This includes that the religious education syllabus in NI includes education on and respect for a diversity of religion.

The Commission recommends that the Department of Education introduces statutory guidance that ensures, in the context of religious education, the right of all children and young people in NI to exercise agency and autonomy in exercising their right to education.

<sup>2371</sup> *In the Matter of an Application by JR87 and Her Father for Judicial Review* [2024] NICA 34, at para 109.

<sup>2372</sup> *Ibid.*

<sup>2373</sup> *Ibid.*

## ● Shared education

In 2023, the CoE Advisory Committee on the Framework Convention on the Protection of National Minorities recommended that the UK Government and NI Executive:

provide further guidance to schools implementing shared education to address their large discretionary power with the aim of improving the consistency of shared education, guaranteeing a more uniform approach to it across schools and ensuring its positive contribution to the integration of society.<sup>2374</sup>

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive:

take all necessary measures to reduce the attainment gaps, particularly among children belonging to low-income families, including by reconsidering the austerity programmes adopted and 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.<sup>2375</sup>

The Shared Education Act (NI) 2016 places an obligation on the Department of Education to promote shared education, which is educating together children and young people of different religious belief or who are experiencing socio-economic deprivation, and children and young people who are not.<sup>2376</sup> In 2024, it is estimated that approximately 70,000 pupils in the NI education system are able to participate in shared education.<sup>2377</sup>

<sup>2374</sup> ACFC/OP/V, 'CoE Advisory Committee on the Framework Convention for the Protection of National Minorities: Fifth Opinion on the UK', 25 May 2023, at para 184.

<sup>2375</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 64.

<sup>2376</sup> Section 2, Shared Education Act (NI) 2016.

<sup>2377</sup> Department of Education, 'Advancing Shared Education: 4th Report to the NI Assembly' (DE, 2024).

The main drivers of pupil participation have been the PEACE IV Shared Education Programme and the Department of Education’s Mainstreaming Shared Education funding stream.<sup>2378</sup>

In 2024, 56 per cent of 2,210 respondents stated that they had been involved in shared education, with 58 per cent agreed or strongly agreed that they were better able to respect the views of others since taking part.<sup>2379</sup> Furthermore, 36 per cent said they had made close friends with young people from other schools who had a different religious background from their own.<sup>2380</sup>

In 2022, an independent evaluation of the effect of the PEACE IV Shared Education Programme reported that there was improved integration and engagement with peers, improved educational outcomes, and enhanced teaching and learning in NI.<sup>2381</sup> In 2023, the PEACE IV programme ended and its successor programme, PEACE PLUS 2021-2027, opened to applications.<sup>2382</sup> In 2024, projects under PEACE PLUS 2021-2027 are not yet operational.<sup>2383</sup> The Department of Education continues to engage with the Special European Union Programmes Body and the Government of Ireland to support its delivery.<sup>2384</sup>

In 2023, the Independent Review of Education recognised that shared education has been invaluable for promoting social cohesion and that it was positive development.<sup>2385</sup> However, the Independent Review stated that shared education “has to be substantially strengthened and re-imagined to be more ambitious”.<sup>2386</sup> The Independent Review recommended that

<sup>2378</sup> Ibid.

<sup>2379</sup> NI Young Life and Times Survey, ‘Summary of Results 2024’ (ARK, 2024), at Figure 5.

<sup>2380</sup> Ibid.

<sup>2381</sup> Special EU Programmes Body, ‘Shared Education Impact Evaluation (Year 5): PEACE IV Programme – Specific Objective 1’ (SEUPB, 2022).

<sup>2382</sup> Email correspondence from Department of Education to NI Human Rights Commission, 9 August 2023.

<sup>2383</sup> Ibid; NI Assembly Hansard, ‘Written Questions: Advancing Shared Education – Nick Mathison MLA - AQW 8025/22-27, 15 March 2024.

<sup>2384</sup> NI Assembly Hansard, ‘Written Questions: Advancing Shared Education – Daniel McCrossan MLA - AQW 12144/22-27’, 23 May 2024; NI Assembly Hansard, ‘Written Questions: Advancing Shared Education – Nick Mathison MLA - AQW 8025/22-27, 15 March 2024.

<sup>2385</sup> Independent Review of Education, ‘Investing in a Better Future – Volume 1’ (Independent Review of Education, 2023), at para 8.36.

<sup>2386</sup> Ibid.

a new ‘Learning Together’ programme was introduced in NI, which required amalgamations of schools from different sectors and transformation to jointly managed community schools.<sup>2387</sup> The Independent Review also concluded that the Strule Shared Education Campus is unaffordable and that “the benefits do not come close to justifying the cost of the project”.<sup>2388</sup> The Independent Review recommended the immediate ending of the Strule programme and that Fresh Start resources were transferred to other education projects in NI.<sup>2389</sup>

In 2024, the Department of Education was developing options for the Minister of Education to consider based on the Independent Review’s findings.<sup>2390</sup> The outcome is awaited. However, the Minister of Education, Paul Givan MLA, has advised that the “Strule and other Shared Education Campus capital projects will continue to be progressed in line with confirmation of access to funding and approved business cases”.<sup>2391</sup> In addition, the Department of Education continued to implement the Mainstreaming Shared Education Strategy 2022, with the aim of establishing Shared Education as a core feature of educational provision in NI.<sup>2392</sup>

## Recommendations

The Commission recommends that the Department of Education ensures that long-term, secure funding for shared education is guaranteed in NI. This includes ensuring that any potential negative effect on funding of shared education due to the UK leaving the EU will be adequately and appropriately mitigated.

<sup>2387</sup> Ibid, at para 8.37.

<sup>2388</sup> Ibid, at para 10.36.

<sup>2389</sup> Ibid, at para 10.38.

<sup>2390</sup> NI Assembly Hansard, ‘Written Question: Independent Review of Education - Kate Nicholl MLA - AQW 12843/22-27, 10 June 2024.

<sup>2391</sup> NI Assembly Hansard, ‘Written Questions: Advancing Shared Education - Daniel McCrossan MLA - AQW 12144/22-27’, 23 May 2024.

<sup>2392</sup> Ibid.

## Special educational needs

In 2023, UN CRC Committee recommended that the UK Government and NI Executive:

ensure inclusive education in mainstream schools for all children with disabilities, including by adapting curricula and training and assigning specialised teachers and professionals in integrated classes, so that children with disabilities and learning difficulties receive individual support and due attention.<sup>2393</sup>

The Special Educational Needs Disability Act (NI) 2016 has not been fully implemented as many provisions require supporting regulations, which are not yet in place. In 2021, the Department of Education consulted on new Special Educational Needs Regulations and a Code of Practice.<sup>2394</sup> In 2024, work continued on finalising the new framework, prior to being introduced to the NI Assembly.<sup>2395</sup>

In 2023/2024, 68,200 pupils in schools in NI (19.2 per cent) had some form of special educational need.<sup>2396</sup> Nearly 27,000 pupils in NI have a statement of special educational needs (7.6 per cent).<sup>2397</sup> In 2023/2024, 83.8 per cent of pupils with any special needs were educated in a mainstream class in a mainstream school.<sup>2398</sup> There were also 7,200 children enrolled in 39 dedicated special schools in NI.<sup>2399</sup> Of pupils in special schools in NI, 54.4 per cent are entitled to free school meals, which is significantly higher than 27.7 per cent across all schools in NI.<sup>2400</sup>

<sup>2393</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 47(b).

<sup>2394</sup> Department of Education, 'New Special Educational Needs Framework'. Available at: <https://www.education-ni.gov.uk/articles/review-special-educational-needs-and-inclusion>.

<sup>2395</sup> NI Assembly Hansard, 'Written Question: Special Educational Needs and Disability Act (Northern Ireland) 2016 - Nick Mathison MLA - AQW 8699/22-27', 26 March 2024.

<sup>2396</sup> Department of Education, 'Annual Enrolments at Schools and in Funded Pre-school Education in NI 2023-2024' (DE, 2024), at para 4.1.

<sup>2397</sup> Ibid.

<sup>2398</sup> Ibid.

<sup>2399</sup> Ibid.

<sup>2400</sup> Ibid, at Section 5.

In 2024, children with special educational needs in NI continued to experience uncertainty regarding school placements.<sup>2401</sup> In June 2024, approximately 400 children with special educational needs in NI were on waiting lists for a suitable school place for the 2024/2025 academic year.<sup>2402</sup> There have also been reports of nursery school children in NI being educated in the community and voluntary sector due to a lack of special school places.<sup>2403</sup> While most children on waiting lists are provided with placements by the start of the school year, this is not guaranteed and the delay and lack of communication experienced while awaiting a decision by the Education Authority NI has caused parents and children “huge anxiety” and has been reported to be “mentally, emotionally and physically draining”.<sup>2404</sup> It also affects the ability of parents to “plan accordingly”, which can result in children not being able to avail of or continue with their school placement.<sup>2405</sup>

The Minister of Education, Paul Givan MLA, advised that “meeting the demand for specialist education places for September [2024] remain[ed] a significant challenge”.<sup>2406</sup> Work was undertaken by the Education Authority, supported by the Department of Education, “to create additional specialist education places in both special schools and specialist provision in mainstream schools for the 2024/2025 academic year”.<sup>2407</sup>

<sup>2401</sup> Gráinne Connolly, “‘Breaking point’ as Special Educational Needs kids wait for school place”, *BBC News*, 17 June 2024; Robbie Meredith, “Robbie Meredith, ‘NI education: More than 100 schools refuse new Special Educational Needs classes’”, *BBC News*, 11 April 2024; NI Education: Almost 400 children with special needs waiting on school place”, *BBC News*, 6 July 2023; ‘Almost 150 Special Educational Needs children in NI do not have a confirmed school place for September 2023’, *ITV News*, 27 July 2023; ‘Special educational needs: No school guarantee for 20 children’, *BBC News*, 17 August 2023; Robbie Meredith, ‘Special needs: No school places for more than 300 pupils’, *BBC News*, 23 June 2022.

<sup>2402</sup> Gráinne Connolly, “‘Breaking point’ as Special Educational Needs kids wait for school place”, *BBC News*, 17 June 2024; Robbie Meredith, “Robbie Meredith, ‘NI education: More than 100 schools refuse new Special Educational Needs classes’”, *BBC News*, 11 April 2024.

<sup>2403</sup> Lauren Harte, ‘Education Authority statement as 42 nursery children with special educational needs educated outside school setting’, *Belfast Live*, 4 October 2023.

<sup>2404</sup> ‘Special needs pupil ‘felt lonely’ during school place delay’, *BBC News*, 1 May 2024; ‘Almost 150 Special Educational Needs children in NI do not have a confirmed school place for September 2023’, *ITV News*, 27 July 2023; Robbie Meredith, ‘Special needs: No school places for more than 300 pupils’, *BBC News*, 23 June 2022.

<sup>2405</sup> Robbie Meredith, ‘Special educational needs: Teen with autism may have to quit school’, *BBC News*, 16 August 2023.

<sup>2406</sup> NI Assembly Hansard, ‘Written Question: School Placements in 2024-25 Academic Year - Gerry Kelly MLA - AQW 11237/22-27’, 15 May 2024.

<sup>2407</sup> *Ibid.*

By 2 October 2024, the Education Authority NI confirmed that no child with a statement of special educational needs was left without a confirmed school placement.<sup>2408</sup> However, some children due to benefit from these additional places faced further uncertainty after they were unable to start school as planned due to the building work not being completed in time on their classrooms.<sup>2409</sup>

In 2023, the Department of Education and Education Authority NI commenced an end-to-end review of special educational needs in NI.<sup>2410</sup> This followed several critical reviews of special educational needs and services in NI,<sup>2411</sup> including an Independent Review that reiterated the need for more effective use of the substantial funding to deliver high quality, child-centred provision.<sup>2412</sup>

In 2024, the end-to-end review was being undertaken over four phases,<sup>2413</sup> with the outcome awaited. The Minister of Education emphasised “the need for sustained investment to deliver the fundamental reforms that are emerging from the end-to-end review of [special educational needs] and to deliver a high-quality, efficient, effective and sustainable [special educational needs] system for the future”.<sup>2414</sup> The Minister of Education

<sup>2408</sup> NI Assembly Hansard, ‘Written Question: School Placements in 2024-2025 Academic Year – Justin McNulty MLA – AQW 16022/22’, 9 October 2024.

<sup>2409</sup> Robbie Meredith, ‘Family “in limbo” as building work delays school start’, *BBC News*, 5 September 2024; Robbie Meredith, ‘“Gut punch” for 19 Special Educational Needs pupils facing school start delay’, *BBC News*, 26 September 2024.

<sup>2410</sup> Department of Education, ‘End to End Review of Special Educational Needs’. Available at: <https://www.education-ni.gov.uk/articles/end-end-review-special-educational-needs-sen>.

<sup>2411</sup> NI Audit Office, ‘Special Educational Needs’ (NIAO, 2017); NI Audit Office, ‘Impact Review of Special Educational Needs’ (NIAO, 2020); NI Commissioner for Children and Young People, ‘Too Little Too Late: A Rights Based Review of Special Educational Needs in NI’ (NICCY, 2020); NI Assembly Public Accounts Committee, ‘Report on Impact Review of Special Educational Needs’ (NIA, 2021); NI Commissioner for Children and Young People, ‘Too Little, Too Late: Monitoring Report’ (NICCY, 2022).

<sup>2412</sup> Department of Education, ‘Independent Review of Special Educational Needs Services and Processes’ (DE, 2023).

<sup>2413</sup> NI Assembly Hansard, ‘Written Question: Update on Independent Review of Special Educational Needs – Stephen Dunne MLA – AQW 7510/22-27’, 4 March 2024.

<sup>2414</sup> Department of Education, ‘Equality Impact Assessment Consultation Report on the 2023-2024 Resource Budget’ (DE, 2023); Robbie Meredith, ‘Schools’ funding for special needs teachers cut in half’, *BBC News*, 5 June 2023; Lauren Harte, ‘Education Authority statement as 42 nursery children with special educational needs educated outside school setting’, *Belfast Live*, 4 October 2023.



further advised that the Department of Education is in a similar position to where it was at the start of 2023,<sup>2415</sup> with its resource allocation for 2024/2025 significantly less than what was required, leading to required reductions in spending.<sup>2416</sup> However, the Minister of Education highlighted that the Department of Education is “very restricted in its ability to reprioritise or reduce spend due to the vast majority of its budget going to meet statutory and demand-led obligations, not to mention the fact that about 80 per cent of the total education budget is subsumed by staff costs”.<sup>2417</sup>

In September 2024, the NI Executive identified “better support for children and young people with special educational needs” as an immediate priority.<sup>2418</sup> The NI Executive acknowledged that “the current education system is struggling to keep pace with the changing pupil profile and the model of support for children and young people needs significant transformation, which requires additional investment”.<sup>2419</sup> The NI Executive has committed to working to “transform the education system to provide high-quality, efficient and sustainable services for children with special educational needs and disability” and that “children and young people with special educational needs and disabilities and their families will be placed at the heart of” the programme of reform.<sup>2420</sup>

## Recommendations

The Commission recommends that the Department of Education, working with the NI Executive and NI Assembly, ensures that the necessary revised Special Educational Needs Regulations and Code of Practice for NI are progressed as a matter of priority.

<sup>2415</sup> Ibid.

<sup>2416</sup> NI Assembly Hansard, ‘NI Assembly: Department of Education Budget Pressures – Cheryl Brownlee MLA’, 25 June 2024; NI Assembly Hansard, ‘Written Question: Financial Savings by Minister of Education – Jim Allister MP – AQW 10718/22-27’, 2 May 2024.

<sup>2417</sup> NI Assembly Hansard, ‘Written Question: Financial Savings by Minister of Education – Jim Allister MP – AQW 10718/22-27’, 2 May 2024.

<sup>2418</sup> NI Executive, ‘Our Plan: Doing What Matters Most – Draft Programme for Government 2024-2027’ (NIE, 2024), at 34.

<sup>2419</sup> Ibid.

<sup>2420</sup> Ibid.

The Commission recommends that the Department of Education and the Education Authority NI ensure that the transformation of special education needs services in NI is robust, adequately funded and effectively implemented as a matter of priority. Targets for delivery should be set and monitored, prioritising children's needs and requisite support, including education, transport and other measures to ensure effective educational engagement and improve children's outcomes.

The Commission recommends that the Department of Education ensures that children with special educational needs in NI that have been adversely affected by past failings of the assessment process are effectively remedied.

### ● Use of restraint in educational settings

In 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

take legislative measures to explicitly prohibit, without exception, the use of... seclusion and restraint as disciplinary measures in schools;

develop statutory guidance on the use of restraint on children to ensure that it is used only as a measure of last resort and exclusively to prevent harm to the child or others and monitor its implementation; [and]

explicitly prohibit the use of restraint and seclusion in educational settings and adopt a child rights-based approach to addressing violence or other disturbances in schools, including by prohibiting the presence of police in schools and providing regular training for teachers on relevant guidance for addressing such disturbances in a child-sensitive manner.<sup>2421</sup>

<sup>2421</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at paras 30(a), 30(b) and 47(j).

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive “adopt appropriate measures to eradicate the use of restraint for reasons related to disability within all settings and prevent... practices of segregation and isolation that may amount to torture or inhuman or degrading treatment”.<sup>2422</sup> The UN CRPD Committee also recommended that the UK Government and NI Executive “set up strategies, in collaboration with monitoring authorities and national human rights institutions, in order to identify and prevent the use of restraint for children and young persons with disabilities”.<sup>2423</sup>

Under the Education (NI) Order 1998, a school staff member is permitted to restrain any pupil at the school where such force is “reasonable in the circumstances”.<sup>2424</sup> This includes for “the maintenance of good order and discipline at the school”.<sup>2425</sup> The accompanying non-statutory guidance currently states that any occasion when reasonable force is used must be logged in an incident book, which is to be reviewed at least annually by the Chair of the Board of Governors and Principal.<sup>2426</sup> However, such incidents are not required to be subject to an independent review.

Use of restraint in an educational setting has been raised as a particular concern for children with special educational needs in NI,<sup>2427</sup> with lack of training on the use of restraint for educational professionals being raised as a contributor.<sup>2428</sup>

In 2021, significant issues were found with the use of restrictive practices in NI schools, including record-keeping, inadequate policies and procedures, and a lack of appropriate complaint investigations by Board of Governors.<sup>2429</sup>

<sup>2422</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 37(a).

<sup>2423</sup> Ibid, at para 37(b).

<sup>2424</sup> Section 4(1), Education (NI) Order 1998.

<sup>2425</sup> Section 4(1)(c), Education (NI) Order 1998.

<sup>2426</sup> Department of Education, ‘Pastoral Care: Guidance on the Use of Reasonable Force to Restrain or Control Pupils’ (DoE, 1999).

<sup>2427</sup> British Association of Social Workers, ‘Policy Statement: Restraint and Seclusion of Children and Young People in Schools and Educational Facilities’ (BASWNI, 2019).

<sup>2428</sup> Ibid.

<sup>2429</sup> NI Public Services Ombudsman, ‘Overview Report: The Use of Restrictive Practices in NI Schools’ (NIPSO, 2021).

Furthermore, the current policy, guidance, and legislative frameworks around the use of restrictive practices in educational settings in NI were deemed not fit for purpose and requiring immediate reform.<sup>2430</sup> Consequently, the Department of Education published interim guidance which clarified record-keeping procedures and reminded education providers that reasonable force and restraint should only be used as a measure of last resort.<sup>2431</sup>

In 2022, the Department of Education published its review of the use of restraint and seclusion practices in educational settings.<sup>2432</sup> The former Minister of Education, Michelle McIlveen MLA, accepted all recommendations. This included the repeal of provisions permitting restraint to be applied for the maintenance of good order and discipline, and the development of new statutory guidance. In 2024, the Minister of Education, Paul Givan MLA, confirmed that work is underway on implementing the recommendations,<sup>2433</sup> with the outcome awaited.

In 2023, the Department of Education consulted on draft statutory guidance for the use of restrictive practices in educational settings in NI.<sup>2434</sup> The draft guidance was informed by the Department of Education's Restraint and Seclusion Reference Group, which included the Commission.<sup>2435</sup> The Commission raised a number of concerns with the draft proposed, including inconsistency with international human rights standards and current health and social guidance.<sup>2436</sup>

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<sup>2430</sup> NI Commissioner for Children and Young People, 'Neither Seen Nor Heard: Rights Based Review on the Use of Restraint and Seclusion in Educational Settings' (NICCY, 2021).

<sup>2431</sup> Department of Education, 'Circular 2021/13 - Interim Guidance on the Use of Restraint and Seclusion in Educational Settings' (DoE, 2021).

<sup>2432</sup> Department of Education, 'Review of the Use of Restraint and Seclusion in Educational Settings in NI' (DoE, 2022).

<sup>2433</sup> NI Assembly Hansard, 'Oral Question: Review of the Use of Restraint and Seclusion in Educational Settings - Michelle McIlveen MLA - AQO 663/22-27', 26 June 2024.

<sup>2434</sup> Department of Education, 'Consultation on the Reduction and Management of Restrictive Practices' (DoE, 2023).

<sup>2435</sup> Ibid.

<sup>2436</sup> 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).

In 2024, subject to Ministerial approval, the guidance was expected to be published within the 2024/2025 academic year.<sup>2437</sup>

## Recommendations

The Commission recommends that the Department of Education takes effective steps to eliminate the use of restraint and seclusion in educational settings and to ensure that a child rights-based approach is adopted in addressing challenging behaviour in schools in NI. This includes the provision of updated statutory guidance that provides proactive strategies for minimising, with a view to eliminating, the use of restrictive practices in educational settings in NI.

The Commission recommends that the Department of Education, supported by the NI Executive and NI Assembly, repeals Section 4(1)(c) of the Education (NI) Order 1998 to ensure that restrictive practices cannot be used to maintain good order and discipline in NI. The relevant guidance should also be updated to reflect any change.

The Commission recommends that the Department of Education introduces a statutory obligation on schools in NI to systematically and regularly collect disaggregated data on the use and minimisation of restrictive practices in educational settings, and that this data is published and independently monitored. Schools should also be required to share records with parents, guardians or carers of the children involved in each incident.

The Commission recommends that the Department of Education provides mandatory training on minimising, with a view to eliminating, the use of restrictive practices in educational settings in NI. This training should specify that the use of restrictive practices should be avoided and only used as a last resort. Practitioners should be supported to adopt proactive, preventative and non-restrictive interventions in respect of challenging behaviour.

<sup>2437</sup> Meeting between the Department of Education Working Group on Restraint and Seclusion and Reference Group on Restraint and Seclusion, 10 May 2024; NI Assembly Hansard, 'Oral Question: Review of the Use of Restraint and Seclusion in Educational Settings - Michelle McIlveen MLA - AQO 663/22-27', 26 June 2024.

# Right to Participate in the Cultural Life of the Community

## ● Minority culture and languages

In September 2024, the CoE Committee of Experts for the Charter of Regional and Minority Languages recommended that the UK Government and NI Executive immediately “implement fully the Identity and Language (NI) Act 2022 without further delay”.<sup>2438</sup>

Specific to Irish language, the CoE Committee of Experts recommended that the UK Government and NI Executive immediately “adopt the Irish Language Strategy and allocate the adequate resources to fund its implementation”, and “develop and implement a strategy for the recruitment of teachers in co-operation with speakers, including the training of teachers for children with special needs within the Irish medium education sector”.<sup>2439</sup> The CoE Committee of Experts also made several recommendations for further action regarding long-term plans for Irish-medium education, translation of text books, bilingual signage and broadcasting.<sup>2440</sup>

Specific to Ulster-Scots, the CoE Committee of Experts recommended that the UK Government and NI Executive immediately “adopt a language strategy to promote Ulster-Scots in education, media and other areas of public life”.<sup>2441</sup>

<sup>2438</sup> CoE Committee of Experts of the European Charter for Regional or Minority Languages, ‘Sixth Evaluation Report on the UK and the Isle of Man’ (COMEX, 2024), at para 2.2.2.

<sup>2439</sup> Ibid.

<sup>2440</sup> Ibid.

<sup>2441</sup> Ibid, at para 2.5.2.

The CoE Committee of Experts also made several recommendations for further action regarding teaching Ulster-Scots, mutual understanding and broadcasting.<sup>2442</sup>

In 2023, the CoE Committee of Ministers, following a report from the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities,<sup>2443</sup> recommended that the UK Government and NI Executive immediately “intensify efforts to develop and increase the offer and support to Irish-medium education in NI, including for children with special educational needs”.<sup>2444</sup> The CoE Committee of Ministers also recommended that the UK Government and NI Executive:

ensure the implementation of the Identity and Language (NI) Act [2022], and work with representatives of the Irish-speaking community to further develop Irish language policy in NI. The authorities should also consider revising the [2022] Act in consultation with the Ulster-Scots minority representatives to address the conflation of Ulster-Scots and Ulster British identities.<sup>2445</sup>

In 2022, Ulster Scots was officially recognised by the UK Government as a national minority, in line with CoE Framework Convention for National Minorities.<sup>2446</sup>

## Identity and Language (NI) Act 2022

The Identity and Language (NI) Act 2022 established an Office of Identity and Cultural Expression, as well as a Commissioner to protect and enhance the use of Irish Language by public authorities, and a Commissioner to enhance and develop the language, arts and literature associated with the Ulster-Scots and the Ulster British tradition in NI.<sup>2447</sup> In 2024, the Office of

<sup>2442</sup> Ibid.

<sup>2443</sup> ACFC/OP/V(2022)003, ‘CoE Advisory Committee on the Framework Convention for the Protection of National Minorities Fifth Opinion on the UK’, 25 May 2023.

<sup>2444</sup> CM/ResCMN(2023)7, ‘CoE Committee of Ministers Resolution on the Implementation of the CoE Framework Convention for the Protection of National Minorities by the UK’, 12 July 2023.

<sup>2445</sup> Ibid.

<sup>2446</sup> House of Lords Hansard, ‘Recognition of Ulster Scots as a National Minority and Funding for An Ciste Infheistíochta Gaeilge, the Irish Language Investment Fund – Statement by Lord Caine’, 25 May 2022.

<sup>2447</sup> Section 2, Identity and Language (NI) Act 2022.



Identity and Cultural Expression had not been established and the Commissioner for the Irish Language and a Commissioner for the Ulster-Scots and Ulster British Tradition had not been appointed.<sup>2448</sup> The approval of the First Minister, Michelle O’Neill MLA, and Deputy First Minister Emma Little-Pengelly MLA, was required to initiate the process for establishing the new statutory appointments,<sup>2449</sup> which was awaited.

## Strategies

In 2017 and 2022, the High Court of Justice in NI held that “the Executive Committee has failed in its statutory duty, under section 28D(1) of the NI Act 1998, to adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language”.<sup>2450</sup> In 2020, a commitment was made to publish an Irish Language Strategy and an Ulster-Scots Strategy.<sup>2451</sup> In 2021, a Co-Design Group for the Irish Language Strategy and a Co-Design Group for the Ulster-Scots Strategy were established by the Department for Communities.

In 2024, the Co-Design Group for the Irish Language Strategy and the Co-Design Group for the Ulster-Scots Strategy continued to meet with officials from the Department for Communities to discuss the content of the two strategies.<sup>2452</sup> Publication of the Irish Language Strategy and the Ulster-Scots Strategy is subject to a wider public consultation process and approval by the NI Executive,<sup>2453</sup> which are awaited.

<sup>2448</sup> John Manley, ‘Stormont leaders urged to expedite appointment of Irish language commissioner’, *The Irish News*, 15 February 2024.

<sup>2449</sup> Meeting of the Ulster-Scots Strategy Co Design Group, 27 June 2024; Meeting of the Irish Language Strategy Co Design Group, 22 July 2024.

<sup>2450</sup> *In the Matter of an Application by Conradh na Gaeilge* [2017] NIQB 27; *In the Matter of an Application by Conradh na Gaeilge* [2022] NIQB 56.

<sup>2451</sup> NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 16.

<sup>2452</sup> Meeting of the Ulster-Scots Strategy Co Design Group, 27 June 2024; Meeting of the Irish Language Strategy Co Design Group, 22 July 2024.

<sup>2453</sup> *Ibid.*

## Recommendations

The Commission welcomes the UK Government's designation of Ulster-Scots as a national minority. The Commission recommends that the Department for Communities, supported by the NI Executive, ensures that the necessary steps are promptly taken to ensure that the additional rights that this affords Ulster-Scots are respected, protected and fulfilled.

The Commission recommends that the Department for Communities promptly develops, implements and monitors an Irish Language Strategy that is sufficiently and sustainably resourced. Each stage should involve meaningful engagement with the Irish Language Commissioner, Irish language speakers and their representative organisations.

The Commission recommends that the Department for Communities promptly develops, implements and monitors an Ulster-Scots Strategy that is sufficiently and sustainably resourced. Each stage should involve engagement with the Ulster-Scots Commissioner, individuals that identify as Ulster-Scots and their representative organisations.

The Commission recommends that the NI Office works with the NI Executive and Treasury to ensure the necessary steps are taken and resources are provided to establish and guarantee the effective functioning of the new statutory bodies created by the Identity and Language (NI) Act 2022. Adequate resources should also be provided to support existing public authorities to effectively fulfil their new duties created by the 2022 Act.











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