



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the Advisory Committee on the
Framework Convention for the protection of
National Minorities**

**Parallel Report to the Advisory Committee on
the Fifth Monitoring Report of the United
Kingdom**

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1.0. Introduction

- 1.1. The Northern Ireland Human Rights Commission (NIHRC) is one of three A-status National Human Rights Institutions in the United Kingdom (UK). Established in 1999, the NIHRC, pursuant to Section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC's mandate extends to all matters relating to the protection and promotion of human rights in NI, including within the competence of the NI Assembly and the Westminster Parliament.
- 1.2. This submission considers the protection of human rights in NI in respect of the United Kingdom's Fifth Report to the Advisory Committee on compliance with the Framework Convention for the Protection of National Minorities (FCNM). Chapter two deals with a number of significant constitutional issues which are important in contextualising the broad framework of rights protection in NI, which is not specific to the protection of national minorities. The subsequent chapters engage directly with the substantive rights of the FCNM.

Involvement of the NI Executive

- 1.3. The NIHRC acknowledges that the Executive Office is the responsible department for matters concerning the response of the NI administration to external relationships,¹ including the compliance and realisation of international human rights obligations through interaction with the UK Government. The NIHRC notes from the UK State Report that inputs from the NI Executive continue to be limited and inconsistent across all reporting areas. This issue is not unique to the FCNM, with the NI Executive also having limited involvement in other treaty reporting processes, most recently the European Charter for Regional and Minority Languages (ECRML).²
- 1.4. On 4 February 2021, NI's First Minister announced his resignation in protest over the NI Protocol.³ This automatically removed the Deputy First Minister from her position and leaves NI without a functioning Executive. The subsequent passing of the Northern Ireland (Ministers, Elections and Petitions of Concern) Act in Westminster will allow the NI Assembly to

¹ The Belfast (Good Friday) Agreement 1998, at para 18.

² UK Government, 'Information Document on the Implementation of the Recommendations for Immediate Action based on the 5th Monitoring Cycle' (2021); See also NI Human Rights Commission, 'Submission to the Committee of Experts on the European Charter for Regional and Minority Languages on the Interim Report of the United Kingdom of Great Britain and Northern Ireland' (NIHRC, 2021).

³ Damien Edgar and Eimear Flanagan, 'DUP: NI First Minister Paul Givan announces resignation' *BBC News NI*, 4 February 2022.

continue without a functioning Executive for at least six months.⁴ The NI Assembly election is expected to take place on 5 May 2022 and the Secretary of State for NI has confirmed that he will not call an early election.⁵

- 1.5. The NI Finance Minister has raised significant concerns regarding the ability of the NI Assembly to approve the 2022-2025 Draft Budget in the absence of the Executive.⁶ The NIHRC highlights its concern that Departments have already been dealing with the challenges of a constrained budget in light of the COVID-19 pandemic. In the event the draft budget cannot be agreed, there is likely to be a significant impact across several areas examined in this submission.
- 1.6. **The Advisory Committee may wish to ask the State Party what steps are taken to ensure it can comprehensively report on the obligations of the UK Government and the NI Executive regarding the application of the Framework Convention in NI.**

Northern Ireland Human Rights Commission

- 1.7. Following the UK Government Comprehensive Spending Review, the NIHRC has received a five per cent cut to its budget for 2022/23, with flat rate budgets for the following two years. The consequence of this is that the NIHRC has had to cease recruitment, leaving it with a staff team of 20 per cent less than minimum. It will not have the ability to utilise its core powers, including its investigatory and educational functions, by the third year of the budget cuts.
- 1.8. The NIHRC is currently an A status national human rights institution and underwent its periodic reaccreditation process in October 2021. The GANHRI Sub-Committee on Accreditation noted with concern the impact of the budget cuts on the NIHRC's ability to fulfil its core mandate under the Paris Principles. As a consequence, it has deferred its decision on reaccreditation until 2022.⁷
- 1.9. The NIHRC has also called for an independent review of the organisation, as the last was conducted in 2001. The Sub-Committee has encouraged

⁴ Jayne McCormack, 'NI political crisis: MPs pass bill to help prevent future Stormont collapse' *BBC News NI*, 8 February 2022.

⁵ The Northern Ireland (Ministers, Elections and Petitions of Concern) Bill contains a provision stating that the Secretary of State cannot call an election for six weeks after the resignation of the First or Deputy First Minister. See also: Christopher Leebody, 'Northern Ireland Secretary Brandon Lewis rules out early Stormont election' *Belfast Telegraph*, 8 February 2022.

⁶ Jonathan McCambridge and David Young, 'Murphy seeking to bring budget directly to Assembly, says O'Neill' *Belfast Telegraph*, 10 February 2022

⁷ GANHRI, 'Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation', October 2021.

the NIHRC to “secure urgent agreement to this Review and/or any other means available to it to advocate for an appropriate and adequate level of funding to effectively carry out its mandate.”⁸

- 1.10. **The Advisory Committee may wish to recommend that the State Party provides adequate and secure funding to enable the NIHRC to fulfil its statutory functions in line with its role as an A status institution.**
- 1.11. **The Advisory Committee may further wish to recommend that the State Party conducts an independent review of the NIHRC.**

2.0. Constitutional Issues

The UK Withdrawal from the European Union

- 2.1. The UK left the EU on 31 January 2020. The UK signed the UK/EU Withdrawal Agreement in January 2020 and the Protocol on the Ireland/Ni Protocol (the Protocol), which is part of the Agreement. These took effect from 1 January 2021.
- 2.2. Protocol Article 2(1) commits the UK government to:

ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol and shall implement this paragraph through dedicated mechanisms.⁹
- 2.3. Protocol Article 2 requires the UK Government and the NI Executive to ensure that no diminution of rights, safeguards and equality of opportunities contained in the relevant part of the Belfast (Good Friday) Agreement 1998 occurs as a result of the UK’s withdrawal from the EU.
- 2.4. In the rights, safeguards and equality of opportunity chapter of the Belfast (Good Friday) Agreement, the parties affirmed their commitment to “the mutual respect, the civil rights and religious liberties of everyone in the

⁸ Ibid, at p.29.

⁹ 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.

community.”¹⁰

- 2.5. This is immediately followed by a commitment by the UK government to complete incorporation of the ECHR, including direct access to the courts and remedies for breach. Other rights and safeguards in of rights, safeguards and equality of opportunities chapter of the Belfast (Good Friday) Agreement include: the right of victims to remember as well as contribute to a changed society, respect, understanding and tolerance in relation to linguistic diversity, and the need to ensure that symbols and emblems are used in a manner which promotes mutual respect rather than division.¹¹
- 2.6. Annex 1 of the Protocol sets out six EU equality Directives.¹² Protocol Article 2 requires the UK Government to “keep pace” with any changes made by the EU six Annex 1 Equality Directives which improve the minimum levels of protection available, after 1 January 2021.¹³
- 2.7. For other EU obligations which underpin the rights, safeguards and equality of opportunity in Article 2, the commitment to ensure ‘no diminution’ is measured by the relevant EU standards on 31 December 2020. The UK Government has committed to ensuring that there will be no diminution of protections as were contained in relevant EU law on 31 December 2020.¹⁴
- 2.8. The NIHRC and the Equality Commission for Northern Ireland (ECNI) are mandated through the EU (Withdrawal Agreement) Act to monitor the implementation of Article 2 of the Protocol, 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 Article 2(1) of the Protocol, as well as promote and enforce its implementation.¹⁵ These new

¹⁰ These rights include, in particular: the right of free political thought; the right to freedom and expression of religion; the right to pursue democratically national and political aspirations; the right to seek constitutional change by peaceful and legitimate means; the right to freely choose one’s place of residence; the right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity; the right to freedom from sectarian harassment; and the right of women to full and equal political participation.

¹¹ Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights.

¹² Council Directive 2004/113/EC 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 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; Council Directive 2000/43/EC on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin, 29 June 2000; Council Directive 2000/78/EC on Establishing a General Framework for Equal Treatment in Employment and Occupation, 27 November 2000; ¹² Directive 2010/41/EU 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 2010/41/EU 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.

¹³ Article 13, Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement 2020.

¹⁴ UK Government, ‘UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland’, (NIO, 2020), at para 13.

¹⁵ Sections 78A-78E Northern Ireland Act 1998.

powers took effect from 1 January 2021 and additional funds were provided to the NIHRC and ECNI in July 2020 to undertake their role as part of the dedicated mechanism.

A Bill of Rights for NI

- 2.9. The constitutional framework in NI flows from the 1998 Belfast (Good Friday) Agreement and NI Act 1998, although core commitments have yet to be implemented by the UK. This includes the UK commitment to legislate in the UK Parliament for a Bill of Rights for NI.
- 2.10. In 2008, the NIHRC provided advice to the UK Government on a Bill of Rights for NI. On receipt of its advice. The NI Office sought views from the public by way of 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 NIHRC”.¹⁶
- 2.11. Following commitments made in the New Decade, New Approach Agreement,¹⁷ the Ad Hoc Committee on a Bill of Rights was established, and during 2021, conducted a stakeholder consultation, including a survey seeking views on human rights and Bill of Rights for NI, the results from which were published in March 2021.¹⁸
- 2.12. The NIHRC has further provided a written submission and oral evidence to the Committee, building on its previous advice and focusing on the technical aspects of a Bill of Rights.¹⁹ Together with the ECNI, further written and oral evidence was provided on how the ‘non-diminution’ clause contained within Article 2 of the NI Protocol and the provisions of the EU Charter of Fundamental Rights should inform the development and drafting of a NI Bill of Rights.²⁰
- 2.13. Under the New Decade, New Approach Agreement, a panel of five experts was also to be appointed by the First and deputy First Ministers, to assist the work of the Ad Hoc Committee. ²¹ A panel has yet to be appointed with reports that the Democratic Unionist Party has blocked the appointment of experts.²² At its meeting on 25 November 2021, the Chair of the

¹⁶ UK Parliament Hansard, ‘Written Ministerial Statement: Minister of State Hugo Swire MP’, 16 December 2010.

¹⁷ NI Office, ‘New Decade, New Approach’ (NIO, 2020), at para 37.

¹⁸ Research and Information Service Briefing Note, ‘NI Bill of Rights Survey’, (NI Assembly, 2021).

¹⁹ NI Human Rights Commission, ‘Response to the Ad Hoc Committee’s consultation on a Bill of Rights for Northern Ireland’, February 2021.

²⁰ NI Human Rights Commission, ‘Briefing note to the Ad Hoc Committee on a Bill of Rights EU Withdrawal and a Bill of Rights’, April 2021.

²¹ NI Office, ‘New Decade, New Approach’ (NIO, 2020), at para 5.26.

²² Sinn Féin, ‘Press Release: Human Rights expert being blocked by DUP from Bill of Rights Panel – Sheerin’, 4 November 2021.

Committee proposed suspending the Committee until such time as a panel of experts has been appointed.²³ The Ad Hoc Committee published its report in February 2022, noting that the panel of experts had not been appointed at the conclusion of the Committee's work and that agreement could not be reached due to the position paper of the Democratic Unionist Party.²⁴

2.14. The Advisory Committee may wish to ask the State party how it intends to work towards developing a consensus among the political parties on a Bill of Rights and meet its obligation emerging from the Belfast (Good Friday) Agreement to implement a Bill of Rights for NI.

Human Rights Act Review

2.15. The Human Rights Act 1998 (HRA) gives domestic effect to the European Convention on Human Rights (ECHR). The ECHR is the only international human rights treaty that has been given such domestic effect. On 14 December 2021, the UK Government published a report on the Human Rights Act written by the Panel of the Independent Human Rights Act Review,²⁵ alongside its own consultation, 'Human Rights Act Reform: a Modern Bill of Rights'.²⁶ The NIHRC has major concerns regarding the UK Government's proposal which goes much further than the Independent Review recommended and sets out plans to replace the Human Rights Act 1998 with a UK Bill of Rights, which would risk depleting protections that are presently enjoyed.

2.16. Human rights protection and compliance has been the cornerstone of the Belfast (Good Friday) Agreement and subsequent agreements.²⁷ This can be evidenced through the UK Government's non-diminution commitment under Protocol Article 2. In its Explainer document on Protocol Article 2, the UK Government has confirmed that the "key rights and equality

²³ NI Assembly, Ad Hoc Committee on a Bill of Rights, Meeting of 25 November 2021. Available at: <https://niassembly.tv/ad-hoc-committee-on-a-bill-of-rights-meeting-thursday-25-november-2021/>.

²⁴ NI Assembly, 'Report of the Ad Hoc Committee on a Bill of Rights', 15 February 2022, at para 8.

²⁵ UK Government, 'Independent Human Rights Act Review' Ministry of Justice, 14 December 2021.

²⁶ UK Government, 'Open consultation Human Rights Act Reform: A Modern Bill of Rights' Ministry of Justice, 14 December 2021.

²⁷ The Belfast (Good Friday) Agreement 1998 at Annex 1 provides that the UK Government must incorporate the ECHR into NI law, "with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule [NI] Assembly legislation on grounds of inconsistency". The St Andrews Agreement 2006, at para 3, reaffirmed that human rights and equality are at the heart of the new dispensation in NI. The Stormont House Agreement 2014, at para 19 and 31, confirmed that future measures on parades and inquests will comply with the ECHR. In New Decade, New Approach at Annex D, in order to restore the devolved government, the NI parties acknowledged, "the importance of promoting and protecting the rights and identity of individuals and are agreed that the Executive should seek to build a society that reflects the best international standards of human rights".

provisions in the [Belfast (Good Friday)] Agreement are supported by the ECHR".²⁸

- 2.17. Any attempt to dilute the role of the ECHR and the ECtHR jurisprudence within proposals to repeal the HRA and replace it with a UK Bill of Rights would run counter to the Belfast (Good Friday) Agreement. The NIHRC believes that any legislative proposals should not undermine the commitments contained within the Belfast (Good Friday) Agreement. Further to its submission to the Independent Review in August 2021,²⁹ the NIHRC will be submitting advice to the UK Government on its proposals which are currently out for public consultation until 8 March 2022.

3.0. Article 3: National Minorities

Scope of application

- 3.1 'National minority' is not a legally defined term within the UK. For the purpose of reporting under the FCNM, the UK's interpretation is based on the definition of 'racial group' in the Race Relations Act 1976. Hence, in its first State Report on the Framework Convention, the UK referred to "our ethnic minority communities (or visible minorities) and the Scots, Irish and Welsh".³⁰ Gypsies and Travellers are also included.³¹ In April 2014, the UK agreed to bring Cornish within the scope of the Framework Convention.³²
- 3.2 The definition of 'racial groups' in NI falls under the Race Relations (NI) Order 1997 which includes members of the Irish Traveller community. However, the Executive Office's 'Racial Equality Strategy 2015-2025' commits to reviewing the Race Relations (NI) Order 1997³³ and proposals for a consultation on a new piece of primary legislation are being developed, with a public consultation process expected to take place in early 2022.³⁴ This is discussed further in relevant sections below.
- 3.3 In the New Decade New Approach agreement, the UK Government stated that it will recognise Ulster Scots as a national minority under the FCNM.³⁵ The NI Office have advised that the UK Government intends to complete

²⁸ 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 3.

²⁹ NI Human Rights Commission, 'Submission to the Independent Human Rights Act Review Team's Call for Evidence' (NIHRC, 2021).

³⁰ ACFC/SR(1999)013, 'Report submitted by the United Kingdom on the Framework Convention for the Protection of National Minorities', 26 July 1999, at para 3.

³¹ Ibid.

³² ACFC/SR/IV(2015)004 rev, 'Fourth Report Submitted by the United Kingdom on the Framework Convention for the Protection of National Minorities', 26 March 2015, at para 1.

³³ Office of the First Minister and Deputy First Minister, 'Racial Equality Strategy 2015-2025' (OFMdFM, 2015).

³⁴ Meeting between the Executive Office and the NI Human Rights Commission, February 2022.

³⁵ NI Office, 'New Decade New Approach, Annex A' (NIO, 2020), at para 24.

this work in parallel to the passage of the legislation on identity and language provided for in New Decade New Approach.³⁶ However, the NI Office were unable to provide a timeframe for the introduction of the Bills, as discussed in more detail in section 9.³⁷

- 3.4 While Ulster Scots is not currently recognised as a national minority by the UK, it is recognised as a linguistic minority under the FCNM³⁸ and as such, the duty to “encourage a spirit of tolerance and intercultural dialogue” applies.³⁹ If Ulster Scots were recognised as a national minority, then more specific duties would apply. This would include measures such as facilitating access to the media⁴⁰ and ensuring equal opportunities.⁴¹
- 3.5 With regard to being recognised as a national minority, the Advisory Committee recommends that the principle of free self-identification is of “paramount importance”⁴² and Article 3(1) guarantees that every person belonging to a national minority “shall have the right freely to choose to be treated or not to be treated as such”. Further, that “no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice”. The Framework Convention emphasises that “affiliation with a minority group is a matter of personal choice”. The “principle of self-identification also guarantees the possibility of multiple affiliation”, which can arise due to mixed marriages or due to other situations.⁴³
- 3.6 **The Advisory Committee may wish to ask the State Party what steps are being taken to recognise Ulster Scots as a national minority under the Framework Convention and when this is likely to occur.**

Data collection

- 3.7. In 2016, the UN Committee on the Elimination of All Forms of Racial Discrimination highlighted “the importance of collecting accurate and updated disaggregated data to develop effective policies to combat racial

³⁶ Email correspondence from the Northern Ireland Office to NI Human Rights Commission, 24 February 2022.

³⁷ Ibid.

³⁸ Council of Europe, Framework Convention for the Protection of National Minorities and Explanatory Report’ (CoE, 1995), at para 12.

³⁹ Article 6, Framework Convention on National Minorities 1998.

⁴⁰ Article 9, Framework Convention on National Minorities 1998.

⁴¹ ACFC/44DOC(2012)001 rev, ‘Advisory Committee on the Framework Convention for the Protection of National Minorities Thematic Commentary No 3’, 5 July 2012, at para 2.

⁴² Ibid, at para 16.

⁴³ Council of Europe, ‘Framework Convention for the Protection of National Minorities and Explanatory Report’ (CoE, 1995), at para 35.

discrimination and to monitor the impact of measures taken".⁴⁴ The CERD Committee recommended that the UK Government and NI Executive "systematically collect and publish disaggregated data on the enjoyment of rights by members of ethnic minorities in all fields of life".⁴⁵

- 3.8. In 2018, the UN Special Rapporteur on contemporary forms of racism, E Tendayi Achiume, visited NI. During her visit, the UN Special Rapporteur noted inconsistency in the data collected by government departments and the limitations in its scope, including a failure to account for the racial impact of immigration and counter terrorism law and policy.⁴⁶
- 3.9. The Executive Office Racial Equality Strategy 2015-2025 commits to "examine where ethnic monitoring should be introduced and consult on proposals for implementation". In 2020, a study to determine the feasibility of introducing ethnic monitoring to the public sector in NI was completed, recommending that the Race Relations (NI) Order 1997 is amended to imposing a duty on specified public authorities to collect data on racial equality and set racial equality objectives.⁴⁷
- 3.10. The NIHRC understands that while the proposals set out in the report have not yet been formally considered by Ministers, it is anticipated that the next steps will be to update and publish Executive Office Guidance on Ethnic Monitoring, which will be the foundation for harmonisation of data collection across the NI Civil Service.⁴⁸ An interdepartmental working group, tasked with taking this work forward, has been established and its inaugural meeting is expected to take place in February 2022, where it will establish terms of reference, develop an implementation plan and finalise the Guidance on Ethnic Monitoring.⁴⁹
- 3.11. In its 2021 submission to the NI Affairs Committee inquiry into the experience of minority ethnic and migrant people in NI, the NIHRC highlighted the need for effective data collection on racial equality.⁵⁰
- 3.12. The NIHRC welcomes this recent progress and renewed commitment by the Executive Office; however, the delay in reaching this point is disappointing and the lack of reliable and consistent data collection across

⁴⁴ CERD/C.GBR/CO/21-23 CERD/C.GBR/CO/21-23 'UN CERD Committee Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom of Great Britain and Northern Ireland' 26 August 2016 at para14.

⁴⁵ Ibid.

⁴⁶ A/HRC/41/54/Add.2, 'Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Visit to the United Kingdom of Great Britain and Northern Ireland', 27 May 2019, at para 74(f).

⁴⁷ This would be analogous to sections 149 and 153 of the Equality Act 2010, which does not extend to NI.

⁴⁸ Email correspondence from The Executive Office to NI Human Rights Commission, October 2021.

⁴⁹ NI Human Rights Commission meeting with The Executive Office, 1 February 2022.

⁵⁰ NI Human Rights Commission, 'Submission to the NI Affairs Committee Inquiry into the experience of minority ethnic and migrant people in Northern Ireland', May 2021, at 14.

NI government departments remains a common theme across this submission.

- 3.13. The Advisory Committee may wish to recommend that the State Party urgently takes effective steps to ensure that ethnic monitoring be consistently integrated into the practices of all relevant departments and agencies.**

Self-identification

- 3.14. The Advisory Committee has previously noted that the possibility for employers to determine the community background of an employee, where no information was provided, impinges on the right to free self-identification.⁵¹ As a consequence, regular reviews of workforce monitoring against the objective of securing equality were recommended.
- 3.15. This practice remains and is subject to monitoring by the Equality Commission for Northern Ireland (ECNI). The ECNI continues to recommend that fair employment legislation is amended to require registered employers in NI to additionally monitor nationality and ethnic origin of the workforce.⁵² The Racial Equality Strategy 2015-2025 commits to a review of Fair Employment Legislation; however, final proposals for reform and arrangements for public consultation on these have yet to be agreed.⁵³
- 3.16. The Advisory Committee may wish to recommend that the State Party ensures its review of workforce monitoring specifically measures progress made in achieving the original purpose of the legislation and the basis for continuing with and/or extending this practice to cover ethnic origin and nationality.**

Fair employment

- 3.17. Under the Fair Employment and Treatment (NI) Order 1998, there is an exemption which permits schools to use religion as a factor when selecting teaching staff; Article 71 provides that the legislation does not apply to or in relation to a teacher in a school.⁵⁴

⁵¹ The Fair Employment (Monitoring) Regulations (Northern Ireland) 1999. See also: ACFC/OP/III (2011)006 Advisory Committee on the Framework Convention for the Protection of National Minorities, 'Third Opinion on the United Kingdom for the Protection of National Minorities' at para 44.

⁵² Equality Commission NI, 'Fair Employment Monitoring Report No.30 published' (ECNI, 2021).

⁵³ Office of the First Minister and Deputy First Minister, 'Racial Equality Strategy 2015-2025' (OFMdFM, 2015) at para 5.14.

⁵⁴ Article 15 of the Framework Equality Directive permits the exclusion of the recruitment of teachers in schools in NI, in so far as this is expressly authorised by national legislation. However, this provision does not prevent changes to NI law

- 3.18. On 17 May 2021, MLAs unanimously passed a motion “That this Assembly notes the exemption in fair employment law allowing discrimination on the grounds of religious belief when appointing teachers; acknowledges that it is unacceptable that teachers should be excluded from protection from discrimination in employment on the grounds of religious belief; and calls on the First Minister and deputy First Minister to repeal urgently this exemption to ensure equal opportunities in employment are afforded to all without exception”.⁵⁵
- 3.19. The ECNI Chief Commissioner then wrote to the Executive Office to highlight its support for the removal of the exemption for secondary schools, with early consideration given to whether it should also be removed for primary schools.⁵⁶
- 3.20. On 17 January 2022, a private member’s bill was introduced to the Assembly which intends to remove the exemption for school teachers from the 1998 Order. The Fair Employment (School Teachers) Bill passed its First Stage and the Committee for the Executive Office launched a public consultation which closes on 7 March 2022.⁵⁷ During the Committee’s examination of the Bill, ECNI Chief Commissioner provided oral evidence reiterating the view that all teachers should be able to enjoy the same legislative protection as other workers.⁵⁸ ECNI highlighted the importance of including teachers in monitoring requirements, ensuring annual data collection and regular review.
- 3.21. **The Advisory Committee may wish to recommend that the State Party expedite the removal of the exemption for teachers under the Fair Employment and Treatment (NI) Order 1998.**

4.0. Article 4(1) Equality/Equal Protection before the Law

Single Equality Legislation

- 4.1. In NI, discrimination is prohibited by a complex framework of legislation and regulations. Unlike other parts of the UK (which fall under the Equality Act 2010), there is no single legislative instrument to consolidate, clarify and enhance existing equality protections in NI. Protocol Article 2 adds a

to remove the exemption for the recruitment of teachers. See: Council Directive 2000/78/EC on Establishing a General Framework for Equal Treatment in Employment and Occupation, 27 November 2000.

⁵⁵ NI Assembly, Hansard Official Report: Monday 17 May 2021.

⁵⁶ Equality Commission NI, ‘Briefing: FETO Teachers’ Exception’ (ECNI, 2021).

⁵⁷ NI Assembly, NIA Bill 51/17-22 Fair Employment (School Teachers) Bill.

⁵⁸ NI Assembly, ‘Hansard Official Report: Committee for the Executive Office’, Wednesday 16 February 2022.

further dimension as the UK Government has committed to ensuring there is no diminution of rights, safeguards and equality of opportunity set out in the Belfast (Good Friday) Agreement as a result of the UK's withdrawal from the EU, including the right to equality of opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity.⁵⁹ The UK Government also committed to ensuring that NI equality law "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 2021.⁶⁰

- 4.2. 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.⁶¹ The European Commission against Racism and Intolerance also recommended that the NI Executive "consolidate equality legislation into a single comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the ECRI."⁶²
- 4.3. In 2017, the UN CRPD Committee recommended reform of equality law in NI⁶³ and the UN CEDAW Committee recommended that the NI Executive to ensure that it affords protection to women on an equal footing with women in other administrations of the State Party".⁶⁴
- 4.4. Despite these recommendations by both UN Treaty Bodies and the Advisory Committee, the NIHRC notes that there has been little progress in this regard.
- 4.5. The NI Executive Office has advised the NIHRC that in the absence of agreement on a single Equality Bill, it is satisfied that the current equality framework protects against discrimination on a range of grounds, albeit with some exceptions.⁶⁵
- 4.6. **The Advisory Committee may wish to strengthen their recommendation and to again ask the State party what steps it will take to simplify, strengthen, and harmonise equality legislation in NI within a Single Equality Act.**

⁵⁹ Article 2(1), Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement 2020.

⁶⁰ Article 13, Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement 2020.

⁶¹ E/C.12/GBR/CO/5 'UN ICESCR Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI' 12 June 2009, at para 16.

⁶² CRI(2016)38, 'European Commission on Racial Intolerance Report on the UK (Fifth Monitoring Cycle)' (ECRI, 2016), at para 22.

⁶³ CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the United Kingdom of Great Britain and NI', 3 October 2017, at para 17(b).

⁶⁴ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 March 2019, at para 16(a).

⁶⁵ Email correspondence from the Executive Office to the NI Human Rights Commission, 29 July 2020.

Multiple Discrimination

- 4.7. NI legislation does not provide for cases of intersectional or multiple discrimination. At present in NI, each ground of discrimination must form its own case, meaning it must be considered and ruled on separately.⁶⁶
- 4.8. The ECNI reports evidence of multiple discrimination. Over a five-year period, from 2016-2021, they received 1878 hybrid new enquiries, which raised issues on two or more equality grounds. 439 of these hybrid enquiries had a race discrimination element.⁶⁷
- 4.9. The Executive Office Racial Equality Strategy 2015-2025 commits to reviewing the Race Relations (NI) Order 1997 and the terms of reference for the review include reference to the UN CERD Committee's recommendation on multiple discrimination.⁶⁸ A comparative study of protections offered by the Race Relations (NI) Order with laws in the rest of the UK and Ireland has been examined by the Departmental Solicitor's Office and formed part of the engagement with stakeholders and other administrations.⁶⁹ However, the NIHRC understands that the consultation on legislation reform is unable proceed at present due to the absence of the Executive.⁷⁰
- 4.10. The issue of intersectionality was considered by the Independent Review of Hate Crime Legislation in NI, which recommended that any new legislation should provide appropriate recognition of the importance of intersectionality and be reflected in the drafting of the statutory aggravations to existing offences.⁷¹ The Department of Justice's response agreed that all protected groups should be treated equally and intersectionality between these groups should be recognised in legislation.⁷²
- 4.11. The NIHRC welcomes the Department of Justice's recent launch of a public consultation on Hate Crime legislation that is currently running until the end of March 2022. It includes consideration of the importance of capturing the intersectional nature of hate crimes.⁷³

⁶⁶ Equality Commission for NI, 'Strengthening Protection against Racial Discrimination: Recommendations for Law Reform', (ECNI, 2014), at 38.

⁶⁷ Correspondence with the ECNI, 4 February 2022.

⁶⁸ Eoin Mullan, Sinead Brown and Paul Roddy, 'Racial Equality Legislation Review' (TEO, 2018), at 7-8.

⁶⁹ Email correspondence from The Executive Office to the NI Human Rights Commission, October 2021.

⁷⁰ The Executive Office meeting of the Racial Equality Subgroup, 16 February 2022.

⁷¹ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI Independent Review', (DoJ 2020), Recommendation 11.

⁷² Ibid, at 5.

⁷³ Department of Justice, '[Consultation on Hate Crime Legislation in Northern Ireland](#)', (31 January 2022).

4.12. The Advisory Committee may wish to ask the State party:

- **What steps it will take to introduce legal protection against multiple and intersectional discrimination; and**
- **Seek a progress update on the reform of the Race Relations (NI) Order 1997.**

Common Travel Area⁷⁴

4.13. In 2018, the NIHRC and the Irish Human Rights and Equality Commission (IHREC) published commissioned research on the Common Travel Area (CTA),⁷⁵ exploring the legal obligations it created. The research noted that the Common Travel Area is “written in sand” and that legal underpinning is largely dependent on EU rights.⁷⁶ The report recommended putting these rights on a legal footing in a bilateral Common Travel area treaty would allow the strongest form of protection.

4.14. In May 2019, the UK Government and the Government of Ireland signed Memorandum of Understanding setting out what they understand by the Common Travel Area and the associated rights and privileges.⁷⁷ This Memorandum of Understanding only extends to British and Irish citizens and does not create “legally binding obligations”.⁷⁸

4.15. The two governments have agreed a treaty codifying areas related to social security coordination.⁷⁹ However, the NIHRC notes with concern that all other rights associated with the Common Travel Area, including free movement of people, rights to reside and work, healthcare and education are all based on separate domestic arrangements, alongside reciprocal agreements, and other non-judicially enforceable agreements.

4.16. On 1 October 2021, new Home Office guidance took effect, stating that while travellers into the UK from Ireland need not show a passport to a Border Force officer, they may be asked to show a document confirming

⁷⁴ While this issue has been noted under Article 4(1) in this submission, it also engages Articles 17 and 18 of the FCNM.

⁷⁵ The Common Travel Area is a long-standing arrangement between the UK, the Crown Dependencies (Isle of Man, Guernsey etc.) and Ireland that pre-dates both British and Irish membership of the EU and is not dependent on it. Under the CTA, British and Irish citizens can move freely and reside in either jurisdiction and enjoy associated rights and privileges, including the right to work, study and vote in certain elections, as well as to access social welfare benefits and health services.

⁷⁶ Sylvia de Mars, Colin Murray, Aoife O’Donoghue and Ben Warwick, ‘Discussion Paper on the Common Travel Area’ (NIHRC and IHREC, 2018), at 11.

⁷⁷ Memorandum of Understanding between the UK Government and the Government of Ireland Concerning the Common Travel Area and Associated Reciprocal Rights and Privileges, 8 May 2019.

⁷⁸ Ibid, at paras 2 and 17.

⁷⁹ Convention on Social Security between the Government of the UK and the Government of Ireland, 2019.

their identity and nationality.⁸⁰ Only certain categories of people may use their identity cards (such as those who have EU settled status), the rest will be required to show their passport. The NIHRC remains concerned about the risk of racial profiling in the context of additional checks at public service access points arising from EU exit⁸¹ potentially deterring migrants from accessing services to which they are entitled.⁸²

4.17. In December 2021, the NIHRC wrote to the Secretary of State to further express its concerns about Home Office guidance in relation to the CTA and the proposed intelligence-led immigration checks which could lead to increased risk of racial profiling.⁸³ It asked the Secretary of State for information on what training and guidance is provided for enforcement officers, the review mechanisms and disciplinary procedures in place for cases of racial profiling, and for data on intelligence-led checks carried out under CTA guidance.

4.18. The NIHRC further notes with concern the proposed Electronic Travel Authorisations (ETA), under the Nationality and Borders Bill, which requires an ETA for all non-British citizens who require leave to enter the UK, when travelling from Ireland to the UK.⁸⁴ Although Irish citizens do not require leave to enter the UK,⁸⁵ those who do not hold a recognised UK immigration status will be affected, despite free travel being presently available to them on the island of Ireland. It is not known what measures are in place to decide which individuals will be required to 'demonstrate' that permission to travel. Concerns about potential for racial profiling under the proposed Bill have been raised by the NIHRC in a joint submission with the ECNI to the House of Lords.⁸⁶

4.19. **The Advisory Committee may want to ask the State Party:**

- **how it intends to ensure that any checks to verify identity and nationality on people travelling to the UK from Ireland are fully in compliant with international human rights standards; and**

⁸⁰ Home Office, 'Common Travel Area – Version 11.0' (HO, 2021), at 44-47.

⁸¹ The ECNI has previously supported a claim of racial discrimination against the Home Office arising from racial profiling by UK immigration officers. This resulted in the settlement of the claim of alleged racial discrimination against a black British woman, arising from the actions of an immigration officer at Belfast City Airport. ECNI, Race case supported by Commission settled with Home Office, 20 July 2016.

⁸² Joint Committee of the Irish Human Rights and Equality Commission and the NI Human Rights Commission 'Policy statement on the United Kingdom withdrawal from the European Union' (NIHRC and IHREC, 2018), at 10-11.

⁸³ Letter from the NI Human Rights Commission to the Secretary of State for the Home Department, 20 December 2021.

⁸⁴ Clause 71, Nationality and Borders Bill 2021.

⁸⁵ Section 3ZA, Immigration Act 1971.

⁸⁶ NI Human Rights Commission and Equality Commission NI, 'Joint Submission to House of Lords on the Nationality and Borders Bill, (NIHRC and ECNI, 2022), at 11-12.

- **how it intends to implement effective measures to address the risk of racial profiling, ensuring it is clearly prohibited and that this is effectively communicated, monitored and enforced.**

EU Settlement Scheme

4.20. The EU Settlement Scheme (EUSS) was designed to protect the rights of EU and European Economic Area (EEA) citizens and their family members already living in the UK prior to 1 January 2021.⁸⁷ Applicants, and their families, can be granted either settled status or pre-settled status under the EUSS. For EU and EEA nationals with five years' continuous residency in the UK, they will ordinarily be granted settled status, which is indefinite leave to remain, while those with less than five years' continuous residency will be granted pre-settled status, which is a temporary right to reside for five years. Pre-settled status allows the applicant to remain in the UK, subject to conditions, in order to fulfil the residency requirements to apply 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.⁸⁸

4.21. In July 2021, the House of Lords European Affairs Committee published a report on Citizens' Rights assessing the operation of the EUSS, expressing concern that the absence of a physical document for those who had been granted settled status may prove problematic.⁸⁹ The report also raised the issue of the status of the two million people who had been granted pre-settled status and the fact that their future applications are subject to individualised deadlines which may create uncertainty.⁹⁰ It further highlighted the need to ensure greater clarity and certainty around late applicants to the EUSS who may lose rights as a result of late applications.⁹¹

4.22. The UK government confirmed that late applications would be accepted where there are reasonable grounds for failing to meet the deadline⁹² and that applicants making late applications will continue to have their rights

⁸⁷ The scheme gives effect to the Citizens' Rights provisions in the UK-EU Withdrawal Agreement, see Part 2, UK-EU Withdrawal Agreement 2020.

⁸⁸ Home Office, 'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members – Version 15.0' (HO, 2021).

⁸⁹ House of Lords European Affairs Select Committee, 'Citizens' Rights, 1st Report of Session 2021/2022', (HL, 2021), at 37.

⁹⁰ Ibid, at 39.

⁹¹ Ibid, at 49.

⁹² Home Office, 'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members – Version 15.0' (HO, 2021), at 31-32.

protected while their application is determined.⁹³ A number of other issues that arose regarding the implementation of the scheme (such as applications from children and young people) have been resolved. The Independent Monitoring Authority for the Citizens Rights Agreements has called on the Home Office to provide further clarity on the rights of EU citizens whose applications are pending or who have made late applications to ensure public bodies and individuals concerned are aware of and can vindicate their rights.⁹⁴

- 4.23. The NIHRC is aware that applicants to the EUSS with pending criminal proceedings have been experiencing delays in getting their applications processed and decisions are being deferred until the criminal process is resolved.⁹⁵ In the case of pending criminal proceedings, the delays in the criminal justice system are well documented and have been exacerbated by the COVID-19 pandemic, meaning applicants can face extensive delays in getting their status confirmed.⁹⁶
- 4.24. In July 2021, the NIHRC raised concerns with the NI Housing Executive following evidence of denial of housing executive benefit on account of EU Settlement status not being regularised.⁹⁷ The NIHRC and the ECNI have also written to the Independent Monitoring Authority to raise concerns about access to housing benefit and individuals being denied employment, despite being able to prove that they had applied for settled status.⁹⁸
- 4.25. Under the Access to Universal Credit, a social security benefit, is limited to applicants who are habitually resident in the UK, thereby excluding people with pre-settled status.⁹⁹ A legal challenge, brought by a woman who had left a violent relationship and was refused access to Universal Credit before the end of the transition period despite not having the means to support herself or her children was referred to the CJEU in 2021.¹⁰⁰ In considering the rights to human dignity,¹⁰¹ private and family life,¹⁰² and the rights of the child,¹⁰³ the CJEU held that the authorities “may refuse an application for social assistance, such as Universal Credit, only after ascertaining that that refusal does not expose the citizen concerned and the children for

⁹³ Home Office, ‘Press Release: Temporary protection for more applicants to the Settlement Scheme’, 6 August 2021.

⁹⁴ Independent Monitoring Authority, ‘Press Release: Home Office asked to clarify the rights of EU citizens applying late to the EU Settlement Scheme’, 27 September 2021.

⁹⁵ Home Office, ‘EU Settlement Scheme: Suitability Requirements – Version 6.0 (HO, 2021).

⁹⁶ Cormac Campbell, ‘Coronavirus: COVID-19 courthouse closures create huge backlog’, *BBC News*, 15 July 2020; Northern Ireland Audit Office, ‘Speeding Up Justice: Avoidable Delay in the Criminal Justice System’ (NIAO, 2018).

⁹⁷ Letter from the NI Human Rights Commission to the NI Housing Executive, 22 July 2021.

⁹⁸ Letter from the NI Human Rights Commission and Equality Commission for NI to the Independent Monitoring Authority, 23 August 2021.

⁹⁹ Regulation 9(3)(d), The Universal Credit Regulations (Northern Ireland) 2016.

¹⁰⁰ *CG v Department for Communities*, Case C-709/20, 15 July 2021.

¹⁰¹ Article 1, EU Charter of Fundamental Rights.

¹⁰² Article 7, EU Charter of Fundamental Rights.

¹⁰³ Article 24, EU Charter of Fundamental Rights.

which he or she is responsible to an actual and current risk of violation of their fundamental right.”¹⁰⁴

4.26. In December 2021, the UK Supreme Court allowed an appeal by the Secretary of State in another case concerning pre-settled status and access to Universal Credit.¹⁰⁵ The applicants had originally argued that denying access to social assistance on the basis of their pre-settled status was discriminatory, since, under EU law, once a citizen is granted a right of residence in another Member State under the provisions of domestic law, they are entitled to the same benefit as a national of that state.¹⁰⁶ The Supreme Court found that the applicants’ residence did not comply with the Citizens’ Rights Directive,¹⁰⁷ and as such, they could not rely on the EU principle of non-discrimination.

4.27. In October 2021, the Independent Monitoring Authority issued a pre action protocol letter to the Home Office noting that the automatic loss of residence status for EU citizens with pre-settled status who do not apply in time for EU Settled Status is a breach of the UK-EU Withdrawal Agreement and the EEA EFTA Separation Agreement.¹⁰⁸

4.28. The Advisory Committee may wish to recommend to the State Party that it:

- **take immediate action to resolve all outstanding applications under the EU Settlement Scheme and ensure that no-one is left without the ability to prove their right to live and work in NI; and,**
- **ensure that all eligible vulnerable groups and individuals, who have not yet applied to the EUSS, are supported to regularise their status in an efficient and timely way.**

Birthright

4.29. In 2020, the Joint Committee of the NIHRC and the Irish Human Rights and Equality Commission published a legal analysis and proposals for reform to enshrine in domestic law, the recognition in the Belfast (Good Friday) Agreement, of the “birthright of all the people of Northern Ireland

¹⁰⁴ *CG v Department for Communities*, Case C-709/20, 15 July 2021, at para 92.

¹⁰⁵ *Fratila and another v Secretary of State for Work and Pensions* [2021] UKSC 53.

¹⁰⁶ Art 18, Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1;

¹⁰⁷ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

¹⁰⁸ Independent Monitoring Authority, ‘Press Release: IMA issues Pre-Action Protocol Letter to the Home Office’, 15 October 2021.

to identify themselves and be accepted as Irish or British, or both”.¹⁰⁹ Under section 1 of the British Nationality Act 1981, anyone born in the UK to a British, Irish or settled parent, is deemed British.

- 4.30. In 2019, the Upper Immigration and Asylum Tribunal held that the system requiring a person to renounce their British citizenship in order to be considered Irish only was a proportionate means of achieving the legitimate aim of avoiding statelessness and maintaining a coherent system of nationality law.¹¹⁰ In 2021, the NI High Court refused a challenge by an Irish identifying applicant to the same legal provision, stating that “she is an Irish citizen; and her additional British citizenship takes nothing away from this in terms of the rights, benefits and privileges which she enjoys as an Irish citizen”.¹¹¹
- 4.31. In the New Decade, New Approach Agreement, the UK Government noted that it had reviewed its rules on family migration arrangements “taking into account the letter and spirit of the Belfast Agreement and recognising that the policy should not create incentives for renunciation of British citizenship by those citizens who may wish to retain it.”¹¹²
- 4.32. On 24 August 2020, changes came into force to allow for a “relevant person of NI” to access EU free movement law protections.¹¹³ A relevant person of NI is defined as someone who is a British citizen, an Irish citizen, or both British and Irish and was born in NI to a parent who was British, Irish or both, or otherwise entitled to reside in NI without any restriction on their period of residence. This scheme closed on 30 June 2021 in line with the EU Settlement Scheme.¹¹⁴
- 4.33. In January 2021, the NIHRC provided written and oral evidence to the NI Affairs Committee inquiry on Citizenship and Passport Processes in NI which highlighted its recommendation that UK nationality and immigration legislation be amended to give effect to the birthright commitment.¹¹⁵ The Committee’s report recommended that “in the interests of transparency, the Government must publish in full the results of the review announced

¹⁰⁹ Alison Harvey, ‘A Legal Analysis of Incorporating into UK Law the Birthright Commitment under the Belfast (Good Friday) Agreement 1998’, (NIHRC and IHREC, 2020).

¹¹⁰ *De Souza (Good Friday Agreement: Nationality)* [2019] UKUT 355 (IAC), at para 54.

¹¹¹ *In the Matter of Ní Chuinneagain* [2021] NIQB 79, at para 17.

¹¹² NI Office, *New Decade New Approach*, (NI Office, 2020), at 48.

¹¹³ Home Office, ‘Statement of Changes in Immigration Rules CP232 (HO, 2020), at 10.

¹¹⁴ NI Human Rights Commission, ‘EU Settlement Scheme extended to the people of Northern Ireland: what does it mean for me?’, (NIHRC, 2020).

¹¹⁵ Correspondence from Robert Walker MO, Minister of State for NI and Kevin Foster MP, Minister for Future Borders and Immigration to the NI Affairs Committee, 2 March 2021; NI Human Rights Commission, ‘Submission to the NI Affairs Committee Inquiry into Citizenship and Passport Processes’, (NIHRC, 2021); UK Parliament Hansard, ‘NI Affairs Committee: Citizenship and Passport Process in NI, HC 1111’ 10 March 2021; NI Human Rights Commission, ‘NI Affairs Committee Inquiry into Citizenship and Passport Processes in NI: NIHRC Commentary on the NI Office/Home Office Submission to the Committee’, (NIHRC, 2021).

by Mrs May"¹¹⁶ and called for the UK Government to "clarify the meaning of the phrase 'to be accepted as' in Article 1(vi) of the Agreement, including how it is respected and upheld in the Government's approach towards the birthright provisions for the people of Northern Ireland".¹¹⁷ The Committee further called on the UK Government and Government of Ireland to agree a shared approach to the birthright provisions to remove any remaining ambiguity.¹¹⁸

4.34. The NIHRC welcomes the potential for regularisation of historical anomalies within UK nationality and citizenship law under the proposed Nationality and Borders Bill. However, the NIHRC expressed concern that the Home Office had not taken the opportunity in the Bill to clarify 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.¹¹⁹

4.35. The Advisory Committee may wish to ask the State Party how it will ensure the birthright commitment under the Belfast (Good Friday) Agreement 1998 is reflected in nationality and immigration laws.

Electoral Rights of EU Citizens

4.36. In June 2021, the NIHRC and ECNI, wrote to the Secretary of State outlining their concerns that Protocol Article 2 would be engaged should the UK Government amend, replace, or repeal legislation governing the voting franchise for local council elections in NI to remove the right to vote and stand in these elections by EU citizens.¹²⁰ The UK Government subsequently confirmed that EU citizens living in the UK prior 1 January 2021 will maintain their local voting and candidacy rights in NI, including NI Assembly elections.¹²¹

4.37. In October 2021, the NIHRC and the ECNI wrote to the Public Bill Committee on the Elections Bill requesting that it give further consideration to the proposed changes to voting and candidacy rights of 'qualifying' EU citizens NI as part of its scrutiny of the Bill.¹²² These

¹¹⁶ NI Affairs Committee, 'First Report of Session 2021/2022 on Citizenship and Passport Processes relating to Northern Ireland' (HC, 2021), at para 16.

¹¹⁷ Ibid, at para 14.

¹¹⁸ Ibid.

¹¹⁹ NI Human Rights Commission, 'Response to Call for Evidence by the Joint Committee on Human Rights on the Nationality and Borders Bill' (NIHRC, 2021), at paras 3.1-3.4.

¹²⁰ Letter from the NI Human Rights Commission to Brandon Lewis MP, Secretary of State for Northern Ireland, 11 June 2021.

¹²¹ UK Parliament Hansard, 'House of Commons Written Statement: Local Elections – Chloe Smith MP, Minister of State for the Constitution and Devolution - HCWS99, 17 June 2021.

¹²² Letter from the NI Human Rights Commission and the Equality Commission for NI to the Public Bill Committee on the Elections Bill, 20 October 2021.

concerns have been recently reiterated by the NIHRC and the ECNI in a letter to the Chair of Protocol on Ireland/Northern Ireland Sub-Committee, ahead of the second reading of the Bill in the House of Lords.¹²³

4.38. The Advisory Committee may wish to ask the State Party what steps are being taken to ensure that the electoral rights of EU Citizens in the UK are being upheld and protected.

EU Citizenship and Workers' Rights

4.39. Under Article 26 of the UK-EU Withdrawal Agreement, frontier workers are entitled to be issued with appropriate documentation which certifies their rights as frontier workers. In practical terms, this means that Irish, British and EU citizens who commenced a cross-border job on or before 31 December 2020 will benefit from the Withdrawal Agreement.

4.40. The Frontier Workers Permit Scheme was established by the UK Government to ensure that EU citizens living in Ireland but working in NI on or after 1 July 2021 can prove their right to work in the UK.¹²⁴ Any EU citizens wishing to come to the UK to work on or after 1 January 2021 will have to apply to the new points-based immigration system.

4.41. EU citizens, including Irish citizens, living in NI and working in Ireland on or after 1 January 2021 do not have to apply to a similar scheme as they maintain their right to work in the EU as an EU citizen. Similarly, British citizens living in NI and working in Ireland will have their right to work protected under the reciprocal guarantees associated with the Common Travel Area.¹²⁵

4.42. The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 set out the rules governing the application of the frontier workers permit scheme, the time frames within which applications have to be made, and the grounds upon which a refusal can be issued. They also set out the circumstances in which a worker or self-employed person can retain their status. These cover instances involving accidents, illnesses, engagement in vocational training and pregnancy or childbirth.¹²⁶ The regulations confirm that applications can be refused on grounds of public policy, public security, public health or on grounds of misuse of rights.¹²⁷ The regulations

¹²³ Letter from the NI Human Rights Commission and the Equality Commission for NI to the Chair of the Protocol on Ireland/Northern Ireland Sub-Committee (HoL), 7 February 2022.

¹²⁴ Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

¹²⁵ Memorandum of Understanding between the UK Government and the Government of Ireland Concerning the Common Travel Area and Associated Reciprocal Rights and Privileges, 8 May 2019, at para 8.

¹²⁶ Regulation 4, Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

¹²⁷ Regulation 18, Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

are likely to apply to a number of EU citizens travelling between Ireland and NI for work.

- 4.43. The NIHRC notes that a number of civil society organisations raised concerns about this scheme, including the lack of consultation and impact assessment in advance of the regulations being published and the limited period provided for registration.¹²⁸
- 4.44. **The Advisory Committee may wish to ask the State Party what steps are being taken to recognise that people living and working across the border are in a particularly vulnerable situation and to ensure that no eligible worker or self-employed person is left unprotected by the frontier worker scheme.**

Nationality and Borders Bill

- 4.45. The NIHRC is concerned that the Nationality and Borders Bill, recently introduced to the Westminster Parliament,¹²⁹ will encroach on provisions within devolved legislation, primarily around support for victims of human trafficking.¹³⁰ Asylum seekers, refugees and irregular migrants with limited access to legitimate forms of employment, legal status or social protection are at particular risk to trafficking and modern slavery.¹³¹
- 4.46. The NIHRC is concerned that the Bill, in its current form, fails to recognise the impact of trauma experienced by a victim of trafficking or modern slavery, failure to acknowledge the positive obligation on the State to identify victims, failure to ensure victims receive specific treatment aimed at preventing secondary victimisation, and to ensure non-prosecution of the victim relating to crimes they were compelled to commit as a consequence of being trafficked.¹³²
- 4.47. The NIHRC has raised specific concerns about compliance about the Bill, with regards to its frustration of the Trafficking Directive,¹³³ and further notes that three UN Special Rapporteurs have raised concerns about the Bill and its compliance with international obligations in relation to

¹²⁸ Letter from the Committee on the Administration of Justice; UNISON; Border People; Centre for Cross Border Studies; Migrant Centre NI; Irish Congress of Trade Unions; Migrant Rights Centre Ireland; Stronger Together; South Tyrone Empowerment Project; Inter Ethnic Forum: Chinese Welfare Association; Omagh Ethnic Community Support Group; Belfast Metropolitan College, College of Sanctuary; North West Migrant Forum; Advice NI; Granite Legal Services NI to the Home Secretary, 26 October 2020.

¹²⁹ The Bill will extend to NI, with the exception of seven clauses (clauses 24, 46, 56, 59, 63, 65 and 66) that only apply to England and Wales.

¹³⁰ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

¹³¹ Fiona David, Katharine Bryant, Jacqueline Joudo Larsen, '[Migrants and their vulnerability to trafficking, modern slavery and forced labour](#)' (IOM, 2019).

¹³² NI Human Rights Commission/ECNI, '[Briefing Paper on Modern Slavery and Human Trafficking and Electronic Travel Authorisation provisions in the National and Borders Bill](#)', (28 January 2022), at 8-10.

¹³³ Ibid.

trafficking and modern slavery.¹³⁴

4.48. The NIHRC also observes that there is no specific provision, guidance or information on how these provisions will impact upon children, particularly those who are seeking asylum, refugees or those with irregular immigration status or who have been separated from their families. In accordance with the Trafficking Directive read with other international obligations, including the UN Convention on the Rights of the Child, the child's best interest must always be the primary consideration in any decision or action.¹³⁵ There is no reference in the Bill to child victims of human trafficking or modern slavery.

4.49. The Advisory Committee may wish to ask the State Party, what consideration is being given on the impact of trauma experienced by a victim of trafficking and modern slavery, the prevention of secondary victimisation and non-prosecution of victims and ensuring the protection of vulnerable children under the Nationality and Borders Bill.

Operation Gull

4.50. In its previous report to the Advisory Committee, the NIHRC noted with concern the conduct of 'Operation Gull', a joint scheme run by Home Office Immigration Enforcement, the Police Service of NI and Police Scotland. Operation Gull is intended to "identify and arrest illegal immigrants transiting Northern Ireland ports, having attempted to abuse or facilitate abuse of the land border as a means of entering the UK and Ireland".¹³⁶

4.51. Although no official statistics or information is published in relation to the scheme, statistics published by the Organised Crime Task Force in 2016 indicated that 775 people were detained under Operation Gull – an increase of 66 percent on the previous year.¹³⁷ The NIHRC notes that recent statistics on the conduct of Operation Gull were unavailable. There have been calls from academics and civil society to suspend the initiative.¹³⁸

4.52. The NIHRC notes that in an answer to a written parliamentary question

¹³⁴ OL GBR The11/2021, 'Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism', 5 November 2021.

¹³⁵ Recital 8 of Directive 2011/36/EU 'Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011; Article 3 UN CRC.

¹³⁶ Organised Crime Task Force, 'Annual Report and Threat Assessment 2016' (June 2016), at p13.

¹³⁷ Ibid.

¹³⁸ 'Calls for suspension of ongoing 'racist' Operation Gull initiative', *Derry Journal*, 2 June 2017.

from NI MP Nigel Dodds,¹³⁹ the government stated, in 2019, that there had not yet been discussion between Home Office and NI authorities as to the future of this operation after the UK's withdrawal from the EU.¹⁴⁰

4.53. The Home Office has advised the NIHRC that there are no plans to change the operation of Operation Gull following the UK's departure from the EU. The Home Office also stated that they do not publish statistics on detentions arising from Operation Gull.¹⁴¹

4.54. The Advisory Committee may wish to ask the State Party for further information and data about the continued use of 'Operation Gull', particularly in light of the UK's withdrawal from the EU.

Immigration Facilities

4.55. In 2019, the UN CAT Committee recommended that the UK Government should ensure that statements from health professionals about detained victims of torture or other person at risk of suffering harm as a consequence of detention, are given due consideration and ensure that individuals identified as at risk of future harm in detention receive necessary care and protection.¹⁴² The Committee also recommended that the UK Government develop mandatory training programmes on the Convention against Torture and Istanbul Protocol and develop a methodology for assessing the effectiveness of training in reducing the number of cases of torture and ill-treatment.¹⁴³

4.56. In NI, irregular migrants are detained at Larne House short-term holding facility.¹⁴⁴ Detainees are held for a maximum period of five or seven days if Removal Directions are in place. Detainees are then released, transferred to Immigration Removal Centres in Great Britain or removed, including to Ireland. Across 2020, there were 97 immigration detainees held at Larne House. Across 2021, this number decreased with 57 immigration detainees at Larne House.¹⁴⁵

4.57. The Immigration Detention Centre Rules make provision for the regulation and management of detention centres.¹⁴⁶ The Rules provide for matters

¹³⁹ Now Lord Dodds of Duncairn.

¹⁴⁰ UK Parliament (Written questions, answers and statements), [Immigration Controls: Northern Ireland – Question for the Home Office, Nigel Dodds](#) (19 April 2019).

¹⁴¹ Email correspondence between the Home Office and the NI Human Rights Commission, 22 February 2022.

¹⁴² CAT/C/GBR/CO/6, 'UN Committee against Torture, Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 7 June 2019, at para 55(a).

¹⁴³ *Ibid*, at para 27.

¹⁴⁴ Email correspondence between UK Border Agency and NI Human Rights Commission, 26 March 2013.

¹⁴⁵ Home Office, 'Immigration Statistics Data Tables: Year End September 2021 (HO, 2020) at Table Dt_01.

¹⁴⁶ The Detention Centre Rules 2001.

such as the welfare and health care of immigration detainees. 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 he/she is 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.

4.58. The Short-term Holding Facility Rules 2018 provide “where a health care professional has concerns that a detained person may have been a victim of torture this must be reported to the manager”.¹⁴⁷ In 2018, the HM Chief Inspector of Prisons, found that:

detainee custody officers [at Larne House] were not aware of any safeguarding adults policy or the national referral mechanism to identify and support victims of trafficking. We were told that if the detainee custody officers identified detainees who were at risk of harm due to specific vulnerabilities, this would be reported immediately to the Home Office.¹⁴⁸

4.59. Women immigration detainees are held with men in Larne House. There are currently three rooms, on a single corridor, are designated for women detainees. This corridor is not separate from the rest of the facility and men can walk through to go to the dining room. Women can lock the doors to their rooms, which can be overridden by staff in the event of an emergency.

4.60. In March 2021, the NIHRC responded to the Department of Justice’s proposed strategy for dealing with women and girls in contact with the criminal justice system, in which it raised concerns in relation to women immigration detainees and access to gender-specific areas at Larne House.¹⁴⁹ A copy of the response was forwarded to the Home Office.

4.61. In August 2021, the NIHRC received a response to the concerns raised above.¹⁵⁰ The Home Office provided that the immigration removal estate is operated in line with the Detention Centre Rules 2001 and for short-term holding facilities such as Larne House, the Short-Term Holding Facility Rules 2018, as well as the Detention Services Order; a Framework which includes specific guidance on women in detention. The Home Office further stated that oversight is provided by HM Chief Inspector of Prisons and the

¹⁴⁷ Short-term Holding Facility Rules 2001.

¹⁴⁸ HM Chief Inspector of Prisons, ‘Report on an Unannounced Inspection of the Short-term Holding Facility at Larne House’, (HM Inspectorate of Prisons, 2018), at para 1.8.

¹⁴⁹ NI Human Rights Commission, ‘NIHRC response to the Department of Justice proposed strategy to support and challenge women and girls in contact with the justice system’, (NIHRC, 2021).

¹⁵⁰ Correspondence from Home Office to NI Human Rights Commission, 26 August 2021.

Independent Monitoring Boards.

- 4.62. The Home Office stated that accommodation changes are currently being planned at Larne House, which will provide for a separate wing for women, with single occupancy bedrooms and a separate association room. The Home Office stated that this project is currently in the early stages but was set to commence in late 2021.
- 4.63. **The Advisory Committee may wish to seek an update from the State Party as to the planned separate accommodation project at Larne House.**

Welfare Reform

- 4.64. In 2015, the Fresh Start Agreement committed to implementing the social security reforms legislated for by the UK Parliament in the Welfare Reform and Work Act 2012. The agreement also included funding for a package of measures, worth up to £585 million over four years, paid for by NI Executive funds, to 'mitigate' some of the social security changes.
- 4.65. A review of the existing mitigation package was completed by the Department of Communities in March 2019, specifically considering the progress made in delivering the recommended welfare mitigations, details of expenditure for each scheme and, importantly, an analysis of the evidence to determine the need for a continuation of the mitigation package.¹⁵¹ Civil society organisations expressed grave concern about the imminent 'cliff edge' if the mitigation package would come to an end in March 2020.¹⁵² The majority of mitigations cannot be extended without legislative provision.
- 4.66. In 2019, the NIHRC published its Cumulative Impact Assessment report of tax and social security reforms implemented between 2010 and 2017, which demonstrated the need for mitigations in NI.¹⁵³ These recommendations were more recently re-iterated in reports commissioned by the NIHRC on the impact of public spending changes in NI,¹⁵⁴ and the effect of Covid-19 on public services in NI.¹⁵⁵
- 4.67. In January 2021, the Department for Communities consulted on its Equality Impact Assessment on the Executive's draft budget for

¹⁵¹ Department for Communities, '[Review of Welfare Mitigation Schemes](#)', March 2019.

¹⁵² Cliff Edge Coalition NI, '[Submission to the Joint Inquiry into Welfare Policy in Northern Ireland](#)', May 2019.

¹⁵³ NI Human Rights Commission, 'Cumulative Impact Assessment of Tax and Social Security Reforms', (NIHRC, 2019).

¹⁵⁴ Howard Reed and Jonathan Portes, '[The Impact of Public Spending Changes in Northern Ireland](#)', September 2021.

¹⁵⁵ Howards Reed and Jonathan Portes, '[The Impact of Covid-19 on Public Services in Northern Ireland](#)', November 2021.

2021/2022. The Department identified that the NI Executive and all Departments were dealing with the challenges of a constrained draft budget in light of the COVID-19 pandemic and economic fallout.¹⁵⁶ The Department stated that there is no allocated budget to offset the two-child policy which limits child tax credit for new claimants to two children per family.¹⁵⁷ The Department further noted that no additional funding had been allocated for the Independent Advice Sector to support welfare changes, which equates to a £1.5 million reduction in funding.¹⁵⁸ The Department identified that no budget allocation had been approved for the Department's New Decade New Approach bids, which included a range of new mitigations that were recommended by the NIHRC.¹⁵⁹ The Department also noted that no funding allocation had been provided for Housing Transformation, a revitalisation programme aiming to secure the NI Housing Executive's social housing stock.¹⁶⁰

4.68. The NIHRC has raised concerns about social security support for ethnic minorities and migrants¹⁶¹ and the negative impact of the two-child policy on families from specific cultural and religious backgrounds who may have larger families, or moral objections to the use of contraception, emergency contraception and abortion.¹⁶² The UN CEDAW Committee has recommended the repeal of the two-child limit¹⁶³ and the UN CRC Committee has recommended the state "conduct a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms... on children, including children with disabilities and children belonging to ethnic minority groups".¹⁶⁴

4.69. The NIHRC response also noted that while minority ethnic communities were not identified by the Department's impact assessment, there are clear links between poverty and ethnicity in NI, attributed to higher unemployment rates and over-representation in low-paid work.¹⁶⁵ The lack of allocation for job market interventions in the draft budget for 2021-22 will have an adverse impact on minority ethnic communities, who already face barriers to employment within NI. Citing the UN High Commissioner for Human Rights, the NIHRC highlighted that minority ethnic communities

¹⁵⁶ Department for Communities, 'Equality Impact Assessment', (DfC, 2021).

¹⁵⁷ Ibid, at para 6.9.

¹⁵⁸ Ibid, at para 6.19.

¹⁵⁹ Ibid, at para 6.18.

¹⁶⁰ Ibid, at para 6.21.

¹⁶¹ NI Human Rights Commission 'Submission to the Department for Communities in Response to Their Equality Impact Assessment of the Draft Budget 2021-22', (NIHRC, 2021).

¹⁶² Ibid.

¹⁶³ CEDAW/C/GBR/CO/8, UN Committee on the Elimination of Discrimination Against Women, 'Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', (CEDAW, 2019), at paras 51-52.

¹⁶⁴ CRC/C/GBR/CO/5, UN Committee on the Rights of the Child, 'Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', (CRC, 2016), at para 71.

¹⁶⁵ Joseph Rowntree Foundation, 'Poverty and Ethnicity: Key Messages for Northern Ireland', (JRF, 2016).

have been disproportionately impacted by Covid-19 due to “systemically unequal access to services and opportunities” including health care, education, housing and access to employment and justice.¹⁶⁶ Members of minority groups are more exposed to the virus because of their over-representation in low-paid, insecure work.¹⁶⁷ Finally, the response stated that the complex documentation required to apply for social security payments already adversely impact migrant workers in NI.¹⁶⁸ The proposed cuts to the Independent Advice Sector alongside no additional staff to process social security payments will exacerbate these pre-existing issues for minority ethnic and migrant workers.

4.70. The Minister also announced the appointment of an Independent Advisory Panel to review welfare mitigation measures in NI, which will be chaired by the former Chief Commissioner of the NIHRC, Les Allamby.¹⁶⁹ The Panel is expected to produce a final report by 4 February 2022.

4.71. Following extensions to the mitigations in 2020¹⁷⁰ and a commitment by the then Minister for Communities to legislate, in February 2022, the NI Assembly legislated to extend some welfare mitigations indefinitely, ensuring that people who would have been affected by the ‘bedroom tax’¹⁷¹ to get top-up payments. The legislation is due to take effect from February 2022, and puts an obligation on the Department for Communities to extend the mitigations permanently.¹⁷²

4.72. The Advisory Committee may wish to ask the State Party:

- **to ensure that social security is accessible, promptly available and guarantees an adequate standard of living;**
- **to review the cuts in social welfare benefits and, in the interim, ensure a comprehensive mitigation package for NI; and**
- **to monitor the cumulative impact of social security reforms on ethnic minorities, women and low-income families and families with two or more children.**

¹⁶⁶ UN High Commissioner for Human Rights, ‘Addressing the Disproportionate Impact of Covid-19 on Minority Ethnic Communities’ (OHCHR, 2020).

¹⁶⁷ Ibid.

¹⁶⁸ NI Human Rights Commission, ‘Submission to the Northern Ireland Affairs and Work and Pensions Committees’ Joint Inquiry into Northern Ireland’s Social Security Policy’, (NIHRC, 2020), at para 7.3.

¹⁶⁹ Department for Communities, ‘Press Release: Communities Minister commissions welfare mitigations review’, 16 November 2021.

¹⁷⁰ Budget Act (NI) 2020 and Budget (No 2) Act 2020.

¹⁷¹ Under the ‘bedroom tax’ or spare room subsidy, people who receive welfare payments would have their housing benefit reduced if they had one or more spare bedrooms. It was originally meant to take effect in NI in 2017.

¹⁷² NI Assembly Hansard, Official Report: Tuesday 8 February 2022 (NIA, 2022)

Asylum Support

- 4.73. 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, to ensure that they enjoy their economic, social and cultural rights, in particular the right to an adequate standard of living”.¹⁷³ The UN ICESCR Committee further encouraged the UK Government “to ensure that asylum seekers are not restricted from accessing employment while their claims are being processed”.¹⁷⁴
- 4.74. In March 2019, the UN CEDAW Committee, recalling its General Recommendation No 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, recommended that the UK Government “take measures to enable asylum-seeking and refugee women to access employment and appropriate housing”.¹⁷⁵
- 4.75. Except for very limited circumstances, asylum seekers are not able to work in the UK. Financial support is available to those who appear to the Home Secretary to be destitute or who are likely to become destitute.¹⁷⁶ In 2020, this support was increased from £37.75 to £39.63,¹⁷⁷ and again by seventeen pence per day in January 2022, taking the total allowance to £40.85 per week.¹⁷⁸ Additional money, between £3 and £5 per week, to buy healthy food is provided to asylum seekers that are pregnant or a mother of a child under three. An asylum seeker can also apply for a one-off maternity payment if their baby is due in eight weeks or less, or if the individual’s baby is under six weeks old.¹⁷⁹ As of September 2021, 942 asylum seekers were in receipt of Section 95 support in NI. Of those, 21 were in receipt of subsistence only and 921 in dispersed accommodation.¹⁸⁰
- 4.76. The Immigration Act 2016 created a new power to support rejected asylum seekers who can demonstrate that they are destitute and face a genuine obstacle to leaving the UK at the point their appeal rights have been

¹⁷³ E/C.12/GBR/CO/6, ‘UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’, 14 July 2016.

¹⁷⁴ Ibid.

¹⁷⁵ CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 14 March 2019.

¹⁷⁶ S.95, Immigration and Asylum Act 1999.

¹⁷⁷ Regulation 2, Asylum Support (Amendment) Regulations 2018; British Red Cross, ‘The Longest Year: life under local restrictions’, 2021, at 24.

¹⁷⁸ Refugee Council, ‘[Changes to Asylum & Resettlement policy and practice in response to Covid19](#)’ (January 2022).

¹⁷⁹ Gov.UK, ‘What You’ll Get’. Available at: <https://www.gov.uk/asylum-support/what-youll-get>.

¹⁸⁰ Office for National Statistics, ‘Immigration Statistics: Asylum and Protection - Section 95 support by local authority’, (ONS, 2021).

exhausted.¹⁸¹ Therefore, persons who have children in their household at the time their asylum claim, and any appeal is finally rejected will no longer be treated as though they were still asylum seekers and so will no longer be eligible for support under section 95. Those refused asylum will be given somewhere to live and £35.39 per person on a payment card for food, clothing and toiletries. They will not be given any money and will not be given the payment card if they do not take the offer of somewhere to live. Those refused asylum can apply for a one-off £250 maternity payment if the baby is due in eight weeks or less, or if the baby is under six weeks old.¹⁸²

- 4.77. Research published by the British Red Cross exploring life under COVID-19 restrictions found that people seeking asylum spoke of difficulties making their asylum support payments of £39.63 per week stretch to cover their living costs, particularly when they were forced to shop in local, more expensive shops as a result of restrictions due to the pandemic.¹⁸³ The research also found that their ability to spend this money was restricted as the ASPEN card, which is how asylum support payments are made, cannot be used online.
- 4.78. Further, research published by the NI Commissioner for Children and Young People, found that children are suffering due to their parent's or carer's immigration status and as a result are plunged into extreme poverty, facing homelessness and destitution.¹⁸⁴ The research also found that this situation had been exacerbated by the COVID-19 pandemic, further widening the inequality gap for children and their parents.¹⁸⁵
- 4.79. In its response to the NI Affairs Committee Inquiry into the experience of minority ethnic and migrant people in NI,¹⁸⁶ the NIHRC highlighted that people whose immigration status is based on having 'no recourse to public funds' have not been effectively provided for, noting that the reliance on local authority provision as an alternative source of support is a problem in NI where local councils do not have responsibility for housing, social services or education.
- 4.80. The NIHRC also notes with the concern the Home Office's 'New Plan for Immigration' as part of a wider public consultation on refugee and asylum

¹⁸¹ Schedule 11, Immigration Act 2016.

¹⁸² Gov.UK, 'What You'll Get'. Available at: <https://www.gov.uk/asylum-support/what-youll-get>.

¹⁸³ British Red Cross, 'The longest year: life under local restrictions, Northern Ireland Briefing', February 2021.

¹⁸⁴ NI Commissioner for Children and Young People, 'NICCY, 'A Hostile Environment: Children and families affected by immigration status and NI Recourse to Public Funds', October 2021, at p.42.

¹⁸⁵ Ibid.

¹⁸⁶ NI Human Rights Commission, 'Submission to the NI Affairs Committee Inquiry into the experience of minority ethnic and migrant people in Northern Ireland', (NIHRC, 2021).

reform.¹⁸⁷ The NIHRC highlighted the failure to engage with human rights and refugee law across several fronts, including failure to establish future refugee resettlement figures, to demonstrate the human rights compliance of many of the proposed reforms which included such as changes to the age assessment of minors and the evidential and procedural rules underpinning a future application for refugee status which would make it more difficult for individuals to apply for refugee status or asylum.¹⁸⁸ These concerns were further reiterated in the NIHRC's response to the Joint Committee on Human Rights' call for evidence on the subsequent Nationality and Borders Bill in October 2021,¹⁸⁹ and in a briefing on the Bill to the House of Lords in January 2022.¹⁹⁰

4.81. **The Committee may wish to ask the State party:**

- **whether it intends to review the restrictions placed on asylum seekers regarding work;**
- **what it intends to do to further support asylum seekers who face extreme poverty, particularly children, over the course of the pandemic; and,**
- **to review the conditions of those whose immigration status is based on 'no recourse to public funds'.**

Crisis Fund

4.82. 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.¹⁹¹

4.83. The Crisis Fund, which is managed by The Executive Office, aims "to help minority ethnic individuals with no other means of support through emergency situations, such as vulnerable migrants, refugees and asylum

¹⁸⁷ Home Office, 'New Plan for Immigration', (UKHO, 2021).

¹⁸⁸ NI Human Rights Commission, '[Response to Public Consultation on the Home Office's 'New Plan For Immigration'](#)', (NIHRC, 2021).

¹⁸⁹ NI Human Rights Commission, 'Response to Call for Evidence by the Joint Committee on Human Rights on the Nationality and Borders Bill', October 2021.

¹⁹⁰ NI Human Rights Commission / ECNI, 'Briefing Paper on Modern Slavery and Human Trafficking and Electronic Travel Authorisation provisions in the National and Borders Bill', January 2022.

¹⁹¹ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016.

seekers and other vulnerable groups”.¹⁹² While it is not a permanent arrangement, the fund has proved to be “critical in alleviating short-term hardships for destitute asylum seekers and refugees”.¹⁹³

- 4.84. In 2020/21, the Crisis Fund, managed by the Red Cross, supported 1,178 people including 753 children from 66 different countries.¹⁹⁴ The primary causes of destitution that can lead to someone applying to the Crisis Fund were asylum issues (including No Recourse to Public Funds), benefit issues and employment issues.¹⁹⁵
- 4.85. In response to the pandemic and the overall need to support the most vulnerable migrants, asylum seekers and refugees, the Executive Office launched an earlier procurement process, awarding the contract in May 2021. In addition to running for longer over the financial year, the amount of funding available in 2021/22 was doubled to £202,000.¹⁹⁶ Subject to budget allocation, The Executive Office hopes to retain this upper level of funding in the coming years.¹⁹⁷
- 4.86. In 2021, in its response to the NI Affairs Committee Inquiry into the experience of minority ethnic and migrant people in NI,¹⁹⁸ the NIHRC reiterated its recommendation that the Crisis Fund be put on a permanent footing, and that the UK Government and NI Executive address the causes of destitution.
- 4.87. **The Advisory Committee may wish to ask the State party what plans there are to ensure long term planning and the continuation of the Crisis Fund on a permanent basis in NI.**

5.0. Article 4(2) Measures to Promote Full and Effective Equality

Racial Equality Strategy

- 5.1. The Racial Equality Strategy for NI 2015-2025 establishes a framework for government departments (and others) to tackle racial inequalities, to

¹⁹² 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.

¹⁹³ 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).

¹⁹⁴ Email correspondence from the Executive Office to the NI Human Rights Commission, October 2021.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ NI Human Rights Commission meeting with The Executive Office, 1 February 2021.

¹⁹⁸ NI Human Rights Commission, Submission to the NI Affairs Committee Inquiry into the experience of minority ethnic and migrant people in Northern Ireland, May 2021.

eradicate racism and hate crime and along with 'Together: Building a United Community', to promote good race relations and social cohesion.¹⁹⁹

- 5.2. As mentioned above, the Executive Office completed a study in 2020 to determine the feasibility of introducing monitoring to the public sector in NI. The final report is now complete: following receipt of the report, the Department has initiated work to consider how best to look beyond the report's evidence for operation and to implement its key findings. To date, officials have been engaging with stakeholders to gauge the impact of introducing monitoring and what information might be required to ensure the outcome is fit for purpose.
- 5.3. **The Advisory Committee may wish to ask the State party for more information on the implementation plan for the Racial Equality Strategy for NI 2015-25.**

Refugees

- 5.4. In 2016, the UN CRC Committee noted that "unaccompanied and separated refugee children within and outside of the State party face restrictions on family reunification" and urged the UK Government and NI Executive to "review its asylum policy in order to facilitate family reunion for unaccompanied and separated refugee children within and outside of the State party".²⁰⁰ In addition, it noted that that "asylum-seeking, refugee and migrant children and their families face difficulty in accessing basic services, such as education and health care, and are at a high risk of destitution" called for "sufficient support to ... access basic services".²⁰¹
- 5.5. The European Commission against Racial Intolerance recommended that a refugee integration strategy is 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."²⁰²
- 5.6. NI's Racial Equality Strategy 2015-2025 commits to the development of a Refugee Integration Strategy, which already exists in Scotland and Wales. Refugee integration is a particular issue for NI as "integration is more difficult in a divided society".²⁰³ A draft Strategy has now been published

¹⁹⁹ OFMDFM, 'Racial Equality Strategy 2015 – 2025' (December 2015).

²⁰⁰ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland', 12 July 2016, at paras 76-77.

²⁰¹ Ibid.

²⁰² ECRI (2016) 38, 'European Commission against Racial Intolerance Report on the UK (Fifth Monitoring Cycle)', 4 October 2016, at para 116.

²⁰³ Michael Potter, 'Refugees and Asylum Seekers in NI', (NI Assembly, 2014), at 14.

for public consultation, which is expected to end in late February 2022.²⁰⁴ The NIHRC understands that the absence of an Executive is unlikely to impact the Strategy's timeline.²⁰⁵

- 5.7. The NIHRC has highlighted overarching concerns for the implementation, monitoring and data collection areas of the Strategy.²⁰⁶ It emphasised the need to adopt a human rights-based approach, including consideration of Protocol Article 2, and for adequate training to ensure those who are responsible for the Strategy have a relevant understanding of human rights application and practice. The NIHRC noted the lack of clarity in the current iteration of the draft Strategy in terms of language, particularly in relation to distinctions between asylum seekers and refugees, and the subsequent legal frameworks that apply to each group. The NIHRC further queried the appropriateness and accuracy of the language used in the Strategy, particularly when referring to vulnerable or marginalised groups. The NIHRC also recommended that greater consideration should be given to outcomes focused on destitution and that any further strategy design and adoption stages should ensure effective participation.
- 5.8. As of October 2021, NI has received approximately 1,815 Syrian refugees under the UK Government's Vulnerable Person Relocation Scheme.²⁰⁷ Under this scheme, the Home Office determines suitability for resettlement and refers such cases onto the devolved administrations, for consideration, with the first 12 months of a refugee's resettlement costs fully funded by central government using the overseas aid budget.
- 5.9. In April 2020, the Global Resettlement Scheme was established by the UK Government to consolidate the Vulnerable Persons' Resettlement Scheme, the Vulnerable Children's Resettlement Scheme, and the gateway protection programme. It aims to be simpler to operate, offer greater consistency and includes emergency resettlement to allow the UK to respond quickly, providing a faster route to resettlement. The new scheme will be based on need and involves liaison with the UN High Commissioner for Refugees to identify the most vulnerable refugees from around the world.²⁰⁸
- 5.10. The Secretary of State is required to "make arrangements to relocate to the UK and support a specific number of unaccompanied refugee children from other countries in Europe" in addition to the resettlement of children

²⁰⁴ Correspondence from the Executive Office to the NI Human Rights Commission, 27 October 2021.

²⁰⁵ The Executive Office meeting of the Racial Equality Subgroup, 16 February 2022.

²⁰⁶ NI Human Rights Commission, '[Response to Refugee Integration Strategy](#)', 2022.

²⁰⁷ Correspondence from The Executive Office to the NI Human Rights Commission, 27 October 2021.

²⁰⁸ Home Office, 'Press Release: New global resettlement scheme for the most vulnerable refugees announced', 17 June 2019.

under the then Vulnerable Persons Relocation Scheme.²⁰⁹ The number of children to be transferred under section 67 is 480, none of which have been resettled in NI.²¹⁰

5.11. In October 2020, the NIHRC wrote to the Executive Office in support of NI's continued and long-term involvement in refugee resettlement.²¹¹ The UK Government committed to receiving up to 5000 refugees in 2020/2021 under the Global Resettlement Scheme.²¹² The then Head of the NI Civil Service, David Sterling, committed to NI's involvement in the scheme until March 2021. The Executive Office conducted an evaluation of the future of refugee resettlement in NI, which the NIHRC understands has been completed.²¹³ It is not yet publicly available.

5.12. In 2021, the Department of Health consulted on proposals for a new regional model of service for separated and unaccompanied asylum-seeking children in NI. The NIHRC supported proposals for a single Trust Based Central Hub with Dispersal Arrangements. The NIHRC also highlighted the need for trauma informed approaches, and recommended cross-departmental collaboration to support long-term integration and settlement for unaccompanied and separated children.²¹⁴

5.13. The NIHRC further notes with concern the 'New Plan for Immigration' from the Home Office and the proposed Nationality and Borders Bill which will impact refugees in NI. These concerns are expanded in paragraph 130 above.

5.14. **The Advisory Committee may wish to ask the State Party:**

- **what appropriate arrangements are being made to ensure NI accommodates a proportional number of unaccompanied asylum-seeking children and refugees; and**
- **for a timeline of publishing and implementing a comprehensive Refugee Integration Strategy.**

Traveller Accommodation

5.15. In 2018, the NIHRC published its investigation report into Travellers' accommodation in NI.²¹⁵ Thirteen systemic issues were identified,

²⁰⁹ S.67, Immigration Act 2016.

²¹⁰ Home Office, 'Policy Statement: Section 67 of the Immigration Act 2016', (HO, 2017).

²¹¹ Correspondence from NI Human Rights Commission to the Executive Office, October 2020.

²¹² Correspondence from Bryson to the Executive Office, 8 July 2020.

²¹³ NI Human Rights Commission meeting with The Executive Office, 1 February 2022.

²¹⁴ NI Human Rights Commission, 'Response to Department of Health consultation on proposals for a new regional model of service for separated and unaccompanied asylum-seeking children in NI', July 2021.

²¹⁵ NI Human Rights Commission, 'Out of Sight, Out of Mind: Travellers' Accommodation in NI' (NIHRC, 2018).

including: that existing law and practice did not provide for sufficient, habitable and culturally adequate Travellers' accommodation; inadequacy of current Travellers' sites; discrimination; the disproportionate impact of the Unauthorised Encampments (NI) Order 2005 on Traveller communities; the general lack of disaggregated data on Travellers' accommodation; insufficient resources available for developing and maintaining Traveller-specific accommodation; and ineffective and inadequate efforts made for participation of Travellers in decision-making processes.²¹⁶ The NIHRC made 45 recommendations aimed at addressing the investigation's findings.²¹⁷

- 5.16. In 2019, the NIHRC published a 12-month progress report, which noted mixed progress.²¹⁸ Only three recommendations had been effectively implemented. No steps had been taken to ensure effective implementation of six recommendations. These included: the need to amend the Housing (NI) Order 2003, for the NI Housing Executive to provide nomadic housing structures, a repeal of the Unauthorised Encampments (NI) Order 2005 (see also paragraphs 5.23 – 5.28 below), inclusion specific policy provisions for Travellers in any homelessness strategies, monitoring the use of Housing Benefit and ensure that the accommodation it pays for is fit for habitation, and to ensure that NI Housing Executive staff are accessible to Travellers, particularly regarding transit and emergency halting on Travellers' sites. On the other 36 recommendations, various degrees of progress had been made but some substantial outstanding issues persisted.²¹⁹
- 5.17. In April 2021, the NI Housing Executive wrote to the NIHRC to outline its response to recommendations and indicating implementation of the recommendations relevant to the Housing Executive.²²⁰
- 5.18. In 2020, the NI Housing Executive published its draft Irish Traveller Accommodation Strategy for consultation.²²¹ The NIHRC provided a response to the consultation, which highlighted the need to be careful about the language used, to make full use of available data sources and to ensure the needs of specific groups of Travellers are addressed.²²² The new Strategy was subsequently launched in July 2021.²²³

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ NI Human Rights Commission, 'Implementation of Travellers' Accommodation Recommendations', (NIHRC, 2019).

²¹⁹ Ibid.

²²⁰ Correspondence from the NI Housing Executive to the NI Human Rights Commission, 13 April 2021.

²²¹ NI Housing Executive, 'Irish Traveller Accommodation Strategy: 2020-2025' (NIHE, 2020).

²²² Letter from NI Human Rights Commission to NI Housing Executive, 16 September 2020.

²²³ NI Housing Executive, 'Irish Travellers Accommodation Strategy 2021-2026', (NIHE, 2021).

5.19. In 2020, following a recommendation to do so, the Department for Communities completed a comprehensive review of the 20-year-old Design Guide on Travellers' Sites, which included focused consultation with the relevant statutory bodies, local councils, interest groups, members of the Traveller communities and their advice and advocacy groups.²²⁴ In October 2020, the Department for Communities published a revised Design Guide for Travellers' Sites in NI, which has been updated to include current health and safety requirements, fire safety guidance, legal and technical advice in relation to fitness standards, service provisions, adaptations and advice on site licencing. It is intended to support the provision of appropriate, cost-effective facilities for Travellers living in NI.²²⁵

5.20. The Department for Communities published a consultation on a new housing supply strategy call for evidence in 2021, in which it highlighted that access to appropriate accommodation for Irish Travellers is limited.²²⁶ In its response, the NIHRC recommended that any housing strategy should ensure sufficient sites for Travellers to set up accommodation, recognising the cultural rights of the Irish Traveller Community to live their traditional lifestyle, and that these sites have sufficient access to essential utilities.²²⁷ The NIHRC further noted that there was no specific legislation or policy in place to tackle homelessness within the Traveller communities in NI.²²⁸

5.21. In December 2021, the Department of Communities also launched a 12-week stakeholder engagement consultation on the review of the Caravans Act (NI) 2011 for an assessment of the key emerging issues of the current legislation.²²⁹

5.22. **The Advisory Committee may wish to ask the State party:**

- **how it intends to implement the outstanding recommendations from the NIHRC's investigation – including amending the Housing (NI) Order 2003 to enable the NI Housing Executive to provide nomadic housing structures; providing specific policies to tackle homelessness; monitoring the use of Housing Benefit and ensure that public authorities are accessible to Traveller communities; and**
- **to ensure there are long-term strategies that guarantee that these recommendations are adhered to.**

²²⁴ Department for Communities, 'Design Guide for Travellers' Sites in NI'. Available at: <https://www.communities-ni.gov.uk/publications/design-guide-travellers-sites-northern-ireland>.

²²⁵ Department for Communities, 'Design Guide for Travellers' Sites NI' (DfC, 2020).

²²⁶ Department for Communities, 'Consultation on the new housing supply strategy call for evidence', (DfC, 2021), at 24.

²²⁷ NI Human Rights Commission, 'Response to public consultation on new housing supply strategy call for evidence' July 2021.

²²⁸ Ibid.

²²⁹ Department for Communities, '[Hargey seeks views on Caravan Act](#)' (14 December 2021).

Unauthorised Encampments (NI) Order 2005

- 5.23. In 2016, the UN ICESCR Committee expressed concern at how the Unauthorised Encampments (NI) Order 2005 “makes Roma/Gypsies and Irish Travellers liable to be evicted from their homes, to have their homes destroyed and then to be imprisoned and/or fined” and has recommended that this is legislation repealed.²³⁰
- 5.24. In 2018, use of the Unauthorised Encampments (NI) Order 2005 was considered by the NIHRC as part of its Travellers’ accommodation investigation. The Police Service of NI reported that the powers under the legislation are used sparingly. Some representatives of the Police Service of NI and civil society organisations believe the 2005 Order bears more heavily on Traveller communities.²³¹ The NIHRC’s investigation confirmed that the 2005 Order “has a disproportionate impact on the Traveller communities and threatens their nomadic culture”.²³²
- 5.25. The Department for Communities accepts that the powers under the 2005 Order have a particular impact on Travellers in NI, but states that annual monitoring of the impact “indicates that the provisions of the 2005 Order have been applied sensitively, pragmatically and proportionately and are effective in balancing the rights of the Irish Travellers, landowners and the settled community”.²³³ For example, the NI Housing Executive operates a co-operation policy. This policy permits Travellers to set up an unauthorised encampment on public land for which there is no current or immediate use and permits them to occupy the land provided it does not create a public health or traffic hazard and the land is maintained in a reasonable and orderly manner. The NI Housing Executive emphasises that the policy is not a substitute for permanent or transit sites but is intended to act as a way of dealing with a humane requirement.²³⁴ The NI Housing Executive Irish Travellers Accommodation Strategy 2021-26 notes that the number of unauthorised encampments operating in NI has significantly reduced over the years, with the NI Housing Executive aware of only one at the time of the strategy’s publication in July 2021.²³⁵

²³⁰ 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 49 and 50(d).

²³¹ NI Human Rights Commission, ‘Out of Sight, Out of Mind: Travellers’ Accommodation in NI’ (NIHRC, 2018), at 288.

²³² Ibid.

²³³ Letter from Leo O’Reilly, Permanent Secretary of Department for Communities to the NI Human Rights Commission, 18 May 2018.

²³⁴ NI Housing Executive, ‘Our Cooperation Policy for Travellers’. Available at: http://www.nihe.gov.uk/index/advice/advice_for_travellers/co-operation_policy.html.

²³⁵ NI Housing Executive, ‘Irish Travellers Accommodation Strategy 2021-26’, (NIHE, 2021), at 43.

- 5.26. In 2019, the Department for Communities re-confirmed it had no plans to repeal the 2005 Order and highlighted that any proposed change to legislation would require the approval of the Minister for Communities and NI Executive and the agreement of the NI Assembly.²³⁶
- 5.27. In advice to the Department for Communities consultation on a new housing supply strategy call for evidence,²³⁷ the NIHRC highlighted that the limited provision of Traveller-specific accommodation and the existence of the Unauthorised Encampments (NI) Order 2005 leaves Travellers vulnerable to homelessness; the NIHRC therefore called on the Department to recognise the cultural rights of the Irish Traveller Community to live their traditional lifestyle and to provide appropriate sites for Traveller accommodation with sufficient access to essential utilities.²³⁸
- 5.28. The Advisory Committee may wish to call upon the State Party to repeal the Unauthorised Encampments (NI) Order 2005.**

Housing Inequality

- 5.29. 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.²³⁹

- 5.30. On 31 March 2021, the total number of applicants on the social housing waiting list was 43,971, an increase from 38,245 in the previous year.²⁴⁰ Of these applicants, 30,288 were in housing stress, where they had 30 or more points under the Common Selection Scheme.²⁴¹ In 2015, it was reported that there is an overall requirement of 190,000 new dwellings needed in NI between 2008 and 2025, an annual figure of 11,200.²⁴² Current targets fall short of this, with an increase of 6,398 social housing

²³⁶ NI Human Rights Commission, 'Implementation of Travellers' Accommodation Recommendations' (NIHRC, 2019), at 9.

²³⁷ Department for Communities, 'Consultation on the new housing supply strategy call for evidence', (DfC, 2021).

²³⁸ NI Human Rights Commission, 'Response to public consultation on new housing supply strategy call for evidence', July 2021.

²³⁹ 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(a).

²⁴⁰ Department for Communities, 'NI Housing Statistics 2020-2021' (DfC, 2021), at 1; Department for Communities, 'NI Housing Statistics 2019-2020' (DfC, 2020).

²⁴¹ Department for Communities, 'NI Housing Statistics 2020-2021' (DfC, 2021), at 1.

²⁴² NI Housing Executive, 'NI Housing Market Review and Perspectives 2015-2018' (NIHE, 2015), at 23.

stock between 2019/2020 and 2020/2021. In 2020/2021, the total social housing stock was 814,210, an increase from 807,812 in 2019/2020.²⁴³

- 5.31. The housing strategy for NI expired in 2017.²⁴⁴ In New Decade, New Approach, the NI Executive committed to “including housing as a specific priority in the Programme for Government”, which “will be augmented with a new outcome and indicators to provide specific focus on ensuring every household has access to a good quality, affordable and sustainable home that is appropriate for its needs”.²⁴⁵ It also committed to “enhance investment and agree a target for new social and affordable home starts and tackle the maintenance backlog for NI Housing Executive properties”.²⁴⁶
- 5.32. The New Decade, New Approach includes a commitment to reclassify housing associations to “enable housing associations to continue building new social housing and intermediate housing, including the Co-ownership Housing Scheme after March 2020”.²⁴⁷ In August 2020, the Housing (Amendment) Act (NI) 2020, which delivers on this commitment and ends the statutory right to buy scheme for Housing Associations was given Royal Assent.
- 5.33. The Programme for Government draft Outcomes Framework, published for consultation in early 2021, explicitly referenced housing as a priority area under three of the outcomes.²⁴⁸ In 2021, Communities Minister Deirdre Hargey MLA confirmed that 2,403 new social homes were started in 2020/21 – almost 30 per cent more than the target for the year.²⁴⁹ She also announced a new three-year Social Housing Development Programme 2021/22 – 2023/24, highlighting that her approach was based upon equality and human rights, where housing is a fundamental right.²⁵⁰
- 5.34. The Minister also highlighted “Housing stress levels here are totally unacceptable. Our housing system is in need of transformative change.”²⁵¹ In May 2021, the Department for Communities launched a consultation on new housing supply strategy call for evidence.²⁵² The NIHRC responded to this consultation, in which it recommended a rebalancing of housing

²⁴³ Department for Communities, ‘NI Housing Statistics 2019-2020’ (DfC, 2020), at 1; Department for Communities, ‘NI Housing Statistics 2018-19’ (DfC, 2019), at 1.

²⁴⁴ Department for Social Development, ‘Facing the Future: Housing Strategy for NI’ (DfSD, 2012).

²⁴⁵ NI Office, New Decade New Approach, (NIO, 2020), at 9 and 39.

²⁴⁶ Ibid, at 9.

²⁴⁷ Ibid.

²⁴⁸ NI Executive, ‘Programme for Government: draft Outcomes Framework’, 2021.

²⁴⁹ NI Assembly Hansard, ‘Oral Question: Social Housing Provision – Colm Gildernew MLA – AQO 2000/17-22’, 10 May 2021.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Department for Communities, ‘Consultation on the new housing supply strategy call for evidence’, (DfC, 2021)

provision in NI, with an increased focus on the provision of publicly owned social housing and increased regulation of the private rented housing sector.²⁵³

- 5.35. In November 2021, Minister Hargey further confirmed her commitment to delivering more social housing, stating that the investment she has directed to the social housing development programme represents 64 per cent of her entire capital budget.²⁵⁴
- 5.36. The ECNI's assessment of the Facing the Future: Housing Strategy for NI 2012-2017 and Building Successful Communities found that, despite monitoring guidance for public authorities, there is a lack of robust housing and communities data relating to a number of equality grounds.²⁵⁵ In 2019, the ECNI further 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."²⁵⁶
- 5.37. **The Advisory Committee may want to recommend to the State Party collect and publish disaggregated equality data to assess, monitor and allow for evaluation of Department actions to address housing inequalities in NI.**

Segregated and Shared Housing

- 5.38. In 2016, 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".²⁵⁷
- 5.39. In NI, the social housing stock is still largely segregated.²⁵⁸ In 2017, the ECNI found that the Catholic household reference person applicants continue to experience longest waiting times for social housing in NI as a whole and that "while median waiting times had increased for all groups,

²⁵³ NI Human Rights Commission, 'Response to public consultation on new housing supply strategy call for evidence', July 2021.

²⁵⁴ Department for Communities, 'Press Release: Delivering more social housing a priority – Hargey', 3 November 2021.

²⁵⁵ Equality Commission for NI, 'Investigation Report under Schedule 9 of the NI Act 1998: Department for Social Development - Housing Policy Proposals' (ECNI, 2015).

²⁵⁶ Equality Commission for NI, 'Equality in Housing and Communities: Policy Recommendations' (ECNI, 2019).

²⁵⁷ 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(e).

²⁵⁸ Social housing in NI is allocated on the basis of need using a points-based system. The Northern Ireland Housing Executive (NIHE) is the public body responsible for identifying housing need and managing the social housing allocation scheme.

more substantive increases were noted for households with a 'Catholic' or 'Other' religion household reference person".²⁵⁹

- 5.40. The Shared Housing Programme completed the 10th Shared Neighbourhood in 2019-20, meeting the target set in the Together: Building a United Community Strategy, and providing 483 new homes.²⁶⁰ The Executive Office stated that the focus is now on delivering good relations schemes within these areas.
- 5.41. The Community Cohesion Strategy includes segregation/integration as a theme.²⁶¹ It contains several actions including supporting research into segregated and shared housing and updating the Mapping Segregation report; facilitating and encouraging mixed housing schemes in the social and affordable sector. The Strategy also commits to developing programmes of action to address issues of residential segregation and integration across three years, as well as developing legacy programmes targeting young champions in neighbourhoods.²⁶² The Cohesion Strategy has since been extended for a further year.²⁶³
- 5.42. Despite these actions, the NIHRC notes that people continue to be intimidated out of their homes²⁶⁴ for example, between April 2015 and October 2018, 2,017 households presented themselves as homeless due to intimidation.²⁶⁵ In 1,488 of these cases the reason cited was intimidation from paramilitaries and another 135 cases were linked to sectarianism.²⁶⁶ Public authorities have been criticised for not addressing the root of the problem and not having a strategy in place that offers mitigation measures.²⁶⁷ In November 2020, the then Minister for Communities confirmed that she did not intend to proceed with a previous proposal to remove intimidation points,²⁶⁸ but that the mechanisms for such prioritisation need to prevent abuse and provide robust verification.²⁶⁹ The Minister advised that officials are investigating options for an alternative proposal, including consideration of a statutory body to independently manage this verification process.

²⁵⁹ Equality Commission for NI, 'Statement on Key Inequalities in Housing and Communities in NI: Full Statement' (ECNI, 2017), at para 1.9.

²⁶⁰ The Executive Office, 'Together: Building a United Community Strategy – Annual Update 2019/20' (TEO, 2021).

²⁶¹ NI Housing Executive for, 'Community Cohesion Strategy 2015-2020' (NIHE, 2015).

²⁶² *Ibid*, at 34.

²⁶³ Email correspondence from NI Housing Executive to the NI Human Rights Commission, October 2021.

²⁶⁴ 'Cregagh: Family forced to move after 'sectarian threat'', *BBC News*, 2 August 2021.

²⁶⁵ Donna Deeney and Adrian Rutherford, 'Exclusive: 2,000 households forced out of their homes - paramilitaries blamed for 73 per cent of cases', *Belfast Telegraph*, 3 January 2019.

²⁶⁶ *Ibid*.

²⁶⁷ Brett Campbell, 'Belfast families living in fear on mixed estate where Catholics forced to flee', *Belfast Telegraph*, 29 September 2017.

²⁶⁸ Under the current scheme, intimidation points can be awarded if an applicant meets certain conditions, such as their home being destroyed or seriously damaged in an attack or risk of being seriously injured or killed in an attack, and the attack or threat of attack was a terrorist incident or due to the applicants' religion, race, disability, sexual orientation.

²⁶⁹ Minister for Communities, 'Housing Statement from Communities Minister Carál Ní Chuilín', 3 November 2020.

5.43. **The Advisory Committee may wish to ask the State Party:**

- **what action has been taken to effectively eradicate the paramilitary and sectarian intimidation that is leading families to be forced from their homes; and**
- **for an update on alternative strategies that can provide effective mitigation measures for when this intimidation leads to families being forced from their homes.**

Access to Healthcare

5.44. Since 2012, a number of the Health and Social Care Trusts in NI offer the NI New Entrants Service. It is the first point of contact to the health services for new migrants, including asylum seekers; it offers initial health assessments health promotion advice, and information on accessing health services in NI.

5.45. Since 2015, all asylum seekers who have made an application to be granted temporary protection, asylum or humanitarian protection are entitled to free primary, secondary and emergency healthcare.²⁷⁰ This includes asylum seekers who have exhausted the appeals process and remain in NI.

5.46. In 2019, the UN CEDAW Committee highlighted the obstacles faced by women from marginalised groups to access healthcare services, including due to their inability to provide identity documentation, proof of address or immigrations status.²⁷¹ It recommended that UK Government and NI Executive strengthen the implementation of programmes and policies at providing effective accesses to healthcare by women from marginalised groups, particularly asylum-seeking and refugee women, migrant women, Gypsy and Traveller women and victims of trafficking".²⁷²

5.47. A number of other UN Committees have also recommended that the UK Government and NI Executive also take steps to ensure that migrant, refugees, asylum-seeking children and ethnic minorities all have access to necessary healthcare services.²⁷³

²⁷⁰ Provision of Health Services to Persons Not Ordinarily Resident Regulations (NI) 2015; Health and Personal Services (General Medical Services Contracts) (Amendment) Regulations (NI) 2015.

²⁷¹ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 March 2019, at para 49.

²⁷² Ibid, at para 50.

²⁷³ E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and NI', 14 July 2016, at para 5; CRC/C/GBR/CO/5, 'UN CRC Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI', 12 July 2016, at paras 77-78; CERD/C/GBR/CO/21-

- 5.48. The NIHRC is also aware that women and girls that may face additional challenges and barriers in accessing abortion services in NI. These include girls under 18 years old, women and girls living in poverty, in rural areas, with disabilities, experiencing domestic abuse and from a migrant background, particularly where language is a barrier.²⁷⁴
- 5.49. The NIHRC has further raised concerns with the Department of Health that the introduction of the COVID status certification could further marginalise people from vulnerable groups including those experiencing homelessness, disabled persons as well as refugees and migrants, recommending appropriate safeguards to ensure that measures are applied in a non-discriminatory manner.²⁷⁵
- 5.50. After the withdrawal of the UK from the European Union, EU, EEA and Swiss citizens living in the UK were required apply for settled status, through the EU Settlement Scheme, to ensure they have leave to remain in the UK.²⁷⁶ The deadline to apply for the EU Settlement Scheme was 30 June 2021. Those EU, EEA and Swiss citizens without settled status risk being viewed as irregular migrants and may lose access to healthcare, among other benefits.²⁷⁷
- 5.51. Concerns have been raised regarding the accessibility of the EU Settlement Scheme, particularly for more vulnerable members of the community, including young people who have grown up in care, victims of modern slavery and members of the Roma community.²⁷⁸ In March 2021, the High Court in England and Wales rejected a legal bid to extend the application deadline to allow more people to apply for the scheme.²⁷⁹ In May 2021, the Home Office released guidance on circumstances that would constitute reasonable grounds for failing to meet the June 2021 deadline.²⁸⁰
- 5.52. In August 2021, the Home Office gave assurances that the rights of late applicants to the EU Settlement Scheme and the rights of their joining family members would be temporarily upheld. The Home Office noted that it had “put in place comprehensive arrangements to enable those with

23, 'UN CERD Committee, Concluding Observations on the Twenty-first to Twenty-third periodic Reports of the United Kingdom of Great Britain and NI', 26 August 2016, at para 31.

²⁷⁴ NI Human Rights Commission, 'Submission to the NI Affairs Committee Inquiry into the experience of minority ethnic and migrant people in Northern Ireland', May 2021, at 16.

²⁷⁵ Letter from NI Human Rights Commission to Minister of Health on Draft Human Rights Impact Assessment for Coronavirus Restrictions, 15 December 2021.

²⁷⁶ UK Government, 'Stay in the UK ('settled status'): Step by Step'. Accessed at: <https://www.gov.uk/eusettdstatus>.

²⁷⁷ Amelia Gentleman, 'High court rejects bid to extend UK's EU settlement scheme', *The Guardian*, 11 March 2021.

²⁷⁸ The Migration Observatory, 'Vulnerable EU citizens are at risk of becoming "irregular migrants" after Brexit'. Available at: <https://migrationobservatory.ox.ac.uk/press/vulnerable-eu-citizens-are-at-risk-of-becoming-irregular-migrants-after-brexite/>.

²⁷⁹ Amelia Gentleman, 'High court rejects bid to extend UK's EU settlement scheme', *The Guardian*, 11 March 2021.

²⁸⁰ Home Office, 'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members', (HO, 2021).

reasonable grounds for missing the deadline to apply to the EUSS".²⁸¹ The Independent Monitoring Authority subsequently welcomed the announcement from the Home Office but warned that greater clarity was needed for public authorities to ensure that these rights were protected in practice.²⁸²

- 5.53. **The Advisory Committee may wish to ask the State Party what steps are being taken to identify and minimise procedural barriers to accessing healthcare and provide further guidance to healthcare professionals to ensure that applicants to the EU settlement scheme are not denied access.**

6.0. Article 5: Promote conditions to maintain culture

Minority Ethnic Development Fund

- 6.1. The Minority Ethnic Development Fund (MEDF) provides support for voluntary and community organisations working with minority ethnic people and groups to promote good relations. The NIHRC previously raised concerns about the strategic delivery and long-term planning of the MEDF.²⁸³ The allocation of funds on a year-to-year basis did not allow groups the ability to plan ahead or develop their services, and the NI Refugee and Asylum Forum identified issues with the way funding was spread across the sector, leaving gaps in key services.²⁸⁴
- 6.2. Therefore, the NIHRC is pleased to note that, following a review of the scheme the Executive Office is now inviting applications to a new three-year MEDF which aims to provide groups with more stability and longer-term planning. MEDF funding is available for projects of various sizes ranging from £100 to £75,000 per annum.²⁸⁵ It is unclear, in the absence of the Executive and a current budget, how the delivery of a three-year fund will be progressed.²⁸⁶ The NIHRC will continue to monitor the delivery of the MEDF.

²⁸¹ Home Office, 'Press Release: Temporary protection for more applicants to the Settlement Scheme', 6 August 2021.

²⁸² Independent Monitoring Authority, 'Press Release: Home Office asked to clarify the rights of EU citizens applying late to the EU Settlement Scheme', 27 September 2021.

²⁸³ NI Human Rights Commission, 'Submission to the Advisory Committee on the Framework Convention for the protection of National Minorities: Parallel Report to the Advisory Committee on the Fourth Monitoring Report of the United Kingdom' (NIHRC, 2016) at para 131.

²⁸⁴ Refugee and Asylum Forum NI, '5 Key Actions: ensuring Northern Ireland responds to the needs of refugees' (2015).

²⁸⁵ The Executive Office, 'Racial Equality' at [Racial equality | The Executive Office \(executiveoffice-ni.gov.uk\)](https://www.executiveoffice-ni.gov.uk/racial-equality)

²⁸⁶ The Executive Office meeting of the Racial Equality Subgroup, 16 February 2022.

6.3. The Advisory Committee may wish to ask the State Party for an update of the delivery of the three-year Minority Ethnic Development Fund.

Parades, protests, flags, symbols and emblems

- 6.4. In 2013, the then UN Special Rapporteur on peaceful assembly, parades and association 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”.²⁸⁷
- 6.5. The Stormont House Agreement proposed that responsibility for parades and related protests should, in principle, be devolved to the NI Assembly.²⁸⁸ It also proposed that the Office of Legislative Counsel, working in conjunction with the Office of the First Minister and the Deputy First Minister, 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. The then Office of the First and Deputy First Ministers was to bring forward proposals to the NI Executive by June 2015.²⁸⁹
- 6.6. In November 2015, an update was provided in ‘A Fresh Start’ which stated that a discussion paper was being prepared for the Executive which “will outline options in relation to the model and operation of the regulation of parades and related protests and the key outstanding issues of contention such as a code of conduct, criteria and accountability. OFMDFM will bring the paper forward to the Executive”.²⁹⁰ This remains the position in 2021.²⁹¹
- 6.7. In 2020/2021, the Parades Commission for NI was notified of 690 Protestant/Unionist/Loyalist, 30 Catholic/Republican/Nationalist and 393 “other” parades. Of these, 52 Protestant/Unionist/Loyalist, one Catholic/Republican/Nationalist, and six “others” were considered ‘sensitive’, in that they have the potential to raise concerns and community tensions.²⁹² There was a reduction (2,680) in the number of notified parades and parade-related protests in 2020/21 when compared to the previous year; the COVID-19 pandemic meant that there was no

²⁸⁷ A/HRC/23/39/Add.1, ‘Report of the 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.

²⁸⁸ Stormont House Agreement, 2014

²⁸⁹ Stormont House Agreement, 2014

²⁹⁰ NI Office, ‘A Fresh Start’, 17 November 2015, at 34.

²⁹¹ Correspondence from the Executive Office to NI Human Rights Commission, October 2021

²⁹² Parades Commission for NI, ‘Annual Report and Financial Statements for the Year Ended 31 March 2021’ (PCNI, 2021) at Table 1.

traditional parading season in 2020 with the majority of annual parades being cancelled.²⁹³

- 6.8. In May and June 2020, there were a series of anti-racism protests in NI in response to the global 'Black Lives Matter' movement. At that time, the existing iteration of the Health Protection (Coronavirus, Restrictions) (NI) Regulations, which are aimed at preventing the spread of COVID-19, prohibited gatherings in public spaces of more than two people with limited exceptions. The Regulations also provided the Police Service NI with the powers to restrict freedom of movement and protests for this purpose. The Police Service NI issued a number of fines to 'Black Lives Matter' protestors under these regulations.²⁹⁴ However, subsequent protests by the NI Cenotaph Protection Group reportedly took place without fines being issued.²⁹⁵
- 6.9. In December 2020, the Police Ombudsman NI issued a report following its investigation of the use of police powers in relation to large public gatherings during this period.²⁹⁶ It found failings in balancing human rights and public health considerations and recommended that the Police Service of NI "consider adopting a human rights based approach to policing of protests based on the four principles: participation, empowerment, equality and non-discrimination and accountability" and further that they "develop human rights based assessments, evidencing the identification of relevant rights, balancing competing rights and risk to include appropriate measures to address PSNI's obligations and mitigate identified risks". The Police Service of NI later apologised and asked for the fines that were issued at the two Black Lives Matter protests to be refunded.²⁹⁷
- 6.10. In June 2016, the Commission on Flags, Identity, Culture and Tradition was established, with a remit to "focus on flags and emblems and as required, broader issues of identity, culture and tradition, and seek to identify maximum consensus on their application. In its work, it will be guided by the principles of the existing Agreements including parity of esteem."²⁹⁸ Having been delayed by the collapse of devolution in 2017 and Covid-19, the Commission reported to the Executive Office in 2020.²⁹⁹

²⁹³ Ibid at page 10.

²⁹⁴ 'Coronavirus: Anti-racism rallies in Belfast and Londonderry', *BBC News*, 6 June 2020

²⁹⁵ Jonathan Bell, 'Police Ombudsman to probe difference in PSNI approach to Black Lives Matter rallies and Belfast cenotaph protest' *Belfast Telegraph*, 17 June 2020.

²⁹⁶ Police Ombudsman NI, 'Press Release: Police Ombudsman to look at how police have enforced regulations on large public gatherings', 17 June 2020.

²⁹⁷ 'Black Lives Matter protest fines: PSNI reputation 'damaged'' *BBC News NI*, 18 August 2021.

²⁹⁸ NI Executive Office, 'Commission on Flags, Identity, Culture and Tradition - Final report' 1 December 2021.

²⁹⁹ Jayne McCormack, 'Stormont: Flags body submits delayed report' *BBC News NI*, 17 July 2020.

- 6.11. The final report contained 44 recommendations; however, it was published without an accompanying implementation plan due to a lack of consensus on a number of critical issues.³⁰⁰ In particular, the report states that many challenges remain around flags, bonfires, and memorials.
- 6.12. In relation to flags, symbols and emblems, the Commission considered: whether changes should be made to existing legislation on placing flags on lampposts and other street furniture; flying flags on public buildings; prohibition of flying flags supporting paramilitary organisations; developing a Flags Protocol; and the possibility of developing a new “civic flag”.³⁰¹ However, it was unable to reach consensus on proposals for the way forward. The NIHRC is unaware of any plans to progress the recommendations or build consensus on these issues.
- 6.13. **The Advisory Committee may wish to request further information from the State Party on how the Report of the Commission on Flags, Identity, Culture and Tradition will be progressed in the absence of political consensus over a number of critical issues in NI.**

7.0. Article 6(1) Tolerance and Intercultural Dialogue

Together: Building a United Community

- 7.1. The ‘Together: Building a United Community’ Strategy (TBUC), published in 2013, outlined the Executive’s commitment to improving community relations in NI. The Strategy commits to developing statutory definitions of ‘good relations’ and ‘sectarianism’.
- 7.2. The NIHRC notes the Advisory Committee’s previous recommendation that NI to define and implement the ‘good relations’ duty as provided under the Northern Ireland 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, and to define sectarianism.³⁰² There has been no progress on the definition of ‘good relations’; however, developments in relation to the definition of sectarianism will be covered in greater detail in the discussion of Art 6(2).

³⁰⁰ Jayne McCormack, ‘Flags report: Stormont publishes £800k report without action plan’ *BBC News NI*, 1 December 2021.

³⁰¹ NI Executive Office, ‘Commission on Flags, Identity, Culture and Tradition - Final report’ 1 December 2021, at pp. 89-114.

³⁰² ACFC/OP/IV (2016)005 Advisory Committee on the Framework Convention for the Protection of National Minorities, ‘Fourth Opinion on the United Kingdom for the Protection of National Minorities’, at para 90.

- 7.3. In its report in December 2021, the Commission on Flags, Identity, Culture, and Tradition also recommended that the legal duty of good relations should be clearly defined in law.³⁰³
- 7.4. **The Advisory Committee may want to ask the State Party what measures are being taken to progress the commitments of the Together: Building a United Community Strategy, in particular, to define and strengthen the 'good relations' duty.**

8.0. Article 6(2) Protection Against Discrimination, Hostility and Violence

Racist Hate Crime

- 8.1. The NIHRC recognises that racist hate crime is a growing concern in NI. In 2020/21, there were 2,493 recorded incidents of hate and 1,757 recorded crimes.³⁰⁴ Incidents and crimes with a racist motivation showed the largest overall increase (353 incidents and 276 crimes).³⁰⁵
- 8.2. In 2016, the UN CERD Committee recommended that the UK Government and NI Executive "investigate all reported acts of racist hate crimes... and provide effective remedies to victims" and that it "systematically collect disaggregated data ... undertake a thorough impact assessment of the measures adopted to ensure their continued effectiveness".³⁰⁶ In addition, the UK Government and NI Executive should "adopt concrete measures, in consultation with affected groups, to increase the reporting of racist hate crimes" as well as adopting measures to "combat racist hate speech and xenophobic political discourse, including on the Internet".³⁰⁷
- 8.3. In 2019, the UN CAT Committee recommended that the UK Government and NI Executive "strengthen its efforts to investigate alleged hate crimes and prosecute perpetrators, including by improving hate crimes training for the police and improving their initial handling of hate crimes reports".³⁰⁸

³⁰³ NI Executive Office, 'Commission on Flags, Identity, Culture and Tradition - Final report' 1 December 2021, at p 148.

³⁰⁴ Police Service of NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Policy in Northern Ireland: Update to 30 September 2021, (PSNI, 2021).

³⁰⁵ Ibid.

³⁰⁶ CERD/C/GBR/CO/21-23, 'UN CERD Committee Concluding Observations on the Twenty-first to Twenty-third periodic Reports of the United Kingdom of Great Britain and Northern Ireland', 26 August 2016, at para 16(a) and (b).

³⁰⁷ Ibid, at para 16(c) and (d).

³⁰⁸ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and NI', 7 June 2019, at para 63.

- 8.4. The EU Victims' Directive provides for a number of protections for victims of crime.³⁰⁹ The Directive requires that individual assessments of the personal characteristics of victims and the nature of the crime, including whether it is a hate crime to identify specific protection needs.³¹⁰ It further notes that particular care should be taken to assess whether victims of hate crime are at risk of victimisation, intimidation and retaliation and that there should be a strong presumption that victims of hate crime would benefit from special protection measures.³¹¹
- 8.5. In early 2020, the Independent Hate Crime Review Team undertook a public consultation on reviewing hate crime legislation in NI.³¹² The findings and recommendations were published in December 2020, following delays due to COVID-19.³¹³ Recommendations from this report included, amongst other issues, a clearer definition of what constituted hate crime, including of statutory aggravation to all existing NI offences, removal of hate expressions from public property, setting up a statutory restorative justice framework, and consolidation of hate crime law into a singular piece of legislation.
- 8.6. Judge Marrinan further noted that while he had recommended a Hate Crime Commissioner for NI, he said he would "strongly support" the alternative proposal from the Department of Justice to establish a Victims of Crime Commissioner who would particularly focus on victims of hate crime and domestic violence.³¹⁴ The NIHRC has also welcomed the proposal to establish a Victims of Crime Commissioner.³¹⁵
- 8.7. The Department of Justice published its response to the Hate Crime Review in July 2021, indicating that no recommendations had been wholly rejected at this stage.³¹⁶ The response also outlined how the Department has put in place a dedicated Hate Crime Branch, with effect from 1 June 2021, to take forward work on implementing the Hate Crime Review Report.³¹⁷ The Department plans to continue monitoring developments in

³⁰⁹ 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. Protocol Article 2 encompasses the right of victims within the relevant part of the Belfast (Good Friday) Agreement.

³¹⁰ Article 22 and Recital 56, 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.

³¹¹ Recital 57, 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.

³¹² Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: An Independent Review - Consultation Paper' (IHCRT, 2020).

³¹³ Department of Justice, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020).

³¹⁴ Department of Justice, 'Improving the experiences of victims and witnesses in the criminal justice system: a consultation on a new three-year Victim and Witness Strategy for Northern Ireland and the establishment of a Victims of Crime Commissioner for Northern Ireland', May 2021.

³¹⁵ NI Human Rights Commission, 'Response to the public consultation on 'Improving the experiences of victims and witnesses in the criminal justice system: a new three-year Victim and Witness Strategy for Northern Ireland; and the establishment of a Victims of Crime Commissioner for Northern Ireland'', July 2021.

³¹⁶ Department of Justice, 'Review of Hate Crime Legislation in Northern Ireland-Departmental Response', July 2021, at 3.

³¹⁷ *Ibid*, at 13.

related policy areas and in other jurisdictions, with a view to introducing a consolidated Hate Crime Bill in the next NI Assembly mandate following a public consultation, which closes in late March 2022.³¹⁸

- 8.8. The NIHRC welcomes the NI Executive's commitment to addressing hate crimes, noting that addressing hate crime is a priority area in the Programme for Government.³¹⁹ However, the NIHRC continues to ask that the Executive implements the recommendations of the Independent Hate Crime Review Team.
- 8.9. **The Advisory Committee may wish to ask the State about its progress in promptly and effectively plans to implement the recommendations of the Independent Hate Crime Review Team.**

Sectarian Hate Crime

- 8.10. The NIHRC recognises that sectarian violence and attitudes continue in NI. In 2020/21, 934 sectarian incidents and 674 sectarian crimes were recorded.³²⁰ This represented an increase from 888 recorded sectarian incidents and 639 recorded sectarian crimes in 2019/2020.³²¹ The level of sectarian incidents in 2020/21 is the highest 12-month period recorded since the period January 2016 to December 2016.³²²
- 8.11. The NIHRC notes the UN CERD Committee's reiteration of its concern that measures to tackle racism and sectarianism are kept outside the framework of protections against discrimination provided by the Convention and the Durban Programme of Action.³²³
- 8.12. In NI, sectarian offences are not included in the Criminal Justice (No 2) (NI) Order (2004) as attracting an enhanced sentence as 'aggravated by hostility'. An offence that has a sectarian motivation must therefore fall under race or religion in order for the courts to be able to impose an enhanced sentence.
- 8.13. Following the Together: Building a United Community Strategy, the New Decade New Approach Agreement recommit to "ending sectarianism and

³¹⁸ Department of Justice, '[Consultation on Hate Crime Legislation in Northern Ireland](#)', (31 January 2022).

³¹⁹ NI Executive, 'Programme for Government: draft Outcomes Framework', 2021, at 26.

³²⁰ Police Service of NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Update to 30 September 2021 (PSNI, 2021).

³²¹ Ibid.

³²² Ibid.

³²³ CERD/C/GBR/CO/21-23, 'UN Committee on the Elimination of Racial Discrimination Concluding Observations on the Twenty-first to Twenty-third Periodic Reports of UK', 26 August 2016, at para 37.

robust supporting strategies and actions will be put in place”,³²⁴ and “to see sectarianism given legal expression as a hate crime”.³²⁵

- 8.14. The NIHRC identified the Independent Hate Crime Review an opportunity to introduce a statutory definition of sectarianism in NI.³²⁶
- 8.15. In the subsequent Hate Crime Review report, Judge Marrinan reflected the need for an agreed definition and recommended that the findings in the report of the Working Group on defining sectarianism in Scots law in November 2018 should be applied in NI.³²⁷ The Department of Justice has agreed in principle that there should be a sectarian offences definition in legislation and that, whilst wide-ranging, there is merit in considering the Scots law definition carefully in relation to its implementation in NI.³²⁸
- 8.16. The Independent Hate Crime Review Team also recommended that there should be a new statutory aggravation for sectarian prejudice.³²⁹ In its response, the Department of Justice agreed in principle to the aggravation recommendation (subject to the agreed definition of sectarianism), which could be monitored by the proposed Victims of Crime Commissioner.³³⁰ However, the Department highlighted that both this recommendation and the above recommendation in relation to a definition of sectarianism will need to be considered in conjunction with any recommendations in the report by the Commission on Flags, Identity, Culture, and Tradition.³³¹
- 8.17. A public consultation is currently underway on new hate crime legislation for NI which seeks views on a definition of sectarianism and a new statutory aggravation for sectarian prejudice, subject to agreement of definition.³³²
- 8.18. In December 2021, the Report from the Commission on Flags, Identity, Culture and Tradition³³³ further recommended that the legal duty of Good Relations be clearly defined in law and that the delivery of Good Relations interventions has reductions of sectarian and race hate incidents as key outcomes.³³⁴

³²⁴ NI Office, ‘New Decade New Approach’, (NIO, 2020), at 42.

³²⁵ Ibid, at 43.

³²⁶ NI Human Rights Commission, ‘Submission to Hate Crime Review Consultation’, (NIHRC, 2020), at para 6.44.

³²⁷ Independent Hate Crime Review Team, ‘Hate Crime Legislation in NI Independent Review’, (DoJ 2020), Recommendation 12.

³²⁸ Department of Justice, ‘Review of Hate Crime Legislation in Northern Ireland - Departmental Response’, (DoJ, 2021), at 6-7.

³²⁹ Independent Hate Crime Review Team, ‘Hate Crime Legislation in NI Independent Review’, (DoJ 2020), Recommendation 13.

³³⁰ Department of Justice, ‘Review of Hate Crime Legislation in Northern Ireland - Departmental Response’, July 2021 at 6-7.

³³¹ Ibid, at 7.

³³² Department of Justice, ‘[Consultation on Hate Crime Legislation in Northern Ireland](#)’, (DoJ, 2022).

³³³ See paragraphs 199 - 201 of this submission for more details of the Report.

³³⁴ NI Executive Office, ‘Commission on Flags, Identity, Culture and Tradition - Final report’ 1 December 2021, at 27.

- 8.19. In 2018, the draft NI (Stormont House Agreement) Bill proposed the establishment of the Implementation and Reconciliation Group which was intended to promote reconciliation and anti-sectarianism.³³⁵ However, in March 2020, the Secretary of State for NI, Brandon Lewis MP, speaking on the Stormont House Agreement stated that “significant changes will be needed to obtain a broad consensus for the implementation of any legislation”.³³⁶ The statement largely related to a shift in the UK Government’s policy to put “information recovery and reconciliation to be at the heart of a revised legacy system that puts victims first”.³³⁷ It provided little detail as to what this would mean in practice.
- 8.20. In 2021, the Secretary of State published a Command Paper outlining the UK Government’s proposals for legislation to address the legacy of the past in NI.³³⁸ This included a proposal for a new Information Recovery Body, which would focus on information recovery and reconciliation rather than a criminal justice response to the Troubles.³³⁹
- 8.21. The NIHRC continues to raise significant concerns over the Command Paper, which conflicts with the requirements for effective investigations under the European Convention on Human Rights.³⁴⁰ This has been accompanied by concerns by the Commissioner for Human Rights of the Council of Europe³⁴¹ and the UN Special Rapporteurs Fabián Salvioli (on the promotion of truth, justice, reparation and guarantees of non-recurrence) and Morris Tidball-Binz (on extrajudicial, summary or arbitrary executions).³⁴² The UK Government has not yet sought advice from the NIHRC on these proposals. The NIHRC continues to encourage consultation on the ECHR requirements before any legislation is introduced to the Westminster Parliament. In any event, the NIHRC will offer advice once draft legislation is made available.
- 8.22. The Advisory Committee may wish to ask the State Party about its progress in promptly and effectively implementing the recommendations of the Independent Hate Crime Review relating to sectarianism.**

³³⁵ NI Office, ‘Consultation Paper: Addressing the Legacy of NI’s Past’, (NIO, 2018), at 46.

³³⁶ UK Parliament Hansard, ‘Written Statement: Addressing Northern Ireland Legacy Issues - Secretary of State for Northern Ireland, Brandon Lewis MP - HCWS168, 18 March 2020.

³³⁷ Ibid.

³³⁸ NI Office, ‘Addressing the legacy of Northern Ireland’s past’, (NIO, 2021).

³³⁹ Ibid, at para 34.

³⁴⁰ NI Human Rights Commission, ‘Press release: NI Human Rights Chief Commissioner Responds to Legacy Proposals’, 16 July 2021.

³⁴¹ Correspondence from Commission for Human Rights to Brandon Lewis MP, 13 September 2021.

³⁴² OHCHR, ‘Press release: UN experts voice concern at proposed blanket impunity to address legacy of the Troubles in Northern Ireland’, 10 August 2021.

8.23. The Advisory Committee may wish to recommend that the State Party seeks formal advice from the NIHRC in respect of its legacy proposals.

9.0. Article 10: Minority language rights

- 9.1. The Belfast (Good Friday) Agreement 1998 recognised the “importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland”.³⁴³
- 9.2. The St Andrews Agreement 2006 committed the Government to introduce an Irish Language Act, reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language.³⁴⁴ The Northern Ireland (St Andrew’s Agreement) Act 2006 required the Executive Committee to adopt strategies relating to the Irish language and Ulster-Scots.³⁴⁵
- 9.3. The Stormont House Agreement (SHA) recalled commitments from previous agreements, and “recognising the importance of understanding, tolerance and respect in relation to linguistic diversity, endorse the need for respect for and recognition of the Irish language in Northern Ireland, consistent with the Council of Europe Charter on Regional or Minority Languages”.³⁴⁶ This remains outstanding in the ‘Fresh Start: Stormont Agreement and Implementation Plan’.³⁴⁷
- 9.4. At the conclusion of the previous monitoring cycle, the Advisory Committee highlighted legislation as a necessity to protect and promote the Irish language and called upon the UK Government to help create the political consensus needed for such adoption.³⁴⁸
- 9.5. Through the New Decade, New Approach agreement, the NI Executive agreed to legislate to implement a framework to recognise and celebrate NI’s “diversity of identities and culture and accommodating cultural difference”.³⁴⁹ The three Bills that were intended to provide for this legislative framework were published with the agreement – NI Act 1998 (Amendment No 1) Bill, NI Act 1998 (Amendment No 2) Bill, and NI Act

³⁴³ Belfast (Good Friday) Agreement 1998, Chapter 6 ‘Rights, Safeguards and Equality of Opportunity’, at para 3.

³⁴⁴ St Andrews Agreement (2006), Annex B.

³⁴⁵ The Northern Ireland (St Andrew’s Agreement) Act 2006, S.15

³⁴⁶ NI Office, The Stormont House Agreement (2014) at para 68.

³⁴⁷ NI Office, Fresh Start: Stormont Agreement and Implementation Plan (2015) p.38

³⁴⁸ ACFC/OP/IV(2016)005 ‘Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the United Kingdom adopted on 25 May 2016’ 27 February 2017 at para 105.

³⁴⁹ NI Office, New Decade New Approach, (NI Office, 2020), Annex E.

(Amendment No 3) Bill. These Bills were to be presented to the NI Assembly by April 2020,³⁵⁰ but this is still awaited.

- 9.6. In May 2020, the NIHRC provided advice to the Executive Office and Secretary of State for NI, Brandon Lewis MP, on the three Bills.³⁵¹ In February 2021, the NIHRC additionally provided a submission to the Committee of Experts on the European Charter for Regional and Minority Languages which examines NI's compliance with the Charter.³⁵²

Irish Language

Irish Language Strategy

- 9.7. Prior to the New Decade, New Approach agreement, previous commitments to an Irish Language Strategy have not been fulfilled. In 2017, in a challenge to the failure to produce a strategy, the NI High Court ruled that the NI Executive had failed to comply with its duty under section 28D(1) of the St Andrews Agreement to "adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language".³⁵³
- 9.8. In 2020, New Decade New Approach committed to the introduction of an Irish Language Strategy and indicated a draft strategy would be produced for consultation within six months.³⁵⁴ In June 2021, Conradh na Gaeilge was granted leave by the NI High Court to apply for a judicial review of the failure to implement a strategy.³⁵⁵ A hearing is awaited.
- 9.9. In August 2021, the Minister for Communities commenced preparatory work to assist the production of the Irish Language Strategy through a co-design process which involves representatives from the sector.³⁵⁶ An expert advisory panel was appointed to provide recommendations about what key actions should be included in the strategy. The report is expected to be published in early 2022 which will then inform the working groups established to support the drafting process. The NIHRC is a member of the Irish Language Co-Design Group.

³⁵⁰ NI Office, *New Decade New Approach*, (NI Office, 2020).

³⁵¹ NI Human Rights Commission, 'Office of Identity and Cultural Expression Provisions of the Draft NI Act 1998 (Amendment No 1)' (NIHRC, 2020); NI Human Rights Commission, 'Irish Language Provisions of the NI Act 1998 (Amendment No 2)' (NIHRC, 2020); NI Human Rights Commission, 'Ulster Scots/Ulster British Provisions of the NI Act 1998 (Amendment No 3)' (NIHRC, 2020).

³⁵² NI Human Rights Commission, 'Submission to the Committee of Experts on the European Charter for Regional and Minority Languages on the Interim Report of the United Kingdom of Great Britain and Northern Ireland' (NIHRC, 2021).

³⁵³ *In the Matter of an Application by Conradh Na Gaeilge* (2017) NIQB 27, at para 17.

³⁵⁴ NI Office, 'New Decade, New Approach' (NIO, 2020), at para 5.21.3.

³⁵⁵ Claire Simpson, 'Irish language group granted High Court leave to challenge Executive' *The Irish News*, 11 June 2021.

³⁵⁶ Robbie Meredith, 'Irish language and Ulster-Scots strategies 'complex and sensitive' *BBC News NI*, 24 September 2021.

9.10. The Advisory Committee may wish to seek assurances from the State Party that the necessary support is in place to guarantee the timely development and full implementation of the Irish Language Strategy.

Irish Language Provisions of the Northern Ireland Act 1998 (Amendment No. 2)

- 9.11. New Decade New Approach proposes the introduction of legislation to create an Irish Language Commissioner to “recognise, support, protect, and enhance the development of the Irish language” and to provide “official recognition of the status of the Irish language in NI”.³⁵⁷
- 9.12. The draft Bill for Amendment No 2 provides official recognition of the status of the Irish Language in NI at clause 78F.³⁵⁸ The NIHRC has advised that the legislation is necessary to fulfil human rights obligations but has raised a concern that the Bill does not outline the status of Irish language in tandem with English language.
- 9.13. Clauses 78G-H of the draft Bill for Amendment No 2 provide for the establishment of an Irish Language Commissioner and outlines the functions of the Commissioner.³⁵⁹ The NIHRC outlined several concerns regarding the role and function of the Irish Language Commissioner.³⁶⁰ First, there is a disparity between the functions afforded to each of the language Commissioners and no clear reason has been advanced for this. For example, the Commissioner for Ulster Scots has a role to provide advice on the effect and implementation of the European Charter for Regional or Minority Languages, FCNM and UN Convention on the Rights of the Child.
- 9.14. No similar role is provided for the Irish Language Commissioner. In addition, the function of the Irish Language Commissioner is to “protect and enhance” compared to the duty to “enhance and develop” given to the Ulster Scots/British Commissioner. Both functions are in contrast to the terminology used in international human rights standards. For example, the Vienna Declaration 1993 states, “the promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and

³⁵⁷ NI Office, ‘New Decade, New Approach’ (NIO, 2020), at para 27(b).

³⁵⁸ Draft Northern Ireland Act 1998 (Amendment No 2), at clause 78F.

³⁵⁹ Draft Northern Ireland Act 1998 (Amendment No 2), at clauses 78G-78H.

³⁶⁰ NI Human Rights Commission, ‘Irish Language Provisions of the Northern Ireland Act 1998 (Amendment No 2)’ (NIHRC, 2020).

principles". Human rights bodies have consistently reaffirmed the 'promote and protect' principles.

- 9.15. **The Advisory Committee may wish to recommend that the primary roles of the Irish Language Commissioner and the Ulster Scots/ Ulster British Commissioner are amended to include both a duty to 'enhance and develop' and to 'promote and protect'.**
- 9.16. **The Advisory Committee may wish to recommend that the Irish Language Commissioner and the Ulster Scots/ Ulster British Commissioner are both provided with an advisory role in respect of European Charter for Regional or Minority Languages, the Framework Convention on National Minorities and the culture provisions in UN Convention on the Rights of the Child.**
- 9.17. Overall, the NIHRC views this Bill as a positive measure that will help protect the rights of members of the Irish language community.³⁶¹ Therefore, it remains disappointing that, at the time of writing, the three draft Bills have not been formally considered within the NI Assembly.
- 9.18. In March 2021, COMEX published their response to the UK Government's interim report, stating that "an Irish Language Act and a strategy are integral to the protection and promotion of Irish in Northern Ireland. It cannot but reiterate its previous recommendations to this effect".³⁶²
- 9.19. In June 2021, The Secretary of State for NI Brandon Lewis announced that the UK Government will introduce legislation in NI should the NI Assembly fail to do so before the end of September.³⁶³ He reiterated his intention in November 2021, promising that "the cultural package [will be] delivered within the mandate".³⁶⁴ The NI Office has previously indicated that it intends to introduce legislation to Westminster before March 2022³⁶⁵; however, as of the end of February 2022 no further progress has been made and the NI Office were unable to provide an exact timeframe.³⁶⁶

³⁶¹ Ibid, at 2.6

³⁶² MIN-LANG(2021)3, 'Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action contained in the Committee of Experts' fifth evaluation report on the United Kingdom and Isle of Man', (ECRML, 2021).

³⁶³ Rory Carroll, 'Northern Ireland: Paul Givan becomes first minister after Irish language deal' *The Guardian*, 17 June 2021.

³⁶⁴ UK Parliament Hansard, 'Third Reading: Northern Ireland (Ministers, Elections, and Petitions of Concern) Bill – Brandon Lewis MP', 26 October 2021.

³⁶⁵ UK Parliament, Northern Ireland Affairs Committee 'Oral evidence: New Decade, New Approach: two years on' (UK Parliament, 2022).

³⁶⁶ Email correspondence from the Northern Ireland Office to NI Human Rights Commission, 24 February 2022.

9.20. The Advisory Committee may wish to recommend that the UK government, the Northern Ireland Office and the NI Executive take steps to expedite the enactment of the three draft Amendment Bills.

The Use of Minority Language in the Public Sphere

- 9.21. Under the Administration of Justice (Language) Act (Ireland) 1737, languages other than English are not permitted to be used in the Courts. The legislation was challenged but upheld as lawful by the NI Court of Appeal in 2010.³⁶⁷ The Advisory Committee has previously expressed its concern that the lack of opportunity to use the Irish language in the public sphere and in relations with local administrative authorities contributes to an overall climate that NI does not encourage the use or development of the language.³⁶⁸
- 9.22. Similarly, the Committee of Experts of the European Charter for Regional or Minority Languages (COMEX) has previously stated, "the prohibition of the use of Irish in courts in Northern Ireland by the 1737 Act is an unjustified restriction relating to the use of Irish, endangering the development of the language."³⁶⁹ Therefore, the NIHRC highlights that the draft Bill for Amendment No 1 contains provisions to remove the prohibition of Irish being used in courts by repealing the Administration of Justice (Language) Act (Ireland) 1737.
- 9.23. In November 2021, the Department of Finance advised that it proposes to make a Statutory Rule under powers conferred by the Births and Deaths Registration (Northern Ireland) 1976, the Marriage (Northern Ireland) Order 2003 and the Civil Partnership Act 2004.³⁷⁰ The Statutory Rule will introduce changes to civil registration legislation to enable registrations and subsequent life event certificates to be produced with the choice of certificate headings in English, Irish or bi-lingual English/Irish with all content remaining in English.
- 9.24. The Department advised that the legislation will be the first step in a phased approach to meeting the New Decade, New Approach requirement to "make any necessary statutory provision for births, marriages and deaths to be registerable in Irish".³⁷¹ While the agreement only stipulates births, marriages and deaths, the option for registration in Irish will include

³⁶⁷ Mac Giolla Cathain's Application [2010] NICA 24.

³⁶⁸ ACFC/OP/III(2011)006, 'Advisory Committee on the Framework Convention for the Protection of National Minorities: Third Opinion on the United Kingdom' 22 December 2011, at para 147.

³⁶⁹ COMEX, 'Application of the Charter in the United Kingdom, 3rd Monitoring Cycle' ECRML (2010) 4, para 121.

³⁷⁰ Correspondence from the Department of Finance to the Committee for Finance, November 2021.

³⁷¹ Ibid.

the registration of all life events including still births, civil partnerships and the conversion of civil partnership to marriage and vice versa.³⁷² It is proposed the rule will come into operation on 1 March 2022.

Ulster Scots

Ulster Scots Strategy

- 9.25. Domestic commitments to Ulster Scots language, heritage and culture have been identified within the Belfast (Good Friday) Agreement 1998,³⁷³ the St Andrews Agreement 2006,³⁷⁴ an amendment to section 28(d)(2) of the Northern Ireland Act 1998,³⁷⁵ and the New Decade New Approach deal.³⁷⁶
- 9.26. The New Decade, New Approach agreement provided for an Ulster Scots Strategy.³⁷⁷ The agreement makes the same commitment to the production of a draft strategy for Ulster Scots within six months as it does for the Irish Language Strategy.
- 9.27. In March 2021, COMEX published its evaluation report, recommending for immediate action, that the UK Government adopt a strategy to promote Ulster Scots in education and other areas of public life. The Committee noted its regret at the lack of progress on the strategy and asked the UK Government to take steps to expedite its production.³⁷⁸
- 9.28. Like the Irish Language Strategy, in August 2021, the Minister for Communities appointed an expert advisory panel to produce recommendations on the key actions to be included in the strategy. The report is expected to be published in early 2022 which will inform the working group established to support the drafting process. The NIHRC is a member of the Ulster Scots Language, Heritage and Culture Strategy Co-Design Group.
- 9.29. **The Advisory Committee may wish to seek assurances from the State Party that the necessary support is in place to guarantee the timely development and full implementation of the Ulster Scots Language, Heritage and Culture Strategy.**

³⁷² NI Office, 'New Decade, New Approach' (NIO, 2020) at 36.

³⁷³ The Belfast (Good Friday) Agreement 1998, at Rights, Safeguards and Equality of Opportunity, at para 3.

³⁷⁴ The St Andrews Agreement 2006, at Annex B.

³⁷⁵ As amended by section 15, Northern Ireland (St Andrews (Agreement) Act 2006.

³⁷⁶ NI Office, 'New Decade, New Approach' (NIO, 2020), at para 27.

³⁷⁷ NI Office, 'New Decade, New Approach' (NIO, 2020), at Annex E, at para 5.23.

³⁷⁸ MIN-LANG(2021)3, 'Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action contained in the Committee of Experts' fifth evaluation report on the United Kingdom and Isle of Man', (ECRML, 2021), at para 59.

Ulster Scots/ Ulster British Provisions of the Northern Ireland Act 1998 (Amendment No. 3)

- 9.30. The draft Bill for Amendment No 3 establishes a Commissioner in relation to Ulster Scots/Ulster British and details the functions, powers and status of this new public office.³⁷⁹ It also proposes a new duty on the Department of Education in relation to Ulster Scots.³⁸⁰ The agreement identified the intention to present the draft Bills to the Assembly within three months of the restoration of the institutions.
- 9.31. The NIHRC has raised concerns about the title of the Bill, as ‘Ulster British’ is not a term or a linguistic/national minority group presently recognised by human rights treaty bodies.³⁸¹ The NIHRC notes the conflation of Ulster Scots culture with a distinct political identity, may have unintended consequences. Binding the established Ulster Scots community, recognised in international law, with a concept of Ulster British in a single mandate could undermine developments in respect of Ulster Scots language and culture.³⁸²
- 9.32. Clause 78Q(3)(a) of the draft Bill creates an awareness-raising function for the Commissioner, requiring them to increase awareness and visibility of Ulster Scots services to public authorities.³⁸³ This function is directed towards those who have already established links within the Ulster Scots Community. The UN Human Rights Committee identified that “the fabric of society as a whole” is enriched by minority languages.³⁸⁴ Resultantly, the NIHRC recommended that the awareness-raising function be expanded to include the promotion of Ulster Scots within wider society.³⁸⁵
- 9.33. The draft Bill places a statutory duty on the Department of Education “to encourage and facilitate the use and understanding of Ulster Scots in the education system”.³⁸⁶ The UN Committee on Economic, Social and Cultural Rights has also identified that the right to cultural life is intrinsically linked to the right to education. As such, the NIHRC welcomed this statutory duty on the DoE, but noted a lack of clarity on whether it applies solely to Ulster

³⁷⁹ Clauses 78O-78Q, Northern Ireland Act 1998 (Amendment No 3).

³⁸⁰ Clauses 78R, Northern Ireland Act 1998 (Amendment No 3).

³⁸¹ NIHRC ‘Advice on the Ulster Scots/Ulster British Provisions of the Northern Ireland Act 1998 (Amendment No 3), May 2020, paragraph 2.14-6.

³⁸² Ibid.

³⁸³ Draft Northern Ireland Act 1998 (Amendment No 3), at clause 78Q(3)(a).

³⁸⁴ CCPR/C/21/Rev.1/Add.5, ‘UN Human Rights Committee General Comment No 23: The Rights of Minorities’, 8 April 1994, at para 9.

³⁸⁵ NIHRC, ‘Ulster Scots/Ulster British Provisions of the Northern Ireland Act (Amendment No 3)’ (NIHRC, 2020), at para 4.7.

³⁸⁶ Draft Northern Ireland Act 1998 (Amendment No 3), at clause 78R.

Scots language alone, or if it applies more broadly to other aspects of the Ulster Scots identity.³⁸⁷

- 9.34. **The Advisory Committee may wish to recommend that the Ulster Scots Commissioner’s awareness-raising function should be enhanced to include promoting Ulster Scots within wider society.**
- 9.35. **The Advisory Committee may wish to recommend that the Ulster Scots Language, Heritage and Culture Strategy clarifies the scope of any duty placed on the Department of Education in relation to Ulster Scots and recommends that any duty is extended to the full mandate of the Commissioner, not only language.**

10.0 Article 11: Traditional names

Street Names

- 10.1 The Advisory Committee previously called for a closer dialogue on signage among the government and local authorities in NI, “to identify pragmatic and flexible solutions that accommodate the demands of the population in line with the principles contained in Article 11 of the Framework Convention”.
- 10.2 The provision of traditional local names and street signs in a minority language remains an issue in NI. Although there are examples of street signs in both Irish and Ulster Scots, there does not appear to be a consistent approach to dealing with requests for bilingual signage. The Local Government (Miscellaneous) Order 1995³⁸⁸ gives local councils the discretion to erect bilingual street signs only and there continues to be no provision for bilingual road signage.
- 10.3 Local council policies vary in their approach to bilingual street signage. The NIHRC notes good practice from Belfast City Council and Derry City and Strabane District Council, who have voted to adopt a new policy on bilingual street signs that will make it easier for residents to apply for a dual language sign where they live.³⁸⁹ The new policies allow a resident or their local councillor to make the request and 15 per cent of the occupiers

³⁸⁷ E/C.12/GC/21, ‘UN Committee on Economic, Social and Cultural Rights General Comment No 21: Right of Everyone to Take Part in Cultural Life’, 21 December 2009, at para 2.

³⁸⁸ The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995, Article 11 provides for street naming, street numbering and the provision of street signs. It also gives Councils the discretionary power to erect dual language street signs or secondary nameplates in a language other than English.

³⁸⁹ ‘Belfast City Council gives green light to bilingual street signs’ *BBC News NI*, 8 January 2021. See also: ‘Bilingual street signs threshold reduced to 15% of residents’ *Derry Journal*, 31 January 2021.

of the street to be in favour of the application.³⁹⁰ If that threshold is reached, a report will be brought to the committee to consider the application. This threshold in line with guidelines from the UN Special Rapporteur on minority issues, who recommends an approach that allows bilingual or trilingual signs, where between five – 20 percent of the local population speak the regional or minority language.³⁹¹

10.4 However, in February 2021, a Notice of Motion to reduce the threshold by which applications could be approved from two thirds to 15 per cent was rejected by Lisburn and Castlereagh City Council.³⁹² Mid Ulster District Council requires at least 51 per cent of residents to approve before the application is considered by its Environment Committee.³⁹³ Armagh City, Banbridge and Craigavon Borough Council,³⁹⁴ and Causeway Coast and Glens Borough Council require approval from at least two-thirds of residents.³⁹⁵ Antrim and Newtownabbey Council are currently consulting on draft policy that would require two thirds of residents to be in favour of the proposal and if it is refused it cannot come back for three years.³⁹⁶

10.5 **The Advisory Committee may wish to reaffirm its previous recommendation and ask the State Party:**

- **what measures are being taken to overcome the politicisation of language issues in NI; and**
- **how it will fulfil its obligations to promote the use of minority languages in street names and other topographical indicators in the absence of political consensus in NI.**

11.0 Article 12: Education

Independent Review of Education in NI

11.1. The New Decade, New Approach agreement committed to the establishment and delivery of an Independent Review of Education “with a focus on securing greater efficiency in delivery costs, raising standards, access to the curriculum for all pupils, and the prospects of moving towards a single education system”.³⁹⁷

³⁹⁰ Belfast City Council, ‘Public consultation on dual language street signage policy’ at: [Dual Language Street Sign policy consultation \(belfastcity.gov.uk\)](https://www.belfastcity.gov.uk/dual-language-street-sign-policy-consultation).

³⁹¹ UN Special Rapporteur on minority issues, ‘Language Rights of Linguistic Minorities: A Practical Guide for Implementation’ (2017) at: [LanguageRightsLinguisticMinorities_EN.pdf \(ohchr.org\)](https://www.ohchr.org/en/hrids/indiv/linguistic-minorities)

³⁹² Christopher Leebody, ‘Lisburn and Castlereagh council rejects bilingual street sign policy’ *Belfast Telegraph*, 24 February 2021.

³⁹³ Mid Ulster District Council, ‘Dual Language Street Name Plate Policy’.

³⁹⁴ Armagh City, Banbridge and Craigavon Borough Council, ‘Street Naming and Numbering Policy’ (2015).

³⁹⁵ Causeway Coast and Glens Borough Council, ‘Street Naming and Property Numbering Policy’ (2015).

³⁹⁶ Antrim and Newtownabbey Borough Council, ‘Draft Dual Language Street Sign Policy’ (2021).

³⁹⁷ NI Office, New Decade New Approach, (NI Office, 2020).

11.2. The Terms of Reference for the Review has been agreed by the NI Executive and published by the Education Minister.³⁹⁸ The Panel was appointed in September 2021 and commenced work in October 2021, with the review expected to take a minimum of 18 months.³⁹⁹ The review has the potential to radically re-shape education design, delivery, and provision, albeit decisions following the Review will be subject to Executive agreement, wider stakeholder consensus and the availability of appropriate funding.

Traveller and Roma children

11.3. In 2016, the UN CRC Committee raised concerns that substantial inequalities persist in educational attainment, including for Roma, Gypsy and Traveller children, and newcomer children.⁴⁰⁰ It was additionally noted that among children subject to permanent or temporary school exclusions there is a disproportionate number of Roma, Gypsy and Traveller children, and children of Caribbean descent.

11.4. In 2019, the UN Special Rapporteur on Racism, E Tendayi Achiume, reported on her visit to the UK that,

race and ethnicity continue to have a significant impact on educational outcomes. The circumstances confronting Gypsies, Roma and Travellers are especially dire. In 2016–2017, Gypsy/Roma children, as well as children Travellers of Irish Heritage, had the highest rates of both temporary (“fixed period”) and permanent exclusions in England. In secondary schools, over half of Traveller of Irish Heritage and 45 per cent of Gypsy/Roma pupils had fixed period exclusions. In special schools, such exclusions affected 51.24 per cent of Travellers of Irish Heritage and 31.94 per cent of Black Caribbean pupils.⁴⁰¹

11.5. Protocol Article 2 requires the UK Government and NI Executive to “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 Racial Equality Directive which protects against

³⁹⁸ Department of Education, ‘Independent Review of Education – Terms of Reference’ (DE, 2021).

³⁹⁹ Department of Education, ‘Independent Review of Education’ (DE, 2021) at [Independent Review of Education | Department of Education \(education-ni.gov.uk\)](#)

⁴⁰⁰ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016.

⁴⁰¹ A/HRC/41/54/Add.2, ‘Visit to the UK of Great Britain and Northern Ireland - Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance’, 27 May 2019, at para 23.

discrimination on the grounds of race and ethnicity in the area of education.⁴⁰²

- 11.6. The number of Irish Traveller children enrolled in school has steadily increased over the last decade from 866 in 2009/2010 to 1,106 in 2020/21. Although it remains lower than for the average school population (94 per cent), the attendance rate of Irish Traveller children has also steadily increased, currently at 74 per cent, which is up from 64 per cent in 2009/2010. Approximately two thirds (67 per cent) of Irish Traveller children receive free school meals.⁴⁰³
- 11.7. The attendance rate of Roma children has steadily increased over the last decade and school enrolment has increased significantly. There were 779 Roma children enrolled in NI schools in 2020/21, an increase of 74 from the previous year and significant increase from 2009/10 when there were only 30 children enrolled. Attendance rate of Roma children is 79 per cent, which although lower than the average school population (94 per cent), has steadily increased from 2009/10 (70 per cent). Approximately one quarter (28 per cent) of Roma children receive free school meals.⁴⁰⁴ In 2020/21, there were 17,664 children from migrant families enrolled in schools in NI, an increase of 273 from 2019/20, equating to five per cent of total school enrolments.⁴⁰⁵
- 11.8. As of October 2020, 1815 Syrian refugees have been resettled in NI through the Vulnerable Persons Resettlement Scheme.⁴⁰⁶ A report by the Barnardo's charity noted that education has been a broadly positive experience for most of the children resettled under this scheme. However, a number of recommendations are identified including language support for parents to assist their involvement in their children's education.⁴⁰⁷ Similarly, research into support for Syrian refugee pupils commissioned by the Education Authority revealed that schools and teachers needed more support to help newcomer children with their language skills.⁴⁰⁸

⁴⁰² 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.

⁴⁰³ Northern Ireland Statistics and Research Agency, 'Irish traveller & Roma pupils in education: 2020-2021 Key Statistics', (DE, 2021).

⁴⁰⁴ Northern Ireland Statistics and Research Agency, 'Irish traveller & Roma pupils in education: 2020-2021 Key Statistics', (DE, 2021).

⁴⁰⁵ Department of Education, 'Newcomer pupils 2001/02 to 2019/20', 11 March 2020.

⁴⁰⁶ Correspondence from the Executive Office to the NI Human Rights Commission, 27 October 2021. See also: Department for Communities, 'Syrian Vulnerable Persons Relocation Scheme Briefing Document' (DfC, 2020).

⁴⁰⁷ Arlene Robertston, 'A New Life for Me: Integration Experiences of Syrian Refugee Children and their Families' (Barnardo's, 2020).

⁴⁰⁸ John McMullen, Jonathan Harris, Sharon Jones, Sheila McConnellogue, and Franka Winter, 'School-based Support for Syrian Refugee Pupils in Northern Ireland' (EA, 2021) at p 5.

11.9. In 2019, the Department of Education issued a public consultation on updating the Supporting Newcomer Pupils Policy 2009.⁴⁰⁹ The NIHRC welcomed the proposal to develop a new strategy and highlighted the need for a robust and well-resourced policy that recognises the interplay between other departmental strategies, such as: support for home languages; mental health services; free school meals; support for asylum seekers; EU Settlement Scheme.⁴¹⁰ The consultation closed in October 2019 and its outcome is awaited.

11.10. The New Decade, New Approach agreement established an Expert Panel on Education Underachievement to examine the links between persistent educational underachievement and socio-economic background. In its final report published in 2021, the Expert Panel highlighted that:

Children from the Traveller community, Roma children and children looked after have some of the lowest levels of attainment of all equality groups. A combination of early intervention, a whole-school approach to nurture and schools having the scope (and budget) to provide a differentiated curriculum bespoke to their pupils' specific needs are essential in addressing these inequalities.⁴¹¹

11.11. In 2020, the Committee of Ministers adopted a Recommendation to include the history of Roma and/or Travellers in school curricula and teaching materials.⁴¹² The NIHRC notes that civil society organisations in NI have highlighted the need for increased cultural awareness within schools and for history lessons taught in school to be representative of the school population.⁴¹³

11.12. In 2016, the UN CERD Committee recommended that steps are taken across the UK to strengthen efforts to challenge and eliminate all racist bullying and harassment in the State party's schools by improving data collection, promoting diversity, and ensuring school curricula contains a balanced account of the history of the British Empire, colonialism and slavery and other grave human rights violations.⁴¹⁴

⁴⁰⁹ Department of Education, 'Public Consultation: Supporting Newcomer Pupils' (DE, 2019).

⁴¹⁰ NI Human Rights Commission, 'Response to Department of Education consultation on Supporting Newcomer Children' (NIHRC, 2019).

⁴¹¹ Expert Panel on Educational Underachievement, 'A Fair State: Final Report and Action Plan' (DE, 2021) at v.

⁴¹² Council of Europe, Committee of Ministers Recommendation on the Inclusion of the History of Roma and/or Travellers in School Curricula and Teaching Materials, 1 July 2020.

⁴¹³ Roundtable with civil society organisations, 23 September 2020.

⁴¹⁴ CERD/C/GBR/CO/21-23, 'UN CERD Committee Concluding Observations on the Twenty-first to Twenty-third Periodic Reports of UK', 26 August 2016, at para 35(a) and 35(b).

11.13. The NIHRC welcomes the commencement of the Addressing Bullying in Schools (NI) Act,⁴¹⁵ which provides a common definition of bullying; establishes a new duty for schools to record all incidents of bullying, including their motivation and their outcome; and requires the school Boards of Governors collectively to take responsibility for the development, implementation, monitoring and periodic review of the school's anti-bullying policies and procedures.

11.14. In June 2021, the NI Executive Office established the Travellers Thematic Group to ensure the government is aware of the impact of policies and practice on Travellers. The group seeks to promote and enable the participation of Travellers and their organisations in its work. It is in the process of agreeing key areas of work and developing actions with targets, review and monitoring processes. The group is to provide an advisory function to the Executive through the Strategic Planning Group on Travellers and Roma.

11.15. **The Advisory Committee may wish to ask the State Party:**

- **what action has been taken to develop and deliver training to promote cultural awareness within NI schools, and ensure that history lessons are representative of the school population as standard;**
- **what targeted strategies and measures are being taken forward to address the educational inequalities among Traveller and Roma children to ensure that tangible outcomes are delivered;**
- **for a timeline regarding publication and implementation of the revised Supporting Newcomer Pupils Policy; and,**
- **whether it intends to establish a Roma Thematic Group as indicated in the Racial Equality Strategy 2015-2025.**

Integrated education

11.16. In 2016, the UN CRC Committee recommended that the UK Government and NI Executive "actively promote a fully integrated education system".⁴¹⁶

11.17. There are currently 65 grant-aided integrated schools in NI, made up of 38 grant-maintained integrated schools and 27 controlled integrated

⁴¹⁵ On 1 September 2021.

⁴¹⁶ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016.

schools.⁴¹⁷ In September 2020, of 3,032 pupils who applied for an integrated school, 2,310 were offered a place.⁴¹⁸ In 2020/21, there are a total of 24,861 pupils educated in integrated education, an increase of 600 on the previous year.⁴¹⁹

11.18. In February 2021, the Minister of Education advised that, under the Education Reform (Northern Ireland) Order 1989, 25 schools in NI have transformed to become Integrated Schools, made up of 20 primary schools and five post-primary schools.⁴²⁰

11.19. In June 2021, an Integrated Education Bill was introduced to the NI Assembly, which would require education bodies to apply a presumption that any new school would be an integrated school in appropriate circumstances and require the Department of Education to develop an Integrated Education Strategy.⁴²¹ The NIHRC welcomes the Bill for widening the statutory definition of integrated education, placing the ethos for integrated on a statutory footing and requiring the Department of Education to actively promote an integrated education system.⁴²²

11.20. In October 2021, a research report by the Centre for Children's Rights at Queen's University Belfast in partnership with the Commission for Victims and Survivors noted that while Shared Education has been an important step towards mixing within the school environment, more fundamental and structural changes are required.⁴²³ It recommended increasing the provision and funding of integrated education, particularly given the increasing demand and oversubscription, and reiterates the UN CRC Committee's Concluding Observations 2016 that "a fully integrated system" is actively promoted.

11.21. The Advisory Committee may wish to recommend the enactment of the Integrated Education Bill, as introduced, and the duty to actively promote an integrated education system in NI.

⁴¹⁷ Department of Education, 'Integrated Schools' (DE, 2021).

⁴¹⁸ NI Council for Integrated Education, Integrated Education On the Up: Impact Report 1 April 2019-31 March 2020, (NICIE, 2020).

⁴¹⁹ NISRA and Department of Education, 'Integrated education in Primary and Post-primary schools: 2020-2021 Key Statistics', (DE, 2021).

⁴²⁰ NI Assembly Hansard, 'Oral Question: Update on Applications for Transformation to Integrated Schools - Trevor Lunn MLA - AQO 915/17-22', 17 February 2021.

⁴²¹ NI Assembly, 'Non-Executive Bill Proposals: Integrated Education Bill - Kellie Armstrong MLA - Bill 23/17-22' 1 June 2021.

⁴²² NI Human Rights Commission, 'NIHRC Submission to the Committee for Education on the Integrated Education Bill' October 2021.

⁴²³ The Centre for Children's Rights and the Commission for Victims and Survivors, 'It Didn't End in 1998: Examining the Impacts of Conflict Legacy Across Generations' (QUB, 2021).

Shared Education

11.22. In 2016, the UN CRC Committee recommended that the UK Government and NI Executive “carefully monitor the provision of shared education, with the participation of children, in order to ensure that it facilitates social integration”.⁴²⁴

11.23. In addition, the UN ICESCR Committee recommended:

that the State party 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.⁴²⁵

11.24. The Shared Education Act (NI) 2016 places an obligation on the Department of Education to promote 'shared education'.⁴²⁶ In accordance with section 7 of the Act, the second biennial report laid before the NI Assembly revealed that 61 per cent of NI's primary, post primary, and special schools were involved in shared education.⁴²⁷

11.25. The Department of Education states that the UK leaving the EU will have no impact on current funding.⁴²⁸ However, EU Peace IV funding for Shared Education programmes is due to cease in June 2022.⁴²⁹ Civil society organisations have expressed concerns as to how these programmes will be funded in the future.⁴³⁰ In February 2021, the Minister of Education advised that the Departments of Education in NI and Ireland provide match funding for the Peace IV Shared Education Programme.⁴³¹

11.26. The Advisory Committee may wish to seek assurances from the State Party that long-term secure funding for shared education is guaranteed in NI.

⁴²⁴ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016.

⁴²⁵ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016.

⁴²⁶ Section 2, Shared Education Act (NI) 2016 defines shared education as “the education together of - (a) those of different religious belief, including reasonable numbers of both Protestant and Roman Catholic children or young persons; and (b) those who are experiencing socio-economic deprivation and those who are not, which is secured by the working together and co-operation of two or more relevant providers”.

⁴²⁷ Department of Education, Shared Education 2nd Report to the Northern Ireland Assembly, (DoE, 2020).

⁴²⁸ Ibid.

⁴²⁹ Ibid.

⁴³⁰ Roundtable discussion with civil society organisations, 23 September 2020.

⁴³¹ NI Assembly Hansard, 'Written Question: EU Funding after Brexit - Pat Sheehan MLA - AQW13979/17-22' 15 February 2021.

12.0 Article 14: Right to learn in minority language

Instruction in and of minority languages

- 12.1 The Education (Northern Ireland) Order 1998 places a duty on the Department of Education to encourage and facilitate the development of Irish-medium education.⁴³²
- 12.2 In the previous monitoring cycle, the Advisory Committee highlighted concerns regarding the Department's limited engagement with this issue and factors presenting progress, such as a lack of teachers and insufficient training. The Advisory Committee called on "the authorities to renew and intensify their efforts to develop Irish-medium education and Irish language teaching".⁴³³
- 12.3 Similarly, in its fifth periodic report of the UK, the Committee of Experts for the Charter of Regional and Minority Languages identified that "there is a lack of teachers and planning for Irish-medium education".⁴³⁴ The Committee recommended that the UK government take immediate action to provide basic and further training of a sufficient number of teachers teaching in Irish.⁴³⁵ However, in the most recent monitoring cycle, the UK government did not identify how it has implemented actions to fulfil this recommendation.⁴³⁶ COMEX has therefore reiterated its previous recommendation and asked that,

the authorities work with representatives of Irish language speakers to develop a long-term strategy to tackle this shortage, as well as short-term remedies such as incentives to students (such as further bursaries, guaranteed employment or salary bonuses) and intensive courses to boost capacities to teach in Irish.⁴³⁷

12.4 The Advisory Committee may wish to seek assurances from the State Party that effective steps are being taken to build capacity for Irish language teaching and Irish-medium education.

⁴³² Article 89, the Education (NI) Order 1998.

⁴³³ ACFC/OP/IV(2016)005 'Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the United Kingdom adopted on 25 May 2016' 27 February 2017 at para 128.

⁴³⁴ ECRML, 'Fifth Report of the Committee of Experts in Respect of the United Kingdom', (ECRML, 2018), at para 2.2.1.

⁴³⁵ Ibid.

⁴³⁶ UK Government, 'Information Document on the Implementation of the Recommendations for Immediate Action based on the 5th Monitoring Cycle' (2021).

⁴³⁷ MIN-LANG(2021)3, 'Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action contained in the Committee of Experts' fifth evaluation report on the United Kingdom and Isle of Man', (ECRML, 2021).

13.0 Article 15: Conditions necessary for participation in cultural, social and economic life

Participation in public life

- 13.1. In 2016, the Advisory Committee highlighted the importance of “political participation of minority representatives in relevant decision-making processes” and the need to promote recruitment into public administration, law enforcement and the judiciary as a means to “better respond to their needs and to attest to the government’s openness to diversity in society.”⁴³⁸
- 13.2. The NIHRC notes the continuing underrepresentation of minority ethnic groups in participation in public life. The Executive Office’s most recent annual report on public bodies and public appointments notes that “Of those whose ethnicity is known, five or fewer appointments in 2018/19 were individuals from a minority ethnic group. (The precise figure and percentage cannot be released due to disclosure control.)”⁴³⁹
- 13.3. The NI Judicial Appointments Commission’s Equality Monitoring Report 2020 records that minority ethnic representation among Lay Magistrates was 1.6 per cent, while for Tribunal members it was 1.7 per cent. No judicial office holders are from a minority ethnic background.⁴⁴⁰
- 13.4. The NI Statistics & Research Agency collects equality statistics on employment within the NI Civil Service and analyses the composition of the service.⁴⁴¹ The most recent report is based on 22,883 staff in post on 1 January 2021. Data on ethnicity was missing for 2,497 staff (10.9 per cent), excluding these cases from the analyses, 67 staff (0.3 per cent) were from an ethnic minority. This represents a 0.1 percent increase from the previous monitoring cycle, when it was reported that the proportion from an ethnic minority background was 0.2 per cent in 2013, equating to 55 staff.⁴⁴² The Advisory Committee previously raised concerns in relation to the lack of measures in place to support the progression of persons

⁴³⁸ ACFC/OP/IV(2016)005 ‘Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the United Kingdom adopted on 25 May 2016’ 27 February 2017, at para 133.

⁴³⁹ NI Statistics and Research Agency, ‘Public Appointments: Annual Report for Northern Ireland 2018/19’ at [Public appointments reports | The Executive Office \(executiveoffice-ni.gov.uk\)](#)

⁴⁴⁰ NI Statistics and Research Agency, ‘The Judiciary in Northern Ireland 2020: Equality Monitoring Report’ at [Diversity Information | Northern Ireland Judicial Appointments Commission \(nijac.gov.uk\)](#)

⁴⁴¹ NI Statistics and Research Agency, ‘Equality Statistics for the Northern Ireland Civil Service- 2021’ at [Equality Statistics for the Northern Ireland Civil Service - 2021 | Northern Ireland Statistics and Research Agency \(nisra.gov.uk\)](#)

⁴⁴² NI Statistics and Research Agency, ‘Equality Statistics for the Northern Ireland Civil Service – 2013’ at [Equality Statistics for the Northern Ireland Civil Service - 2013 | Northern Ireland Statistics and Research Agency \(nisra.gov.uk\)](#)

belonging to minorities, such as training for leadership or similar schemes.⁴⁴³

13.5. During the previous reporting cycle, the Committee noted positive efforts by the Police Service of NI to encourage applications from underrepresented groups such as establishing an Ethnic Minority Police Association in its Equality, Diversity and Good Relations Strategy.⁴⁴⁴ The most recent statistics show that of 7,020 officers, 66.50 per cent are perceived Protestant, 32.17 per cent are perceived Catholic and 0.58 per cent are from an ethnic minority. These figures are relatively consistent with those reported during the previous monitoring cycle in 2016, when 67.28 per cent were perceived Protestant, 31.16 per cent were perceived Catholic, and 0.54 per cent officers were from an ethnic minority.

13.6. The Advisory Committee may wish to reaffirm the importance of the representation of ethnic minorities in the public sector and law enforcement and seek further information about specific measures being taken to address under-representation.

⁴⁴³ ACFC/OP/IV(2016)005 'Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the United Kingdom adopted on 25 May 2016' 27 February 2017, at para 129.

⁴⁴⁴ Ibid at para 132.