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# Children's Rights and Educational Policy in Northern Ireland: Implementation of the UNCRC

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The UK's 6th periodic reporting cycle to the United Nations Convention on the Rights of the Child (UNCRC) is underway. In February 2021, the Committee on the Rights of the Child (CRC) is expected to send the UK Government a request for specific information, known as a 'List of Issues Prior to Reporting' (LOIPR). The list asks the UK government and its devolved administrations to detail measures and developments relating to its implementation of the UNCRC.

The purpose of this paper is to highlight the predominant issues currently impacting on a child's right to education in Northern Ireland (NI). It will provide an overview of the UNCRC including how it is implemented and monitored across the UK. The paper will also focus on the concerns and recommendations raised by the CRC in relation to education in its previous round of reporting in 2016, progress made by the NI government on the relevant issues, as well as commentary by key stakeholders in NI.

## Key points

The United Nations Convention on the Rights of the Child (UNCRC) is an internationally binding human rights agreement. It is viewed as the most complete international Human Rights Convention covering civil, political, social and economic rights and has been adopted by the majority of countries.

The Convention has 54 articles, 42 of which set out the civil, political, economic, social and cultural rights that all children up to the age of 18 are entitled to.

The UK ratified the UNCRC in December 1991. Each devolved administration takes forward the UNCRC as appropriate to its own requirements. The Westminster government, however, remains responsible for the overall implementation of the UNCRC across all four nations as well as for reporting responsibilities.

The UNCRC has not yet been incorporated into domestic NI law. There are however a number of other policy and legislative vehicles through which it is envisioned children's rights will be realised in NI including through the Children's Services Co-operation Act (NI) 2015, (CSCA) and the Children and Young People's strategy 2020-2030.

The UNCRC is enforced through ongoing monitoring by an independent team of experts called the UN Committee on the Rights of the Child (CRC). Governments that ratify the Convention or one of its Optional Protocols must report to the CRC in 5 year cycles.

The UK's 6th periodic reporting cycle to the UNCRC is underway. In February 2021, the CRC is expected to send the UK Government a request for specific information, known as a 'List of Issues Prior to Reporting' (LOIPR). The list asks the UK government and its devolved administrations to detail measures and developments relating to its implementation of the UNCRC. The UK government must reply to the LOIPR within one year and their response forms the UK's official report to the CRC.

Several recent international and local challenges including Brexit, the ongoing coronavirus pandemic as well as the absence of a sitting assembly for three years have negatively impacted the progression of children's rights in NI including the right to education.

Articles 28 focus on a child's right to an education and on the quality and content of education. Article 29 focuses on the aims of education and assist the child in developing his or her "personality, talents and mental and physical abilities to their fullest potential"

Ensuring that all children and young people in NI enjoy their right to an effective education is taking place at a time when NI has an increasingly diverse school population including increases in the number of new comer children and children with special educational needs.

The CRC and various NI stakeholders have highlighted several factors that prevent children from accessing a child rights compliant education in NI including:

- Substantial inequalities in access to and outcomes of education among certain groups of children including care experienced children, Traveller children, newcomer children from ethnic minorities, children with SEN and disadvantaged children;
- Inequality of access to education created by academic selection;
- Significant flaws in the education system which present barriers for children with SEN from fully realising their right to an effective education;
- Bullying, including cyberbullying, remains a serious and widespread problem with significant negative outcomes for victims;
- The increasing use of formal and informal exclusions as well as the continued use of isolation rooms in school settings;
- Limited advancement of emotional wellbeing and mental health initiatives in schools;
- Limited advancement of integrated education;
- Limited access to meaningful sexual and reproductive health education; and
- Human rights education in the school curriculum remains a non-statutory obligation.

There are also a number of additional rights clusters within the convention where education policy plays a role. The CRC has highlighted several areas of concern within these clusters including:

- The use of restrictive practices in school settings;
- Concerns regarding the ongoing sexual exploitation and abuse of children;
- Children's food insecurity;
- Access to affordable childcare; and
- Respecting the views of the child.

Stakeholders including the Northern Ireland Commissioner for children and young people (NICCYP) and the Equality Commission have commended encouraging developments in child rights-focused policy and legislation in education since the last review, including:

- The publication of the Children and Young People's strategy;
- The establishment of an expert panel to examine education inequalities and disadvantage;
- Ongoing improvements to SEN provision including the advancement of the SEN Framework; and
- The development of an emotional health and well-being in education framework.

However, significant challenges remain to ensuring a children's rights compliant education. The NICCYP has highlighted that it would like to see an inclusive system of education which enables children and young people in NI to be taught and learn together, and one which is much more efficient and cost effective thus ensuring all children have equal access to an excellent quality education in line with Articles 28 and 29 of the UNCRC.

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# 1 The UN Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCRC) is an internationally binding human rights agreement. A convention is an agreement between countries to obey the same law. When the government of a country ratifies a convention it agrees to take on takes on legal obligations under international law.<sup>1</sup>

Since it was adopted by the United Nations in November 1989, 196 countries have signed up to the UNCRC, with only one country – the United States of America - still to ratify.<sup>2</sup> It is viewed as the most complete international Human Rights Convention covering civil, political, social and economic rights.<sup>3</sup>

The Convention has 54 articles, 42 of which set out the civil, political, economic, social and cultural rights that all children are entitled to. The remaining articles are concerned with how governments must publicise and carry out the convention.

The rights in the convention apply to all children and young people up to 18 years old without exception.<sup>4</sup> The UNCRC is expected to be interpreted as a whole: all the rights are linked and no right is more important than another.<sup>5</sup> However, there are four 'general principles' - or overarching rights - which are seen as necessary for interpreting all the other articles and play a fundamental role in realising all the rights in the Convention for all children. They are:

1. Non-discrimination (Article 2);
2. Best interest of the child (Article 3);
3. Right to life survival and development (Article 6); and
4. Right to be heard (Article 12)<sup>6</sup>

In 2000, two optional protocols were added to the UNCRC. One asks governments to ensure children under the age of 18 are not forcibly recruited into their armed forces. The second calls on states to prohibit child prostitution, child pornography and the sale of children into slavery.<sup>7</sup> These have now been ratified by more than 120 states. A third optional protocol was added in 2011. This enables children whose rights have been violated to complain directly to the CRC.<sup>8</sup>

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<sup>1</sup> See <https://www.nidirect.gov.uk/articles/childrens-human-rights> retrieved on 2nd February 2021

<sup>2</sup> See <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child> retrieved on 3rd February 2021

<sup>3</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2* (2020) <https://www.niccy.org/media/3691/niccy-socnri-2-main-report-web-nov-20.pdf>

<sup>4</sup> As cited in footnote 1 retrieved on the 2<sup>nd</sup> February 2021

<sup>5</sup> See <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/> retrieved on the 2<sup>nd</sup> February 2021

<sup>6</sup> As cited immediately above retrieved on the 2<sup>nd</sup> February 2021

<sup>7</sup> See <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child> retrieved on the 3rd February 2021

<sup>8</sup> As cited directly above

The UK ratified the UNCRC in December 1991.<sup>9</sup> While some important children's rights issues – notably child poverty and immigration – are common across the UK, the approach taken by the four UK nations differs on a number of children's rights issues and each Devolved Administration takes forward the UNCRC as appropriate to its own requirements.<sup>10</sup> The Westminster government however remains ultimately responsible for the implementation of the UNCRC across all four nations as well as for reporting responsibilities.<sup>11</sup>

## 2 Implementing and monitoring the UNCRC

The main way the Convention is enforced is through ongoing monitoring by the CRC. Governments that ratify the Convention or one of its Optional Protocols must report to the CRC, which is made up of 18 experts in the field of children's rights from different countries and legal systems.<sup>12</sup>

Reports to the CRC outline the situation of children in the country and explain the measures taken by the State to realise their rights. Reports are submitted by the State within two years of ratification and every five years thereafter. The CRC has adopted guidelines detailing the information States are expected to give in their implementation reports.<sup>13</sup>

For the purposes of the periodic reports the articles contained in the UNCRC are combined under clusters of rights as follows:

- General Measures of Implementation;
- Definition of a Child;
- General Principles;
- Civil Rights and Freedoms;
- Education, Leisure and Cultural Activities;
- Family Environment and Alternative Care;
- Violence against children;
- Basic Health and Welfare; and
- Special Protection Measures, including the administration of youth justice.

In addition to monitoring a state's compliance with the articles contained within the convention, the CRC also pays particular attention to what it has termed 'general measures of implementation' – the ways in which states make sure laws and policies comply with the UNCRC.<sup>14</sup>

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<sup>9</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2 (2020)*

<sup>10</sup> Report of the UK Children's Commissioners UN Committee on the Rights of the Child Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland, P1

<sup>11</sup> As cited immediately above

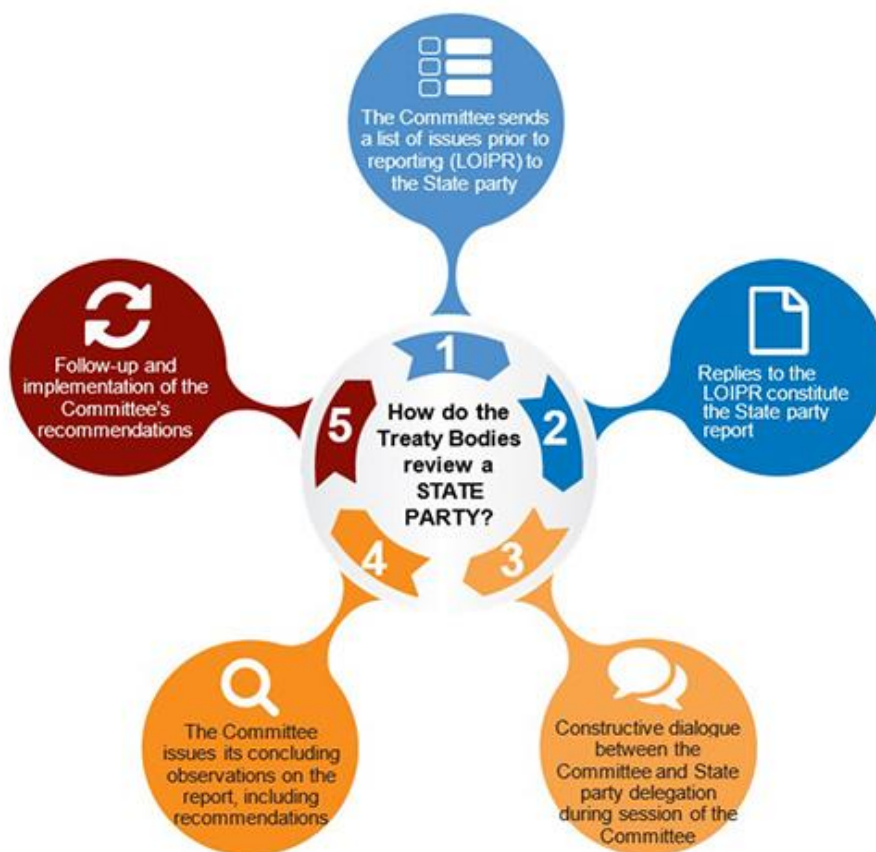
<sup>12</sup> see <https://www.unicef.org/child-rights-convention/implementing-monitoring> retrieved on the 28th January 2021

<sup>13</sup> As cited immediately above

<sup>14</sup> Committee on the Rights of the Child *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child* (2016), Page 2

Recently, States have been able to opt into new guidelines for reporting. This is called the 'simplified reporting procedure'. The five stages of the new reporting procedure are indicated in figure 1. The UK opted into the simplified procedure in August 2019 and its first review under the new procedure will take place in 2021-22.<sup>15</sup>

Figure 1: Reporting Cycle of the Committee on the Rights of the Child<sup>16</sup>



### 3 The UK's 6th periodic reporting cycle (2020-2022)

In February 2021, The CRC will send the UK government a request for specific information, known as List of Issues Prior to Reporting (LOIPR).<sup>17</sup> The LOIPR asks the government about measures and developments relating to their implementation of the UNCRC and can contain up to 30 questions.<sup>18</sup> Prior to publication, stakeholders from each of the four regions in the UK can highlight key issues to be included in the LOIPR through written reports submitted to the CRC. Stakeholders can include non-governmental organisations (NGOs),

<sup>15</sup> See <https://www.togetherscotland.org.uk/about-childrens-rights/un-convention-on-the-rights-of-the-child/monitoring-the-uncrc/> Retrieved on the 28<sup>th</sup> January 2021

<sup>16</sup> See <https://www.ohchr.org/EN/HRBodies/CRC/Pages/ReportingProcedure.aspx> Retrieved on the 28<sup>th</sup> January 2021

<sup>17</sup> See <https://www.ohchr.org/Documents/HRBodies/CRC/CalendarSRP.pdf> retrieved on the 2nd of February 2020

<sup>18</sup> Cited in footnote 15

children's organisations, national human rights institutions (NHRIs), UN agencies, and others such as academics, researchers and civil society organisations.<sup>19</sup>

The UK government must reply to the LOIPR within one year and their response forms the UK's official report to the Committee. Governments of the four regions feed into the overall UK Government report. The deadline for this is the 15th February 2022.<sup>20</sup> After the submission of the report, stakeholders have a further opportunity to send comments or shadow reports, as well as questions for the Committee's upcoming dialogue with the UK government and proposed recommendations.

In September 2022, the CRC will then review all of the evidence they have received and a delegation of officials from the UK then meet in Geneva for a dialogue to discuss the key issues raised.<sup>21</sup> This is an opportunity for the Committee to ask questions of the State delegation and clarify any points.

Following the dialogue, the CRC publishes its concluding Observations which set out the Committee's assessment of how well the UK is implementing the Convention, areas of concern and recommendations for how the state can improve its compliance with the UNCRC.<sup>22</sup> Unlike other conventions, the Committee does not have a formal follow-up procedure, which would provide for the periodic assessment of the implementation of certain recommendations. As a result, independent national monitoring mechanisms (e.g. NGOs and NHRIs) play a major role in raising public awareness about the UNCRC and its goals, and supporting its implementation.<sup>23</sup>

## 4 Implementing the UNCRC in NI legislation and policy

The CRC has highlighted incorporation as a key means of implementation of the Convention within State Parties. Each time the Committee has examined the periodic reports of the UK on the implementation of the UNCRC, it has expressed concern that the Convention has not yet been incorporated into domestic law and emphasised that this must be rectified.<sup>24</sup> The NICCYP highlights that incorporating the UNCRC into domestic law will make it a key tool to improve outcomes for all children and young people in Northern Ireland.<sup>25</sup>

As the convention has not been made part of UK domestic law a child cannot go to court relying only on the UNCRC - courts in the UK may be persuaded by the UNCR when making

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<sup>19</sup> See <https://www.togetherscotland.org.uk/about-childrens-rights/un-convention-on-the-rights-of-the-child/monitoring-the-uncrc/> retrieved on the 2nd of February 2020

<sup>20</sup> Cited directly above

<sup>21</sup> Cited in footnote 19

<sup>22</sup> Cited in footnote 19

<sup>23</sup> see <https://www.unicef.org/child-rights-convention/implementing-monitoring> retrieved on the 29th January 2021

<sup>24</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p2

<sup>25</sup> Northern Ireland Assembly *Briefing to the NI Assembly Ad-Hoc Committee on the Bill of Rights for Northern Ireland*. The Commissioner for Children and Young People (NICCY)



legal judgments but they are not bound by it. This means they are free to make decisions that are incompatible with the UNCRC.<sup>26</sup>

In 2015 the Children's Services Co-operation Act (Northern Ireland) 2015 (CSCA) was passed into law.<sup>27</sup> The act aims to improve the well-being of children and young people in a manner which realises their rights. It places obligations on Departments / Agencies to co-operate with each other in order to contribute to the improvement of outcomes for children and young people. In setting out the definition of what is meant by children's wellbeing the CSCA states that regard is to be had to the relevant provisions of the UNCRC.<sup>28</sup>

The Act also places a statutory obligation on the Government to adopt a Children and Young People's Strategy. This is in line with the CRC's General Comment No. 5 on the General Measures of Implementation of the UNCRC which obliges State Parties to produce a 'national action plan for children'.<sup>29</sup> The Department of Education has responsibility for the development and implementation of this strategy. The strategy is viewed as the key vehicle through which children's rights will be delivered and was published in January 2021.<sup>30</sup>

Stakeholders have highlighted that while the CSCA is a very welcome development in establishing statutory responsibility for agencies to deliver more effectively on children's wellbeing and rights, it does not deliver full incorporation of the UNCRC. Moreover, there have been considerable delays in its implementation, largely due to the lack of a Northern Ireland Executive for 3 years and delays in publishing and implementing the Children's and Young People's Strategy.<sup>31</sup>

## 5 Articles 28 and 29 – a child's right to education

The right to education is included under the rights cluster 'Education, Leisure and Cultural Activities'. Two articles in the UNCRC deal specifically and only with education. Article 28 defines education as a right and recommends steps for this right to be achieved 'progressively and on the basis of equal opportunity'. Primary education should be compulsory and available free to all, while secondary education should be made available and accessible to every child, with financial assistance if needed. States are requested to encourage attendance and reduce drop-out rates and to take measures to ensure that school discipline is administered in a manner consistent with the child's human dignity. They are also asked to promote international co-operation in the field of education.<sup>32</sup>

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<sup>26</sup> See <http://www.crae.org.uk/childrens-rights-the-law/laws-protecting-childrens-rights/un-convention-on-the-rights-of-the-child/> retrieved 26<sup>th</sup> January 2021

<sup>27</sup> See <https://www.legislation.gov.uk/ni/2015/10/contents/enacted> Retrieved 26th January 2021

<sup>28</sup> See <https://www.education-ni.gov.uk/childrens-services-co-operation-act-northern-ireland-2015> Retrieved 2nd February 2021

<sup>29</sup> CRC General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child 2016

<sup>30</sup> See <https://www.education-ni.gov.uk/articles/children-and-young-people> retrieved 2nd February 2021

<sup>31</sup> Northern Ireland Assembly *Briefing to the NI Assembly Ad-Hoc Committee on the Bill of Rights for Northern Ireland*. The Commissioner for Children and Young People (NICCY)

<sup>32</sup> See <https://www.unicef.org.uk/rights-respecting-schools/the-right-to-education/> Retrieved 26<sup>th</sup> January 2021

Article 29 concerns the purpose of school education, which should be to assist the child in developing his or her 'personality, talents and mental and physical abilities to their fullest potential'. Another purpose is to develop respect for human rights and fundamental freedoms. Respect for the child's own roots are also emphasised - parents, cultural identity, language and national values. The article envisions that the school setting should help a child prepare for 'responsible life in a free society' in the spirit of understanding, peace and tolerance. Finally, Article 29 stresses the importance of the school developing respect for the natural environment.<sup>33</sup>

## 6 Recent challenges have negatively impacted children's rights

A joint report carried out by the four UK Children's Rights Commissioners to inform the UK's 6<sup>th</sup> reporting cycle highlighted that since the 2016 periodic reporting process involving the UK Government and devolved administrations, significant challenges have disproportionately affected the rights of children in NI.<sup>34</sup>

Critically, the NI government was suspended from January 2017 until January 2020. The lack of an Executive caused delays to legislative and policy reform in critical areas, including several affecting children. The New Decade, New Approach agreement ensured the restoration of devolved institutions and positively, contains important legislative and policy initiatives concerning children.<sup>35</sup>

Brexit poses significant challenges to the rights of children across the UK, particularly in Northern Ireland. The NICCYP has highlighted how the European Union Withdrawal Agreement Act removes the EU Charter of Fundamental Rights from UK law, "weakening legal protections for children".<sup>36</sup> Access to child protection measures such as the European Arrest Warrant, sharing of criminal record information and a 'real-time' crime alert system, which enables quick action where a vulnerable child is at risk, including potential parental abduction and trafficking, will be lost also be lost unless a 'Future Security Partnership' can be agreed.<sup>37</sup>

The onset of the ongoing pandemic in early 2020 saw NI move into a 'full lockdown' on 23 March 2020 with full closure of schools. As a result the NI Executive has had to refocus in responding to an unprecedented situation, redeploying resources – human, financial and

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<sup>33</sup> Cited directly above

<sup>34</sup> Report of the Children's Commissioners of the United Kingdom of Great Britain and Northern Ireland to the United Nations Committee on the Rights of the Child. *Examination of the combined 6<sup>th</sup> and 7<sup>th</sup> reports of the United Kingdom of Great Britain And Northern Ireland (2020)* page 2

<sup>35</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2 (2020)*, page 5

<sup>36</sup> Northern Ireland Assembly *Briefing to the NI Assembly Ad-Hoc Committee on the Bill of Rights for Northern Ireland*. The Commissioner for Children and Young People (NICCY)

<sup>37</sup> Cited directly above

physical – to address the public health crisis. The resulting actions have had an unprecedented impact on children’s lives in particular their access to education.<sup>38</sup>

The Children’s Law Centre (CLC) has highlighted how the combined effects of the Government suspension and Brexit resulted in stagnation of the NI economy between 2016 and 2018. Furthermore the added impact of COVID-19, and heightened concern over the UK/EU trade agreement, resulted in the NI economy entering into recession in the last quarter of 2019.<sup>39</sup> The UK economy similarly entered into recession in the second quarter of 2020. This is significant for NI as its economy is heavily reliant on Westminster for economic support once EU support ends, including funding to manage additional costs of transition.<sup>40</sup>

## 7 Context: NI’s school population continues to rise and diversify

Initial data for the 2020-21 academic year indicates that 352,000 pupils are registered in funded schools in NI. This has increased for the eleventh successive year, and has risen by almost 3,500 pupils alone compared to last year. Of those pupils, 173,268 are in primary school and 148,992 are in post-primary education.<sup>41</sup> Of those post primary students, 64,399 attend Grammar Schools and 84,523 attend non-Grammar Schools.<sup>42</sup> Furthermore, in 2019-20:

- Irish Medium enrolments continued to rise - 6,816 pupils were being educated through the medium of Irish;<sup>43</sup>
- The number of Pupils in integrated education (24,261) also demonstrated an increase;<sup>44</sup>
- 666 pupils were enrolled in Education Other Than at School (EOTAS) centres;
- Approximately 92,000 pupils are entitled to free school meals;<sup>45</sup> and
- 2,635 pupils in education were described as looked after.<sup>46</sup>

Schools in NI have also continued to be increasingly ethnically diverse with a yearly increase in the number of pupils whose first language is not English. School enrolment data for the 2018/19 academic year identified 17,391 newcomer pupils, accounting for 5% of the school population.<sup>47</sup> This represents an increase of almost 5,500 pupils over the last five years. In

<sup>38</sup> Northern Ireland Commission for Children and Young People *Statement On Children’s Rights In Northern Ireland 2 (2020)*, page 29

<sup>39</sup> Haydon, D *Northern Ireland Ngo Stakeholder Report To Inform The Un Committee On The Rights Of The Child’s ‘List Of Issues’ Prior To Reporting (2020)* P5

<sup>40</sup> Cited directly above P5

<sup>41</sup> Department of Education *Annual enrolments at grant-aided schools in Northern Ireland 2020-21 Basic provisional statistics (2020)*, P6

<sup>42</sup> Cited directly above, p8

<sup>43</sup> Department of Education *Irish Medium Education 2019-20 Key Statistics (2020)*

<sup>44</sup> Department of Education *Integrated Education in Primary and Post Primary Schools 2019-20 Key Statistics (2020)*

<sup>45</sup> Department of Education *Annual enrolments at grant-aided schools in Northern Ireland 2020-21 Basic provisional statistics (2020)*, P 9

<sup>46</sup> Department of Education *Looked After Children in Education 2019-20 Key Statistics (2020)*

<sup>47</sup> Department of Education *Newcomer Pupils in Education 2019-20 Key Statistics (2020)*

2019/20, there were approximately 89 first languages spoken by pupils, with Polish and Lithuanian being the most common behind English.<sup>48</sup>

There are growing numbers of children with special educational needs (SEN). In Northern Ireland, 67,254 pupils have some form of SEN, representing 19.3% of the total school population.<sup>49</sup> Of those children, 19,302 or 5.5% have a statutory statement of SEN.<sup>50</sup> Special School enrolments have also gradually increased, rising by nearly 1,000 pupils in the last five years to 6,403 in 2020-21.<sup>51</sup> Special schools have a much higher than average proportion of pupils entitled to free school meals (48%).<sup>52</sup>

## 8 Challenges to a children's education rights in NI

The combined report submitted by the four Children's Commissioners highlights, that despite encouraging developments in child rights-focused policy and legislation since the last review, the benefits have not been universally felt across the UK. Implementation of the UNCRC remains slow and disjointed and deep and persistent inequalities remain and have increased in some areas.<sup>53</sup>

In its 'Statement on Children's Rights in Northern Ireland 2' report, the NICCYP presents a multitude of issues that prevent every child's full participation in, and access to, a child rights compliant education system.<sup>54</sup> The following section considers those issues in more detail, specifically focusing on the concerns and recommendations raised by the CRC in the previous round of reporting, the progress made by the NI government on the relevant issues as well as comments by key stakeholders in NI.

### **Inequality of access to and outcomes of education persist**

As part of its concluding observations on the fifth periodic report of the UK, the CRC expressed its concerns that substantial inequalities persist in educational attainment in the UK, particularly for boys, children living in poverty, Roma, gypsy and traveller children, children with disabilities, children in care and newcomer children. This is reflected in NI where the Equality Commission has identified certain groups of children as being more likely to demonstrate lower levels of academic achievement and lower levels of progression to further education, including: care experienced children; Traveller children; children from

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<sup>48</sup> Cited directly above

<sup>49</sup> Department of Education *Special Educational Needs 2019-20 Key Statistics* (2020)

<sup>50</sup> Cited directly above

<sup>51</sup> Department of Education *Annual enrolments at grant-aided schools in Northern Ireland 2020-21 Basic provisional statistics* (2020), P 9

<sup>52</sup> Cited directly above

<sup>53</sup> Report of the Children's Commissioners of the United Kingdom of Great Britain and Northern Ireland to the United Nations Committee on the Rights of the Child. *Examination of the combined 6<sup>th</sup> and 7<sup>th</sup> reports of the United Kingdom of Great Britain And Northern Ireland* (2020) p2

<sup>54</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2* (2020)p15 and *Children and Young People (NICCY)* (2020)

ethnic minorities; children with a disability, children with additional needs and children from disadvantaged backgrounds.<sup>55</sup>

In addition to lower educational attainment, the groups of children and young people mentioned above experience additional barriers that prevent them accessing a high quality education in line with Articles 28 and 29 of the UNCRC. For example, refugee and asylum seeking children may experience language barriers and have limited previous experience of formal education, Care experienced children and young people may be affected by learning difficulties not being identified and problems experienced while they are in care not being understood by teachers as well as traveller children who are more likely to be excluded from school and have lower school attendance.<sup>56</sup>

The CRC recommended that that the UK should enhance its efforts to reduce the effects of the social background or disabilities of children on their achievement in school and to guarantee the right of all children to a truly inclusive education in all jurisdictions. The concluding remarks further commented that NI should abolish the practice of unregulated admission tests to post-primary education.<sup>57</sup>

The use of unregulated ‘transfer tests’ (i.e. academic selection) continues to exacerbate educational inequalities in NI.<sup>58</sup> Academic selection differentially adversely affects children from disadvantaged groups evidenced by the fact that 37.8% of children in non-Grammar schools and only 13.7% of children in Grammar schools are entitled to free school meals.<sup>59</sup> Recent research found that preparation for the transfer test was also a significant source of anxiety for young children.<sup>60</sup>

Northern Ireland’s New Decade New Approach has committed the DE to a number of key priorities related to education including raising standards and equal access to the curriculum for all pupils. This is to be achieved through an independent review of the education system in NI as well establishing an expert group to examine and address links between the persistent educational underachievement and socio-economic background. Both reviews have been commenced. The DE also has a wide and varied range of policies and programmes in place designed to support children’s access to education.<sup>61</sup> While commending the pro-active steps being taken by a range of bodies, including government departments across all sectors, to promote equality in education, the Equality Commission

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<sup>55</sup> See <https://www.equalityni.org/KeyInequalities-Education> Retrieved on 26th of January

<sup>56</sup> Haydon, D *Northern Ireland Ngo Stakeholder Report To Inform The Un Committee On The Rights Of The Child’s ‘List Of Issues’ Prior To Reporting Supporting Evidence* (2020) p67

<sup>57</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p19

<sup>58</sup> Haydon, D *Northern Ireland Ngo Stakeholder Report To Inform The Un Committee On The Rights Of The Child’s ‘List Of Issues’ Prior To Reporting* (2020) p28

<sup>59</sup> Department of Education *Free School Meals Key Statistics 2019-20 Key Statistics* (2020)

<sup>60</sup> Cited in footnote 48 p67

<sup>61</sup> See <https://www.assemblyresearchmatters.org/2020/10/12/every-child-deserves-a-real-chance-in-life-a-renewed-government-focus-on-solving-educational-underachievement-in-northern-ireland/> retrieved 16<sup>th</sup> February 2021

and the Northern Ireland Commissioner for Children and Young people NICCY highlight that significant challenges remain.<sup>62</sup>

Furthermore, stakeholders have highlighted how challenges presented by COVID-19 to the delivery of education, including insufficient numbers of digital devices and inconsistent pupil engagement with remote learning are being felt more sharply by Children in NI who are already experiencing persistent inequalities in the education system.<sup>63</sup> The NICCY has called on the Government to ensure thorough and ongoing assessment of the impact of the Covid-19 pandemic and Government response to this on all children and young people's access to education.<sup>64</sup>

### **Insufficient funding of the education system**

In its 2016 examination of the UK Government's compliance with its obligations under the UNCRRC, the CRC made a number of recommendations relevant to the funding of education. The Committee recommended that the UK should allocate the maximum extent of available resources with a special focus on eradicating child poverty and reducing inequalities within and across all jurisdictions. Furthermore with regard to the cost of education the Committee recommended that the UK should guarantee the right to free compulsory primary education for all, by prioritizing free and quality primary education in public schools.

The joint report from the four Children's Commissioners of the UK indicates that insufficient funding continues to hinder universal access to education in NI. The report notes that spending on education per child was considerably lower than the rest of the UK, and a smaller proportion of this reached schools in NI than other jurisdictions.<sup>65</sup> Pressure on the education budget is likely to be further exacerbated by the ongoing health pandemic.<sup>66</sup>

The NI Affairs Committee Inquiry into Education Funding in Northern Ireland in 2019 cited a lack of a functioning assembly, changing school demographics as well as increases in spending on SEN and Disability as some of the additional pressure being placed on the education budget.<sup>67</sup>

While children are supposed to be provided with a free school place, this is not the reality, research by the NICCY in 2017 indicated that on average parents spent £1,222.30 per child on education in the previous year.<sup>68</sup> As a result many children in NI may be denied access to

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<sup>62</sup> Equality Commission for Northern Ireland *Key Inequalities in Education* (2017) and NICCY *Monitoring Table UNCRRC Committee's Concluding Observations -2020 Update [Northern Ireland]*

<sup>63</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2* (2020)p32

<sup>64</sup> Cited directly above p33

<sup>65</sup> Report of the UK Children's Commissioners UN Committee on the Rights of the Child. *Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, P34

<sup>66</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2* (2020)p28

<sup>67</sup> Northern Ireland Affairs Committee inquiry into education funding *The education budget and school funding 2019*

<sup>68</sup> 'Northern Ireland Commission for Children and Young People A 'free' education? *The cost of education in Northern Ireland 2017*, p13

critical educational opportunities and key entitlements as a result of their parents' inability to pay.<sup>69</sup>

There is also increasing disparity between schools not only in terms of what provision is offered, but also how much it costs to access this provision, further increasing inequality.<sup>70</sup> The inquiry noted that the structure of the education system contributes significantly to the strain on the education budget and that the issues in the funding of education in NI cannot be fully addressed without fundamental reform of the education system.

## Failures in provision for children with SEN

Several recent reports have highlighted significant flaws in the education system which have presented barriers for children and young people with SEN and/or disabilities in mainstream schools from fully realising their right to an effective education under articles 28 and 29 of the UNCRC.

Specific barriers highlighted in the reports include:

- Lack of early identification and intervention and subsequent provision of supports;
- Lack of provision for children with SEN in early years settings;
- Provision of services that are neither evidence based nor subject to regular evaluation;
- Lack of clear information for parents/carers and other stakeholders;
- Significant shortcomings in management of the statementing process;
- Increases in number of statementing appeals; and
- Unsustainability of current funding arrangements for SEN services.<sup>71</sup>

Significant barriers also exist for children and young people with Sen and/or disabilities who require specialist provision. While the numbers of children with SEN requiring this type of provision are increasing annually, there are insufficient specialist placements available to accommodate children who cannot attend mainstream schools. Challenges in the system have been further exacerbated by extensive delays in the implementation of the new policy and legislative framework for SEN in Northern Ireland.

The COVID 19 pandemic has had a detrimental impact on the rights of children with SEN, with ongoing criticism of the impact of the temporary modification of education duties on the provision for children with SEN and disabilities. The limit support received during the crisis has had a harmful

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<sup>69</sup> Cited directly above p5

<sup>70</sup> 'Northern Ireland Commission for Children and Young People A 'free' education? *The cost of education in Northern Ireland* 2017 p6

<sup>71</sup> Northern Ireland Audit Office *Impact Review of Special Educational Needs (2020)*, Northern Ireland commissioner for Children and Young People *'Too Little, Too Late' A Rights Based Review of Special Educational Needs Provision in Mainstream Schools Main Report (2020)* and Northern Ireland Assembly Press Releases *Education Committee Expresses Dismay Over Mismanagement of SEN Statementing Process (2020)*

effect on the education, health and wellbeing of these children and young people, as well as on parents and carers.<sup>72</sup>

Stakeholders have acknowledged that since the publication of the reports mentioned above, the relevant authorities have acknowledged the need for widespread change and have begun making several improvements to ensure the educational needs of children with SEN are met. Work on the new SEN framework has also been advanced.<sup>73</sup> The NICCYP highlight that the new SEN Framework provides an opportunity for systemic improvements to be made, and that the revised Regulations and new Code of Practice are vehicles through which the recommendations from their report can be actioned. Implementation of the New SEN Framework must remain a matter of priority for the DE.<sup>74</sup>

## Bullying in NI schools

Research carried out by the EA identified that bullying is amongst the key issues facing pupils in Northern Ireland, with respondents aged 9 – 13 years reporting it as the biggest issue.<sup>75</sup> The National Children's Bureau further identified newcomer children and LGBTIQ+ children to be at particular risk of bullying.<sup>76</sup>

In its concluding recommendations and observations in 2016 the UNCRC raised concerns that bullying, including cyberbullying, remains a serious and widespread problem in the UK and that all four regions should intensify their efforts to tackle bullying and violence in schools, conduct regular monitoring of incidences of bullying at school, and involve children in the initiatives and monitoring aimed at eliminating bullying.<sup>77</sup>

Currently, the Education and Libraries (Northern Ireland) Order 2003 requires all grant-aided schools to include within their discipline policy, an anti-bullying policy which includes measures to prevent all forms of bullying among pupils. The effectiveness of these measures is monitored through the regular cycle of school inspections of pastoral care arrangements.<sup>78</sup> Furthermore the Addressing Bullying in Schools (NI) Act 2016 which was granted Royal Assent in May 2016 was due to come into effect in September 2019 and would place a statutory duty on schools to comply with the provisions of the act.<sup>79</sup> However the NICCYP has reported that the act has not been commenced due to trade union concerns

<sup>72</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2* (2020) P32

<sup>73</sup> See <https://www.education-ni.gov.uk/articles/review-special-educational-needs-and-inclusion#toc-0> Retrieved on the 26<sup>th</sup> of January 2021

<sup>74</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2* (2020)p25

<sup>75</sup> Education Authority *Regional Assessment Of Need Draft Addendum 2018* p16

<sup>76</sup> Dorris, C, Lyons, F and Nugent, R. *Informing the development of an emotional health and wellbeing framework for children and young people in Northern Ireland* (2019)

<sup>77</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p11

<sup>78</sup> See <https://www.education-ni.gov.uk/articles/dealing-bullying> retrieved 25th January 2021

<sup>79</sup> See <https://www.eani.org.uk/school-management/policies-and-guidance/addressing-bullying-in-schools-act-2016> retrieved 25th January 2021



and the DE agreed a temporary pause on its enactment ‘in order to facilitate further meaningful dialogue on this issue and to allow us to seek an agreed resolution to union concerns, where possible.’<sup>80</sup> The CLC are calling for this Act to be implemented as soon as possible.<sup>81</sup>

### **The practice of suspension, exclusion and off-rolling**

The CRC 2016 concluding remarks and recommendations highlighted a worrying UK wide pattern of formal or informal exclusions (where children are sent home early or put on part-time timetables, where the exclusions are not being recorded) and recommended that the UK forbid and abolish the practice of “informal” exclusions.<sup>82</sup> In NI the continuing use of this practice is evidenced by NICCY’s Legal and Investigations work and recent comprehensive review of SEN provision in mainstream school. Pupils with SEN and/or disability are almost twice as likely to be suspended as their peers and almost half of expulsions since 2015/16 have involved children with SEN in Northern Ireland.<sup>83</sup>

Due to the failure to record these “informal” suspensions or exclusions they are not being properly documented, resulting in a hidden problem with no data collection hampering knowledge about the scale of the issue. Evidence suggests that schools are employing such measures because teachers lack the skill and capacity to respond to the needs of children with SEN. Informal exclusions have also been attributed to a lack of available support services for behavioural management.<sup>84</sup> Furthermore, the NICCYP has highlighted that the use of isolation facilities in school settings continue despite the Committee’s 2016 recommendation for abolition of their use. The NICCYP are call for urgent action to be taken to end the practice.<sup>85</sup>

The DE has stated that it is reviewing arrangements for the suspension and expulsion arrangements. This work is being supported by an engagement group which is representative of schools and children’s advocates, and is overseen by a Project Board representative of all managing authorities for schools. The Department is considering the issue of seclusion with relevant partners and will report back to the Minister in due course.<sup>86</sup>

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<sup>80</sup> Northern Ireland Commission for Children and Young People *Statement On Children’s Rights In Northern Ireland 2* (2020)p28

<sup>81</sup> Haydon, D *Northern Ireland Ngo Stakeholder Report To Inform the Un Committee On The Rights Of The Child’s ‘List Of Issues’ Prior To Reporting Supporting Evidence* (2020) P75

<sup>82</sup> UNCRG *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p19

<sup>83</sup> NICCY, 2020, ‘Too Little, Too Late,’ *A Rights Based Review of Special Educational Needs Provision in Mainstream School* (2020) p77

<sup>84</sup> Cited directly above p79

<sup>85</sup> NICCY *Monitoring Table UNCRG Committee’s Concluding Observations -2020 Update* [Northern Ireland]

<sup>86</sup> Cited directly above

## Emotional wellbeing and mental health in schools

It is well recognised that schools, the DE and the wider education system play a central role in supporting children and young people's emotional wellbeing and mental health.<sup>87</sup>

In their 2016 concluding remarks, the CRC welcomed the significant efforts undertaken both at national and devolved levels to improve mental health services for children and young people. However the Committee remained concerned that the number of children with mental health needs is increasing across the UK and the number of child suicides has been steadily increasing in Northern Ireland in the past 10 years.<sup>88</sup> The CRC further recommended that all jurisdictions of the UK should regularly collect comprehensive data on child mental health as well as rigorously investing in child and adolescent mental health services including develop comprehensive strategies at the national and devolved levels.<sup>89</sup>

Despite the CRC's recommendation that comprehensive data on child mental health is regularly collected, the true scale of poor mental health among children and young people in Northern Ireland remains unknown as there is no regularly available prevalence data. A 2020 Youth Wellbeing Prevalence Survey indicates that NI has higher levels of mental ill health than any other UK jurisdiction – 1 in 8 (12.6%) children in Northern Ireland had an emotional disorder such as anxiety or depression compared with 1 in 12 (8.1%) in England.<sup>90</sup> Furthermore, suicide rates are higher than in the other UK jurisdictions (17.8 per 100,000 aged 15-24 compared with 8.1 in England, 9.7 in Wales and 15.1 in Scotland).<sup>91</sup>

Despite the CRC urging the four jurisdictions to invest heavily in health services for Children and Young People, an in-depth review of Child and Adolescent Mental Health Services (CAMHS) in Northern Ireland by the NICCYP describes how C&YP are waiting too long to ask for help, waiting too long to get the right support when they ask for it and waiting too long for systems /services to change.<sup>92</sup> The report also expressed concerns about the lack of focus on mental health and well-being in the school setting. Stakeholders have noted that the Independent Counselling Service for Schools is at maximum capacity and not statutorily funded in primary schools and there is a lack of confidence, skills and knowledge amongst school and youth services staff to support children with mental health issues.<sup>93</sup> The NICCYP has called for the adoption of a consistent regional approach to educating children, and normalising conversations about mental health and emotional well-being, as well as the need

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<sup>87</sup> See <https://www.bera.ac.uk/blog/children-and-young-peoples-mental-health-the-role-of-schools> accessed on the 25th of January 2021

<sup>88</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p19

<sup>89</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p19

<sup>90</sup> Bunting, L. et al *The Mental Health of Children and Parents in Northern Ireland. Results of the Youth Wellbeing Prevalence Survey*, October 2020, p47

<sup>91</sup> RCPCH *State of Child Health*. Northern Ireland (2020) p23

<sup>92</sup> NICCYP *Still Waiting' A Rights Based Review of Mental Health Services and Support for Children and Young People* (2020) p204

<sup>93</sup> Cited in footnote 87 p50

for mandatory mental health training for all teachers in schools, and better working arrangements between schools and CAMHS.<sup>94</sup>

The NICCYP has also called for the implementation of a broader measure of well-being across all schools in Northern Ireland, one that measures long term educational outcomes which relate to the development of the personality, talents and abilities of individual children in line with that envisioned in Article 29 of the UNCRC rather than just academic achievement.<sup>95</sup>

There have been a number of recent initiatives focusing on improving mental health in Northern Ireland generally as well as specific actions relating to children and young people. These include the 2020 Mental Health Action Plan and the appointment of a 'Mental Health Champion'. Furthermore, the publication of the emotional health and well-being in education framework should if successfully implemented result in improvements in mental health awareness and literacy, and alleviate mental health difficulties in schools.<sup>96</sup>

There is strong evidence that the ongoing pandemic has had a negative effect on young people's mental health, and an increasing recognition they have been more adversely affected than older age-groups.<sup>97</sup> Recent research from Barnardos revealed that teachers were concerned about the long-lasting impact of Covid-19 on children's mental health and wellbeing. The report also found that schools would welcome more support with emotional health and wellbeing including increased funding and that this needed to be a priority area in the future.<sup>98</sup> In recognition of the identified needs for additional mental health supports in schools, the DE has established a number of measures including the Wellbeing Fund, the purpose of which is to provide £5 million to all schools for the purposes of providing emotional support and nurture as well as sporting and fun activities.

### **Limited advancement of integrated education**

As part of the wide range of recommendations that the CRC made in their 5<sup>th</sup> report concerning children's rights and education in the UK, it specifically recommend that the NI government should actively promote a fully integrated education system and carefully monitor the provision of shared education, with the participation of children, in order to ensure that it facilitates social integration.<sup>99</sup>

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<sup>94</sup> Cited in footnote 88

<sup>95</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2* (2020)p26

<sup>96</sup> Cited directly above

<sup>97</sup> Centre for Longitudinal Studies, Institute of Education, University College London, *Mental health during lockdown: Evidence from four generations* (2020)

<sup>98</sup> see <https://www.barnardos.org.uk/news/almost-90-teachers-agree-covid-19-pandemic-could-have-impact-pupils-mental-health> retrieved 25th January 2021

<sup>99</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p19

The Department of Education has a statutory duty under Article 64(1) of the Education Reform (Northern Ireland) Order 1989 to encourage and facilitate the development of integrated education and funds the Northern Ireland Council for Integrated Education (NICIE) to help it fulfil its statutory duty.<sup>100</sup> However, current data indicates that only 6% of primary and 8.9% of non-grammar post-primary pupils are enrolled in integrated schools.<sup>101</sup> There is evidence to suggest that the existing 65 integrated schools are also unable to meet demand - a particular problem at post-primary level where almost a quarter of Year 8 students who applied for admission to an integrated school in 2019 were unsuccessful in obtaining a place.<sup>102</sup>

An Independent Review of Integrated Education was commissioned by the DE and completed in 2016, however, no time bound targets were set for implementation of the recommendations, which included an in-depth audit of demand for places in existing integrated schools and pro-active plans for increasing the places available in the integrated sector.<sup>103</sup>

### **Lack of meaningful sexual health education in schools**

In 2016, the CRC recommended that the UK should ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools across the UK. Furthermore, this education should provide age-appropriate information on: confidential sexual and reproductive health-care services; contraceptives; the prevention of sexual abuse or exploitation, and sexuality.<sup>104</sup>

In NI, each school is required to have in place its own written policy on how it will address the delivery of RSE. Beyond the statutory minimum content required by the curriculum, schools have flexibility in what is covered under their policy and when it is covered. This gives each school the scope to make its own decisions on how best to meet the needs of its pupils.<sup>105</sup>

The NICCY has highlighted that this approach which enables grant-aided schools to develop their own policy on how they will address RSE within the curriculum, is contrary to both the CRC's recommendation that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools in NI and section 9 of the Northern Ireland (Executive Formation etc.) Act 2019 which requires the implementation of the recommendations of the CEDAW report and therefore the introduction of a compulsory RSE curriculum in Northern Ireland.<sup>106</sup>

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<sup>100</sup>Cited directly above p77

<sup>101</sup> Department of Education *Integrated education in primary and post primary school 2019-20 Key Statistics* (2020)

<sup>102</sup> NI Council for Integrated Education *NICIE Impact Report 1 April 2019 – 31 March 2020*. (2020) p7

<sup>103</sup> Cited in footnote 98

<sup>104</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p16

<sup>105</sup> See <https://www.education-ni.gov.uk/articles/relationships-and-sexuality-education> retrieved 2nd February 2021

<sup>106</sup> NICCY *Monitoring Table UNCRC Committee's Concluding Observations -2020 Update* [Northern Ireland]

It also stands in contrast with regulations passed by Parliament to ensure that all English post-primary schools teach RSE and all primary schools teach Relationships Education from September 2020. The NICCYP has highlighted that any reform of the education system must focus on raising standards, and improving access to the curriculum for all pupils. As part of this, it is essential that children and young people across Northern Ireland have access to Relationships and Sexuality Education (RSE).<sup>107</sup>

### **Children's rights education**

Whilst the UNCRC and children's and young people's rights are reflected within the NI school curriculum throughout Key Stages 1 to 4 it is not a statutory element of the curriculum in NI.<sup>108</sup> Young people have demonstrated limited knowledge about children's rights, the UNCRC and the role of the NICCYP.<sup>109</sup>

## **9 Additional rights clusters where education policy has a role**

There are several other rights clusters that are interrelated with a child's right to education and some of the responsibilities for their implementation fall under the remit of the Department of Education. These include:

- Respect for the views of the child
- Violence against children
- Family environment and alternative care
- Disability, basic health and welfare

### **Civil Liberties and Freedom - respect for the views of the child**

*'Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously'*<sup>110</sup>

Lack of child participation in legislation and policy development, service planning and delivery continues. Stakeholders have highlighted how most recently the UK and Northern Ireland Governments have excluded children from major policy decisions, such as those concerning Brexit or planning for/ responses to COVID-19.<sup>111</sup> The CRC has previously recommended the establishment of structures for the active and meaningful participation of

<sup>107</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2(2020)*p28

<sup>108</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2(2020)*p29

<sup>109</sup> Haydon, D *Northern Ireland Ngo Stakeholder Report To Inform the Un Committee On The Rights Of The Child's 'List Of Issues' Prior To Reporting Supporting Evidence (2020)* P75

<sup>110</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland CRC/C/GBR/CO/5 (2016)* p6

<sup>111</sup> Haydon, D *Northern Ireland Ngo Stakeholder Report To Inform the Un Committee On The Rights Of The Child's 'List Of Issues' Prior To Reporting Supporting Evidence (2020)* P24-25

children and give due weight to their views in designing laws, policies, programmes and services at the local and national level.<sup>112</sup>

The Children and Young People's Strategy includes as one of its key principles the need to take into account the views of children and young people. The structures which will be established to implement the strategy will include the participation of children and young people and the DE has indicated that a 'Young People's Participation in Decision Making Project' is under way to implement this.<sup>113</sup>

Furthermore, after many years of lobbying by child and youth organisations, in July 2020 the Northern Ireland Assembly Commission announced its plans to introduce a Youth Assembly. The NICCY has welcomed the establishment of the Youth Assembly and believes the proposal demonstrates an intention to best practice.<sup>114</sup> However, there is still no explicit DE policy in place to require that children and young people are involved in having a say in decisions that affect their lives within the school environment. This absence has been remarked on by both NICCY and the CRC on a regular basis.<sup>115</sup>

### **Civil Rights and Freedoms - Freedom of thought, conscience and religion**

Compulsory worship continues in NI schools. Despite the CRC's recommendation it is still the case that, under Article 21 of the Education and Libraries (Northern Ireland) Order 1986, the school day in every grant-aided school must include collective worship and no action has been taken to permit pupils to withdraw from these sessions.<sup>116</sup>

### **Violence against children – The use of restrictive practices in schools**

The CRC highlighted concerns about the continued use of restraint and seclusion on children with psychosocial disabilities, including children with autism, in schools. The CRC recommended that all regions in the UK ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort. The CRC also recommended that governments systematically and regularly collect and publish data on the use of restraint and other restrictive interventions on children.<sup>117</sup>

A number of high profile reports recently revealed the widespread and largely unmonitored use of both practices in schools across the UK.<sup>118</sup> As a result of these reports the English,

<sup>112</sup> Cited in footnote 108 p7

<sup>113</sup> NI Executive *Children and Young People's Strategy 2020-2030* (2020)

<sup>114</sup> <https://www.niccy.org/media/3724/niccy-monitoring-table-november-2020-concluding-observations-final.pdf>

<sup>115</sup> Northern Ireland Commission for Children and Young People *Statement On Children's Rights In Northern Ireland 2(2020)P96*

<sup>116</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p26 and Haydon, D Northern Ireland Ngo Stakeholder Report To Inform the Un Committee On The Rights Of The Child's 'List Of Issues' Prior To Reporting Supporting Evidence (2020) P26

<sup>117</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p8

<sup>118</sup> The Challenging Behaviour Foundation (2019) *Reducing Restrictive Intervention of Children and Young People Case study and survey results* January 2019, Children and Young People's Commissioner Scotland (2018) *No Safe Place: Restraint and*

Scottish and Welsh governments have introduced or are in the process of introducing new frameworks aimed at reducing reliance on these practices in educational settings.<sup>119</sup> Northern Ireland is lagging behind in this regard with no indication that the DE is planning to release similar guidance. In NI, data on the use of restraint, seclusion and restrictive practices in educational settings is currently not collected, collated and made available.<sup>120</sup> Furthermore the NICCYP highlights guidance from the DE is out of date and does not require schools to record, train staff or report all incidences of restraint and seclusion.<sup>121</sup>

The NICCY has stated that it has become increasingly concerned about the use of restraint, seclusion and other restrictive practices in a range of settings, most notably in education and is undertaking a joint piece of work with NIPSO on the issue.<sup>122</sup>

### **Violence against children – The impact of paramilitarism**

The CRC raised concerns that in Northern Ireland, children face violence, including shootings, carried out by ‘non-State actors’ involved in paramilitary-style attacks and recommended that the state take immediate and effective measures to protect children from paramilitary style violence and from recruitment into violent activities.<sup>123</sup> In a submission to the UN Committee against Torture in 2019, the NICCYP called on the UK and NI governments to continue to work on addressing the role of ‘paramilitary organisations’ in the lives of children and young people.<sup>124</sup>

The DE reported that it has developed a number of programmes to support efforts to prevent vulnerable young people from being involved in paramilitary activity and from being harmed by paramilitary violence. The programmes which are funded by the executive’s Tackling Paramilitarism Programme (TPP) include:

- The EA’s Youth Outreach programme “Steer Teenagers Away from Recurrent Trouble”(START) - 13 youth outreach workers located in areas of high paramilitary activity work with young people identified as being at higher risk of involvement in paramilitary activity;
- A DE campaign to promote pupil attendance at school and a pilot programme which provides wrap-around education services to C&YP in four geographical areas which are significantly impacted by social and economic disadvantage and paramilitary activity; and

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*Seclusion in Scotland’s Schools* and BBC Five Live Investigates – *Restraint in Special Schools* [online] Available at: <https://www.bbc.co.uk/programmes/b08ljdhv>

<sup>119</sup> HM Government *Reducing the Need for Restraint and Restrictive Intervention* Department of Education and Department of Health (2019) and Welsh Government *Consultation Document Reducing Restrictive Practices Framework* Number: WG38962 (2019)

<sup>120</sup> NICCY *Monitoring Table UNCRC Committee’s Concluding Observations -2020 Update* [Northern Ireland]

<sup>121</sup> Cited directly above

<sup>122</sup> Cited in footnote 117

<sup>123</sup> Cited in footnote 114 p11

<sup>124</sup> Haydon, D *Northern Ireland Ngo Stakeholder Report To Inform the Un Committee On The Rights Of The Child’s ‘List Of Issues’ Prior To Reporting Supporting Evidence* (2020) P38

- CCEA resources to promote and support the teaching of active citizenship as a way of tackling paramilitarism and promoting lawfulness.<sup>125</sup>

The NICCY had commented that whilst the efforts by the DE to progress the aforementioned initiatives are positive, the most recent data show an increase in paramilitary style assaults from previous years and that more work clearly needs to be done to protect children from paramilitarism. Furthermore, the NICCY reports that it has not seen evidence of the impact of these initiatives on the lives of children and young people including the publication of outcomes data.<sup>126</sup>

## **Violence against children - sexual exploitation and abuse**

The majority of reported sexual offences in NI continue to be committed against children - according to PSNI statistics for 2018/19, 3,547 sexual offences were reported and 2,041 of these were against children under 18.<sup>127</sup> Research shows that under-reporting remains prevalent.<sup>128</sup>

As part of its 2016 concluding remarks and recommendations, the CRC commented that the recommendations of the Marshall Inquiry into Child Sexual Exploitation in NI must be implemented.<sup>129</sup> The Independent Inquiry, which was initiated by the Ministers for Health, Justice and Education, published its report, known as the Marshall report, in November 2014.<sup>130</sup> Ministers from the three departments made a commitment that they would implement the wide ranging inquiry recommendations over 3 phases and would publish six monthly Progress Reports.<sup>131</sup>

Over the intervening four year period, four rounds of progress reports have now been published. The DE reports that of the 17 key recommendations made by the Marshall, 14 relate to education and the Department has progressed work on all of these. The DE has also engaged with schools to share information and advice on the issue of CSE.<sup>132</sup>

However stakeholders have expressed serious concerns regarding the CSE Progress Report process and the lack of evidence of effective implementation of recommendations of the 2014 Inquiry.<sup>133</sup> The NICCY has recommended that the reporting process is reviewed to

<sup>125</sup> NICCY *Monitoring Table UNCRC Committee's Concluding Observations -2020 Update* [Northern Ireland]

<sup>126</sup> Cited directly above

<sup>127</sup> PSNI *Trends in Police Reported Crime in Northern Ireland 1998/99 to 2018/19* (2019)

<sup>128</sup> Haydon, D *Northern Ireland Ngo Stakeholder Report To Inform the Un Committee On The Rights Of The Child's 'List Of Issues' Prior To Reporting Supporting Evidence* (2020) P35

<sup>129</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland CRC/C/GBR/CO/5* (2016) p10

<sup>130</sup> Marshall, K *Child Sexual Exploitation in Northern Ireland. Report of the Independent Inquiry* (2014)

<sup>131</sup> NICCY *Monitoring Table UNCRC Committee's Concluding Observations -2020 Update* [Northern Ireland]

<sup>132</sup> Cited directly above

<sup>133</sup> Haydon, D *Northern Ireland Ngo Stakeholder Report To Inform The Un Committee On The Rights Of The Child's 'List Of Issues' Prior To Reporting* (2020) p15



ensure that Progress Reports provide evidence and assurance that outcomes to prevent CSE are being achieved.<sup>134</sup>

### **Family environment and alternative care – Childcare**

While the CRC has acknowledged positive practices across the four regions with regard to providing childcare for those who need it, it also highlighted concerns about the negative effect of the high cost of childcare on children and their family environment.<sup>135</sup> Currently, NI remains the only UK jurisdiction without a Childcare Strategy and legislation providing childcare services to all who need them.<sup>136</sup>

The majority of parents in NI consider there is a lack of sufficient, affordable childcare in their area. The 2019 Northern Ireland Childcare Survey found that: the average cost of a full-time childcare place is £166 per week/ £8,632 per year, which equates to 35% of the median household income before housing costs; 41% of parents are using means other than their income -such as savings, loans and/or credit cards -to pay their childcare bill; 50% of parents report spending more than 20% of their income on childcare, with more than 1 in 10 lone parent households spending over half their income on childcare.<sup>137</sup>

The DE has responsibility for implementing a childcare strategy. A Draft Childcare Strategy was launched for consultation in the latter half of 2015. The DE reported that work is still ongoing to finalise the Ten Year Executive Childcare Strategy.<sup>138</sup> The CLC has commented that the current childcare system is not sustainable and requires fundamental and urgent reform as well as investment to support provision of high quality, affordable childcare.<sup>139</sup>

### **Disability, Basic Health and Welfare - Children's food insecurity**

Children experiencing food insecurity and holiday hunger in the UK remains a serious cause for concern. Three of the main causes are cited as low income, benefit delays, and benefit changes.<sup>140</sup> The CRC has recommended systematic data collection on food security and nutrition for children, with regular monitoring and assessment of the effectiveness of policies/ programmes to deal with these issues.<sup>141</sup>

Food insecurity and holiday hunger has been brought under the spotlight again during the COVID-19 pandemic with a reported 128% increase in the number of children accessing

<sup>134</sup> NICCY *Monitoring Table UNCRC Committee's Concluding Observations -2020 Update* [Northern Ireland]

<sup>135</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p12

<sup>136</sup> Haydon, D *Northern Ireland Ngo Stakeholder Report To Inform The Un Committee On The Rights Of The Child's 'List Of Issues' Prior To Reporting Supporting Evidence* (2020) p39

<sup>137</sup> Employers for Childcare *Northern Ireland Childcare Survey 2019* (2019)

<sup>138</sup> NICCY *Monitoring Table UNCRC Committee's Concluding Observations -2020 Update* [Northern Ireland]

<sup>139</sup> Cited in footnote 120 p40

<sup>140</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/12/cco-uncrc-report.pdf>

<sup>141</sup> UNCRC *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* CRC/C/GBR/CO/5 (2016) p17

foodbanks in NI in 2020.<sup>142</sup> In response the DE and DfC implemented a Free School Meals Payment Scheme at an early stage in the pandemic and this has been further extended to cover meals during periods of school closures and holidays until April 2022. The DE has not committed to this policy post 2022 stating that children going hungry during school holiday periods ‘while it may be exacerbated this year by COVID-19, it is something that causes concern during every holiday period’ and requires ‘cross departmental effort to address it’.

## 10 Conclusion

Education reduces poverty, decreases social inequalities, empowers and helps each individual reach their full potential. It also brings significant economic returns for a country and helps societies to achieve lasting peace and sustainable development. For this reason the right to education is viewed as key to achieving all other human rights. However, despite the value that is placed on education, a child’s right to education is often far from guaranteed.

The UK ratified the UNCR in 1991 with the intention of progressing children’s rights across all four nations including the right to education covered under articles 28 and 29 of the convention. Despite encouraging developments in child rights-focused policy and legislation since the last review by the CRC, the benefits have not been universally felt and barriers to a children’s rights compliant education are evident across the UK, including NI. Barriers to accessing education are evident for certain groups of children and young people and can take many forms including a lack of appropriate provision for children with SEN, the excessive cost of education for disadvantaged families, the impact of bullying on LGBTQ children and young people as well as the use of inappropriate disciplinary measures which exclude children from school for long periods. Furthermore insufficient funding, hindered further by changing school demographics as well as increases in spending on SEN and Disability also prevent universal access to education in NI.

The role of education policy extends beyond simply progressing the right to education and encompasses the impact of paramilitarism, sexual exploitation and abuse, the use of restrictive practices, childcare and children’s food insecurity. While stakeholders have commended the positive strides in the development of child rights-focused policy and legislation in education since the last review of the UNCRC, challenges undoubtedly remain.

The NICCYP would like to see an inclusive system of education which enables children and young people in NI to be taught and learn together, and one which is much more efficient and cost effective. The NICCY believes that this can only be achieved through fundamental reform of the education system in NI ensuring all children equal access to an excellent quality education in line with Articles 28 and 29 of the UNCRC.

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<sup>142</sup> See <https://www.trusselltrust.org/2020/09/14/new-report-reveals-how-coronavirus-has-affected-food-bank-use/> retrieved February 10<sup>th</sup> 2021