



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**The Department of Health, Social Services and Public Safety  
consultation on the Draft Standards for Supported Lodgings for  
Young Adults (aged 16-21) in Northern Ireland.**

**Summary**

The Northern Ireland Human Rights Commission (the NIHRC):

**(para 10)** advises that the categorisation of the United Nations (UN) Convention on the Rights of the Child (CRC) in the section 'Underpinning principles and values' must not diminish its status as a binding legal obligation on the basis of which the DHSSPS has corresponding duties. Whilst acknowledging the positive references to the treaty, due regard to the legality of CRC should be provided in the finalised Standards.

**(para 11)** advises that the best interests of the young person must be a primary consideration in all actions and decisions taken by Service Providers. This should be explicit within the finalised Standards.

**(para 12)** further recommends that the 'general principles' of the CRC, as set out in General Comment No. 5 of the UN CRC Committee, should be explicit in the finalised Standards where appropriate and necessary.

**(para 16)** that greater attention be afforded to the framework established by human rights law. Appropriate consideration of all the relevant treaties beyond the CRC and related soft law should be evidenced.

**(para 17)** further advises that equality and non-discrimination should be incorporated in the finalised Standards, with a specific focus on making necessary inclusions of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Framework Convention for the Protection of National Minorities (FCNM) and International Convention on the Protection of the Persons with Disabilities (CRPD) in Standards 1 and 3.

**(para 19)** advises that the finalised Standards should incorporate the holistic approach of the UN Guidelines. This should also assist in determining what Service Providers are required to provide for a young person in his or her Supported Lodgings.

**(para 21)** advises that Service Providers should be made aware in the finalised Standard 6, that the ensuring the engagement, participation and involvement of the young person in decision making is a legal entitlement in accordance with the CRC, Article 12.

**(para 22)** further recommends that records should indicate when the young person's views and wishes have not been taken into account and the reasons for this.

**(para 27)** recommends that the full impact of the right to an adequate standard of living, which includes housing and food is considered with regard to Standard 7.

**(para 31)** advises that the absence of references to young people with disabilities in the Draft Standards is unacceptable. It recommends the inclusion of an additional Standard that recognises the obligations on Service Providers in this regard.

**(para 34)** advises that examination of written records should always be an important part of any inspection process. In addition, face-to-face interviews with young people who are or have been placed in Supported Lodgings is also a vital component of any inspection.

**(para 38)** advises that in commissioning any services to private sources for Supported Lodging the Northern Ireland Housing Executive and the relevant Health and Social Care Trust should seek assurances that the service provider will deliver services in a manner that is fully compliant with domestic and international human rights law. The finalised Standards should clearly state this requirement.

**(para 44)** advises that the provision of Supported Lodgings must adhere to the principle of non-retrogression. It recommends that the finalised Standards state clearly that a young person in such circumstances will fall within the ambit of the Children (NI) Order 1995, with full access to the range of services and entitlements afforded to an individual defined as "child in need" for this purpose.



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**The Department of Health, Social Services and Public Safety  
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**Introduction**

1. The Northern Ireland Human Rights Commission (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.<sup>1</sup> In accordance with this function the following statutory advice is submitted to the Department of Health, Social Services and Public Safety (DHSSPS) in response to the consultation on the Draft Standards for Supported Lodgings for Young Adults (aged 16-21) in Northern Ireland ('the Draft Standards').
2. The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant international treaties in this context include:
  - the CoE European Convention on Human Rights, 1950 (ECHR)<sup>2</sup>;
  - the International Covenant on Civil and Political Rights (ICCPR)<sup>3</sup>;
  - The International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>4</sup>;
  - the UN Convention on the Rights of the Child (CRC)<sup>5</sup>;
  - the International Convention on the Elimination of all forms of Racial Discrimination (CERD)<sup>6</sup>;
  - CoE Framework Convention for the Protection of National Minorities (FCNM);<sup>7</sup>

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<sup>1</sup> Northern Ireland Act 1998, Section 69(1).

<sup>2</sup> Ratified by the UK in 1951.

<sup>3</sup> Ratified by the UK in 1976.

<sup>4</sup> Ratified by the UK in 1976.

<sup>5</sup> Ratified by the UK in 1991

<sup>6</sup> Ratified by the UK on 7 March 1969.

- the UN Convention on the Rights of Persons with Disabilities (CRPD);<sup>8</sup>
  - European Social Charter (ESC).<sup>9</sup>
  - Charter of Fundamental Rights of the European Union.<sup>10</sup>
3. The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom (UK) Government's ratification. In addition, the Northern Ireland Act 1998, section 26 (1) provides that 'if the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken.'
  4. The NIHRC further recalls that the Northern Ireland Act 1998, section 24(1) states that 'a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights'.
  5. In addition to the treaties, there exists a body of 'soft law' developed by the human rights bodies of the UN and CoE. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:
    - UN Guidelines on Alternative Care of Children ('UN Guidelines').<sup>11</sup>
  6. In providing its advice the NIHRC observes that the Draft Standards apply to a specific age group, 16 -21. The DHSSPS should note that below the age of 18, individuals are children afforded the full protections of the CRC. The NIHRC further draws attention to the UN Guidelines, which are 'applicable, as appropriate, to young persons already in alternative care and who need continuing support for a transitional period after reaching the age of majority under applicable law.'<sup>12</sup> The NIHRC therefore views the protections afforded by human rights law to children to also be applicable to individuals between 18-21 throughout the period of their placement in Supported Lodgings as proposed in the Draft Standards.

## **Underpinning principles and values**

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<sup>7</sup> Ratified by the UK on 15 January 1998.

<sup>8</sup> Ratified by the UK in 2009.

<sup>9</sup> Ratified by the UK in 1962.

<sup>10</sup> Ratified by the UK 2000.

<sup>11</sup> A/RES/64/142

<sup>12</sup> Ibid. para 28.

7. The 'Introduction' to the Draft Standards commits to the provision of "an environment [that] will offer tailored levels of housing and social care support to enable young people to develop the practical, emotional and relationship skills needed for a successful transition to independence and adulthood". This is in keeping with the general obligation under the CRC to provide a broad and holistic approach to protecting young people and ensuring they have access to the full range of measures which will empower them to participate fully in society.
8. The Draft Standards state that they are "in keeping" with the CRC in the section 'Underpinning principles and values'. The best interests principle enshrined in the CRC, Article 3<sup>13</sup> is also referred to in the sub section 'Confidentiality'.
9. The UN CRC Committee, General Comment No. 5 identified the following Articles as 'general principles' that are basic to the implementation of all of the rights in the CRC. These are:
  - Article 2, which protects children from discrimination on the basis of their own circumstances such as sex, race, religion and on the basis of the circumstances of their parents, legal guardians or other members of their families;
  - Article 3, which requires that the best interests of the child should be a primary consideration in all actions undertaken by public or private bodies
  - Article 6, the right to life, which incorporates the right to a life which ensures the full physical, mental, spiritual, moral and social development of children. This further includes the right of children to be free from all forms of violence<sup>14</sup>, the right to education and the right to health; and,
  - Article 12, which requires that children should be able to express their views and opinions freely and the opinions listened to and given due weight in accordance with the age and maturity of the child in all matters affecting them.
10. **The NIHRC advises that the categorisation of the CRC in the section 'Underpinning principles and values' must not diminish its status as a binding legal obligation on the basis of which the DHSSPS has corresponding duties. Whilst acknowledging the positive references to the treaty, due regard to the legality of CRC should be provided in the finalised Standards.**

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<sup>13</sup> Nb. The best interest principle is also enshrined the Charter of Fundamental Rights of the European Union, Article 24.

<sup>14</sup> [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf)

11. **The NIHRC advises that the best interests of the young person must be a primary consideration in all actions and decisions taken by Service Providers. This should be explicit within the finalised Standards.**
12. **The NIHRC further recommends that the 'general principles' of the CRC, as set out in General Comment No. 5 of the UN CRC Committee, should be explicit in the finalised Standards where appropriate and necessary.**
13. The Draft Standards must comply with the full range of relevant human rights treaties ratified by the UK and domestic human rights laws. Under Annex A there is no reference to the other treaties (see, para 2). There is also no reference to the ECHR, and in particular, Article 8 which engages a child's right to a secure and settled home life.<sup>15</sup>
14. Equality is as an underpinning principle or value of the Draft Standards. However, the right to equality and non-discrimination, as well as the corresponding duties of the DHSSPS and relevant public authorities are not mentioned. It is core legal obligation on service providers to treat all potential placements equally and in a non-discriminatory manner. In this regard the following aspects of the Draft standards would benefit from further review:
  - Standard 1, the Provision of Information, and specifically the reference to an accessible young person's guide;
  - Standard 3 the Placement Agreement and Support Planning, and specifically the reference to a written Placement Agreement that the young person must sign and be provided a copy of.
15. There is particular need in Standards 1 and 3 to consider the application of relevant human rights obligations, to ensure that the written information is made available in an accessible format, this includes those young persons whose first language is not English or who may have a learning difficulty or a sensory impairment. Service Providers should ensure that, where necessary, interpreters, signing or other appropriate facilities are available for the young persons. Such requirements are enshrined in a number of human rights treaties, including the CERD, FCNM and CRPD.
16. **The NIHRC recommends that greater attention be afforded to the framework established by human rights law. Appropriate consideration of all the relevant treaties beyond the CRC and related soft law should be evidenced.**

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<sup>15</sup> A & S v. Lancashire County Council [2012] EWHC 1689

17. **The NIHRC further advises that equality and non-discrimination should be incorporated in the finalised Standards, with a specific focus on making necessary inclusions of the CERD, FCNM and CRPD in Standards 1 and 3.**
18. The UN Guidelines emphasise the need for a holistic approach, stating that “attention must be paid to promoting and safeguarding all other rights of special pertinence to the situation of children without parental care, including, but not limited to, access to education, health and other basic services, the right to identity, freedom of religion, language and protection of property and inheritance rights”.<sup>16</sup>
19. **The NIHRC advises that the finalised Standards should incorporate the holistic approach of the UN Guidelines. This should also assist in determining what Service Providers are required to provide for a young person in his or her Supported Lodgings.**
20. The CRC, Article 12 (see para 9) is reflected to some degree under Standard 6 Engagement, Participation and Involvement. This requires that “clear evidence exists of young people’s views and wishes being taken into account in the development and review of their Placement Agreement and Support Plan” and that “records of meetings show evidence of young people’s involvement in influencing service planning and improvement”.
21. The NIHRC advises that Service Providers should be made aware in the finalised Standard 6, that the ensuring the engagement, participation and involvement of the young person in decision making is a legal entitlement in accordance with the CRC, Article 12.
22. The NIHRC further recommends that records should indicate when the young person’s views and wishes have not been taken into account and the reasons for this.

### **Accommodation**

23. Standard 7 Accommodation engages the ICESCR, Article 11, right to an adequate standard of living, which includes adequate housing.<sup>17</sup> The ICCPR, Article 17 and ECHR, Article 8, right to respect for private and family life.<sup>18</sup>
24. The ICESCR Committee, General Comment No 7 outlines what is required for housing to be deemed ‘adequate’. The housing must have

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<sup>16</sup> A/RES/64/142 para 16.

<sup>17</sup> See also, European Social Charter, Articles 14 and 17;

<sup>18</sup> A/RES/64/142

legal security of tenure, adequate lighting, heating and sanitation and be habitable. The location of any housing is also important. For example, in the context of Supported Lodgings a young person accommodated in area where they can access education and training.

25. The right to adequate housing also incorporate the concept of be cultural adequacy. This may be particularly relevant in the case of, for example, finding suitable placements for Irish Travellers. In addition, the UN Guidelines state the importance of according due respect for the young person's cultural, economic, gender and religious differences.<sup>19</sup>
26. The NIHRC notes that many of the requirements listed in General Comment No. 7 are included in Standard 7. Indeed, the NIHRC welcomes the inclusion of the requirement for adequate storage for the young person's private belongings. However, an adequate standard of living requires more than adequate physical conditions. The right also incorporates food and while the relevance of this aspect might not be readily apparent, it is nonetheless important with regard the young person's religious, ethical, cultural beliefs or their health needs.
27. **The NIHRC recommends that the full impact of the right to an adequate standard of living, which includes housing and food is considered with regard to Standard 7.**

### **Young people with disabilities**

28. The CRPD and ECHR, Article 8 case law addresses the duty on relevant public authorities to provide, in certain circumstances, additional special care and assistance for young people with disabilities.
29. In the case of *Burnip v Birmingham City Council* housing benefit rules were declared discriminatory on the ground of disability. The judgment read "the right not to be discriminated against in the enjoyment of the right guaranteed under the Convention is also violated when States without an object and reasonable justification fail to treat differently persons whose situations are significantly different"<sup>20</sup>
30. Young people with disabilities, and in particular, young people with mental disabilities are at particular risk of being excluded from decision making. The CRPD, Article 19 enshrines the right to independent living and to being included in the community and outlines a range of

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<sup>19</sup> Ibid, para 18.

<sup>20</sup> *Burnip v Birmingham City Council and Another* [2102] EWCA Civ 629 quoting *Thlimmenos v Greece* (2003)



support services that are vital in realising that right. Article 23 enshrines the right of children to be cared and provided for within a family setting. The NIHRC notes that there is no mention in the Standards of young people with disabilities and of the specific duties placed on Service Providers in meeting their obligations in this area. At the same time, the NIHRC notes that research from the DHSSPS shows that "care leavers aged 16-18 continue to have a higher proportion of young people coping with disability (12%) than the general population (6%), and in terms of education, higher proportions of care leavers had a Statement of Educational Need (19%) compared with the general school population (5%)".<sup>21</sup>

- 31. The NIHRC advises that the absence of references to young people with disabilities in the Draft Standards is unacceptable. It recommends the inclusion of an additional Standard that recognises the obligations on Service Providers in this regard.**

### **Monitoring arrangements**

32. The arrangement for an external and independent body, the Regulation, Quality and Improvement Authority (RQIA) to monitor compliance with the Standards is positive. However, the scope and extent of the RQIA's powers to inspect a Supported Lodgings Service is not clear. It is important that the RQIA has the authority to inspect the Supported Lodging itself. However, any such inspection must be conducted in a manner that fully respects the young person's and host's right to respect for private and family life, ECHR, Article 8, through, for example, gaining informed consent from the young person and informing the host of the potential of such inspections at the outset.
33. There is substantial emphasis in the Standards on records and documentation in the form of policies and procedures and the need for these to reflect outcomes and the involvement of the young person. Accurate, appropriate and accessible record keeping is of course extremely important for a number of reasons including for inspection and audit purposes. In the event of needing to investigate a complaint, written records are a vital source of evidence for any complaint handler.
- 34. The NIHRC advises that examination of written records should always be an important part of any inspection process. In addition, face-to-face interviews with young people who are or have been placed in Supported Lodgings is also a vital component of any inspection.**

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<sup>21</sup> Northern Ireland Care Leavers 2013/2014  
<http://www.dhsspsni.gov.uk/index/statistics/socialcare/care-leavers.htm>

## Commissioning of services

35. In the 'Introduction' to the Draft Standards it is stated that "Supported Lodgings can be delivered by an external provider based on joint commissioning arrangements between the Northern Ireland Housing Executive and the relevant Health and Social Care Trust or delivered in-house by a Trust".
36. The Human Rights Act (HRA) 1998 gives legal effect in the UK to the majority of human rights contained in the ECHR. Under section 6 HRA 1998, it is unlawful for any public authority to act in a way that is incompatible with ECHR rights. Section 6 applies to all activities of a public authority. In principle, therefore, it includes public procurement by central or local government, whether of goods or services, and thus public services delivered by private providers, for instance, in the area of health and social care.
37. The HRA, section 6(3)(b) provides that "...any person certain of whose functions are of a public nature..." qualifies as a "public authority" for the purposes of the Act and is therefore potentially liable for acting incompatibly with ECHR rights. Accordingly, any private sector or voluntary sector organisation undertaking a function, or functions, "of a public nature" would be under a direct obligation to respect human rights, parallel to those of the commissioning public authority. Correspondingly, any person whose human rights were breached by a private or voluntary provider of a public service would be able to challenge that by taking legal action directly against the provider, rather than being restricted, in seeking redress, to challenging the purchasing public authority.
38. **The NIHRC advises that in commissioning any services to private sources for Supported Lodging the Northern Ireland Housing Executive and the relevant Health and Social Care Trust should seek assurances that the service provider will deliver services in a manner that is fully compliant with domestic and international human rights law.<sup>22</sup> The finalised Standards should clearly state this requirement.**

## Non-retrogression

39. Affording due regard to the principle of non-retrogression is essential for the purpose of compliance with human rights law. The ICESCR Committee, General Comment 3 explains the aim of ensuring full realisation of the rights enshrined in the treaty. In doing so, it is

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<sup>22</sup> For further information see, Public Procurement and Human Rights, November 2013, [www.nihrc.org](http://www.nihrc.org)

also clear that “any deliberately retrogressive measures... would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”<sup>23</sup>

40. The NIHRC notes that the consultation document refers to the Children (Leaving Care) Act (Northern Ireland) 2002 and states that supported lodgings could assist the transition from care. The Draft Standards acknowledge that the 2002 Act “introduced new and enhanced duties on Health and Social Care Trusts in relation to financial responsibilities for 16 and 17 year olds and furthermore held as one of its core objectives that children falling within the entitlements of the Act should only leave care when they are ready and prepared to do so.”<sup>24</sup>
41. The NIHRC further notes that the provision of Supported Lodging will fall under the Children (Northern Ireland) Order 1995 Article 27 (2) (f) which allows for the provision within legislation of “other” arrangements that “seem appropriate to the authority and comply with any regulations made by the [DHSSPS].”<sup>25</sup>
42. It is of critical importance that a young person in Supported Lodgings continues to fall within the ambit of the Children (NI) Order 1995, with full access to the range of services and entitlements afforded to an individual defined as “child in need” for this purpose. Health and Social Care Trusts must continue to fully discharge their Article 18 and 21 requirements to children in need; and in doing so ensure that any child eligible for support under the Children (Leaving Care) Act suffers no detriment in relation to receipt of such provisions as a result of them being provided with Supported Lodgings.
43. The NIHRC has sought assurance from the DHSSPS that this will be case and it understands that the proposed Standards must operate within the current legal framework.
44. **The NIHRC advises that the provision of Supported Lodgings must adhere to the principle of non-retrogression. It recommends that the finalised Standards state clearly that a young person in such circumstances will fall within the ambit of the Children (NI) Order 1995, with full access to the range of services and entitlements afforded to an individual defined as “child in need” for this purpose.**

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<sup>23</sup> ICESCR Committee, General comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the Covenant), para 9.

<sup>24</sup> The Draft Standards, Annex A, p.30.

<sup>25</sup> Ibid.