



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Submission to Department of Finance  
consultation on Marriage Law**

**February 2022**

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## Summary of Recommendations

The NI Human Rights Commission (NIHRC):

- 2.12 supports the proposal to amend the Marriage Order 2003 so that belief marriage is placed on an equal statutory footing with religious marriage, in accordance with Article 9 and Article 14 of the ECHR.**
- 2.17 recommends that the Department of Finance develops specific statutory criteria to define belief groups and religious groups. Any guidance produced should be subject to further consultation with key stakeholders.**
- 2.18 recommends that any new proposal by the Department to amend marriage law and/or policy in NI is subject to a comprehensive human rights impact assessment which outlines any potential interference with Article 9 ECHR, Article 12 ECHR and Article 14 ECHR in particular.**
- 3.7 recommends that the Department of Finance introduce legislation to repeal all legal provisions permitting the marriage of children in NI and increase the minimum age for marriage to 18 years, for both girls and boys.**
- 3.19 advises that the Department of Finance is required to screen all legislation for compliance with Protocol Article 2.**
- 3.20 recommends that the Department of Finance ensure that Protocol Article 2 is considered throughout the development and implementation of any subsequent legislation or policy in relation to Marriage Law.**
- 3.25 The NIHRC recommends that government departments collaborate with statutory bodies and other relevant actors to improve data collection for monitoring the prevention and elimination of child, early and forced marriage.**
- 3.30 advises that, under current laws, children are particularly vulnerable to forced marriage and recommends that preventative and protection efforts must be strengthened, including by sensitising parents on the need for full and free consent of their daughter or son, to her or his marriage. Other measures should**

**include research, awareness-raising, education, and training of professionals.**

**3.33 advises that the right to marry under Article 12 ECHR is subject to domestic legislation. ECtHR jurisprudence indicates that an obligation for marriages contracted outside the jurisdiction to respect the legal marriageable age, would not alone amount to a denial of the right to marry.**

## 1.0 Introduction

- 1.1 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 in Northern Ireland (NI). Further, the NIHRC, pursuant to section 78A(1), must monitor the implementation of Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement (rights of individuals). In accordance with these functions, the following advice is submitted in response to Department of Finance's consultation on Marriage Law in NI.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards. This includes the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, and other relevant treaty obligations of the Council of Europe (CoE) and United Nations (UN). The regional and international treaties that are relevant to this advice include:
- European Convention on Human Rights (ECHR);<sup>1</sup>
  - CoE Convention on Preventing and Combating Violence against Women (Istanbul Convention);<sup>2</sup>
  - UN Convention on the Rights of the Child (UN CRC);<sup>3</sup>
  - UN International Covenant on Civil and Political Rights (UN ICCPR);<sup>4</sup>
  - UN Convention on Elimination of Discrimination against Women (UN CEDAW);<sup>5</sup>
  - UN Convention against Torture (UN CAT);<sup>6</sup>
  - Universal Declaration of Human Rights (UDHR).<sup>7</sup>
- 1.3 In addition to treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding, but provide further guidance in respect of specific areas. The relevant standards in this context include:
- UN Human Rights Committee General Comment No.22;<sup>8</sup>

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<sup>1</sup> Ratified by the UK 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights (ECtHR).

<sup>2</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 11 April 2011 (Not yet ratified by UK).

<sup>3</sup> Ratified by the UK 1989.

<sup>4</sup> Ratified by the UK 1966.

<sup>5</sup> Ratified by the UK 1986.

<sup>6</sup> Ratified by the UK 1988.

<sup>7</sup> Ratified by the UK 1951.

<sup>8</sup> HRI/GEN/1/Rev.1, 'UN Human Rights Committee General Comment No.22: Article 18' 1993

- UN CRC General Comment No.4;<sup>9</sup>
- UN CRC General Comment No.20;<sup>10</sup>
- UN CEDAW General Comment No.21;<sup>11</sup>
- UN CEDAW Committee Concluding Observations 2019;<sup>12</sup>
- UN CAT Committee Concluding Observations 2019;<sup>13</sup>
- UN General Assembly Resolution 75/167 Child, early and forced marriage 2020.<sup>14</sup>

- 1.4 The NIHRC further advises on the UK Government commitment in Protocol Article 2(1) to ensure there is no diminution of rights, safeguards and equality of opportunity in the relevant section of the Belfast (Good Friday) Agreement as a result of the UK's withdrawal from the EU. This is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. In addition, the NI Assembly is prohibited from making any law where it is incompatible with Protocol Article 2.<sup>15</sup> Section 24(1)(aa) of the Northern Ireland Act 1998 also provides that all acts of the Department should be compatible with Protocol Article 2.
- 1.5 The NIHRC welcomes the Department's consultation to consider the introduction of legislation to put belief marriage on an equal footing with religious marriage and raise the minimum age at which a person can marry or enter into a civil partnership.
- 1.6 The NIHRC has sought to highlight relevant human rights standards and principles where they may be of assistance in informing the development of legislation and policy in this area. The structure of this response is largely aligned to the consultation questions save where, to avoid repetition, the issues have been grouped together.

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<sup>9</sup> CRC/GC/2003/4 'UN CRC General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child' 1 July 2003.

<sup>10</sup> CRC/C/GC/20, 'UN CRC General comment No. 20 (2016) on the implementation of the rights of the child during adolescence' 6 December 2016.

<sup>11</sup> A/49/38 'UN CEDAW Committee, General Recommendation No. 21: Equality in Marriage and Family Relations' 13th session, 1994.

<sup>12</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019.

<sup>13</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019.

<sup>14</sup> A/RES/75/167, 'UN General Assembly Resolution adopted by the General Assembly on 16 December 2020', 23 December 2020

<sup>15</sup> Section 6(2)(ca), Northern Ireland Act 1998.

## 2.0 Non-Religious 'Belief' Marriage

### Human Rights Standards

- 2.1 The right to marry is protected in international law by Article 23(2) ICCPR and 12 ECHR. The right is subject to national laws on marriage and the European Court of Human Rights (ECtHR) has held that States enjoy a wide margin of appreciation.<sup>16</sup> However, any restrictions imposed by the government must not be arbitrary or interfere with the very essence of the right.<sup>17</sup>
- 2.2 Freedom of thought, conscience and religion is protected by Article 9 ECHR, Article 18 UDHR, Article 18 ICCPR and Article 14 UNCR. Article 14 ECHR enshrines the protection against discrimination in the enjoyment of the rights set forth in the Convention "on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". The ECtHR has established that a difference of treatment is discriminatory within the meaning of Article 14 if it has no objective and reasonable justification.<sup>18</sup>
- 2.3 Under the terms of Article 9 ECHR,
- "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."<sup>19</sup>
- 2.4 The right to hold and change a religion or belief is an absolute right. However, the right to manifest religion or belief is qualified and may be restricted where this is prescribed by law, necessary in a democratic society, in pursuit of a legitimate aim and where the restriction is proportionate to that aim. The ECtHR has noted that the reason behind the qualification of the right to manifest a belief is the possibility for an individual's practise of their beliefs to impact on others.<sup>20</sup>

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<sup>16</sup> O'Donoghue and others v the United Kingdom, Application no.34848/07, 14 December 2010.

<sup>17</sup> Frasiak v Poland, Application no.22933/02, 5 January 2010.

<sup>18</sup> Karlheinz Schmidt v. Germany judgment of 18 July 1994, Series A no. 291-B, pp. 32-33, § 24

<sup>19</sup> ECHR, Article 9(1)

<sup>20</sup> Eweida and Others v. the United Kingdom, Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10, para 80.

- 2.5 There is no definition of religion or belief in the text of the ECHR or the case law of the ECtHR, although for any personal or collective conviction to attract protection by this right, it must have attained a certain level of cogency, seriousness, cohesion and importance.<sup>21</sup>
- 2.6 The State has a duty of neutrality in respect of religion and must refrain from attempting to assess the legitimacy of religious beliefs or the manner in which those beliefs are expressed.<sup>22</sup>
- 2.7 Marriages in Northern Ireland are governed by the Marriage (NI) Order 2003 (the 2003 Order),<sup>23</sup> which provides for both religious marriages and civil marriages. Article 14 of the 2003 Order provides that the Registrar General may grant temporary authorisation to a member of a religious body to solemnise one or more specified marriages or marriages during a specified period. Article 31 enables the Registrar General to appoint a registrar of marriages and additional persons to solemnise civil marriages. In effect,

“Under the 2003 Order, only religious organisations— organised groups of people that meet regularly for religious worship—have the legal privilege to marry their members in accord with their beliefs. Belief groups, including humanists, do not fall under the definition of religious groups since they do not meet regularly for religious worship. Therefore they cannot avail of a legal privilege that the Order restricts to religious groups.”<sup>24</sup>

- 2.8 The NIHRC notes the recent NI judgments in *Re Smyth*, which challenged these provisions on the grounds that they operate to exclude the possibility of legal recognition for a humanist marriage ceremony on the same footing as a religious marriage, and that this difference in treatment is contrary to Articles 9 and/or 14 of the ECHR.<sup>25</sup> The NI High Court granted:

“A declaration that the provisions of the 2003 Order can be read and given effect to in a way that it is compatible with the applicant’s

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<sup>21</sup> *Bayatyan v. Armenia* [GC], Application no. 23459/03, § 110, ECHR 2011.

<sup>22</sup> *Eweida and Others v. the United Kingdom*, Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10, para 81.

<sup>23</sup> Marriage (NI) Order 2003,

<sup>24</sup> Department of Finance, ‘Belief Marriage and Minimum Age for Marriage or Civil Partnership – a public consultation’

(DoF, 2021) at para 22 (citing the General Register Office); see also, Marriage (NI) Order 2003, Article 14 and Article 31.

<sup>25</sup> In the matter of an application by Laura Smyth [2017] NIQB 55; and [2018] NICA 25.



rights under Articles 9 and 14 ECHR pursuant to section 3 of the Human Rights 1998 thereby enabling the GRO to grant the application for temporary authorisation under Article 14 of the 2003 Order by “reading in” the words “or belief” so that all references to “religious marriage” and “religious body” in Articles 14, 15, 16 and 17 of the Order read “religious or belief marriage” and “religious or belief body”.

2.9 However this declaration was later set aside by the NI Court of Appeal. While accepting that the statutory prohibition of a humanist celebrant as the person solemnising the respondent’s marriage would have constituted discrimination pursuant to Articles 9 and 14 ECHR, the Court held that:

“Article 31 of the 2003 Order provides a basis for avoiding such discrimination by enabling the appointment of [a humanist celebrant] without having to utilise the interpretive tool provided by section 3 of the Human Rights Act 1998 to alter the wording of Article 14 of the 2003 Order. The fact that the person solemnising the marriage is appointed pursuant to Article 31 of the 2003 Order rather than Article 14 of the said Order does not in our view give rise to any difference of treatment.”

2.10 The NIHRC notes with concern that, by setting aside the High Court’s declaration despite otherwise agreeing with the judgment, the Court of Appeal decision has only permitted humanist celebrants to apply to become temporary civil registrars and as such provide only civil marriages.<sup>26</sup> The NIHRC recognises that the Article 31 arrangement is not the most effective redress to the trial judge’s decision in *Re Smyth*, which found that belief marriage deserves full legal recognition on an equal footing with religious marriage,

“[96] In relation to the solemnisation of marriage the State has chosen to authorise the solemnisation of religious marriage ceremonies in recognition of those bodies’ beliefs. Having done so, in my view it should provide equal recognition to individuals who hold humanists beliefs on the basis of my findings that humanism does meet the test of a belief body and that a wedding ceremony conducted by a humanist constitutes a manifestation of that belief.

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<sup>26</sup> DoF, Consultation Document 2021, at para 30.

[97] I consider that there has been a breach of the applicant's rights under Articles 9 and 14 of the ECHR."<sup>27</sup>

2.11 Therefore, the NIHRC welcomes that the Finance Minister has introduced a temporary measure to 'read in' aspects of belief marriage to the 2003 Order. Although, it is advised that clearly establishing the position within statute is not only preferable but is a significant and necessary safeguard of individual rights and against any further legal challenge on the basis of Convention rights.

2.12 **The NIHRC supports the proposal to amend the Marriage Order 2003 so that belief marriage is placed on an equal statutory footing with religious marriage, in accordance with Article 9 and Article 14 of the ECHR.**

2.13 The consultation document states,

"At present, a religious body that wishes to conduct religious marriages must... apply to the Registrar General to request officiant status for one or more of its members. The Registrar General can refuse authorisation if, for example, she believes that the applicant body is not a genuine religious body, or does not deem a particular applicant to be a fit and proper person to perform the officiant role or has concerns regarding the content of the marriage ceremony."<sup>28</sup>

2.14 The NIHRC agrees with the Department's suggestion that the Registrar General could additionally consider applicants from belief bodies. However, this will require clear statutory guidance and rights-based training to assist the Registrar General in making such determinations. In *Re Smyth*, Mr Justice Colton reiterated:

"[94] The starting point must be that if the law is to protect freedom of religion under Article 9 it must recognise that all religions and beliefs should be treated equally.

[95] The State must be neutral and impartial in the arrangement it makes for the exercise of manifestations of various religions and beliefs."<sup>29</sup>

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<sup>27</sup> [2017] NIQB 55

<sup>28</sup> Ibid, at page 36.

<sup>29</sup> [2017] NIQB 55.

2.15 The NI High Court relied upon the UN Human Rights Committee's General Comment No.22 on Article 18 of the UDHR to assist its interpretation of Article 9 ECHR:

"Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms 'belief' and 'religion' are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community."<sup>30</sup>

2.16 The NIHRC notes that both Scotland and Ireland have established qualifying criteria to define belief organisations and bodies in law. While Scottish law appears to define a belief body quite broadly, the Irish Civil Registration (Amendment) Act 2012 provides more specific criteria to define secular bodies, including the exclusion of particular groups such as political parties. Given the potential for challenges regarding consistency in interpretation, adopting a set of specific criteria, for example modelled on the approach taken by the Irish Civil Registration (Amendment) Act 2012, may provide greater clarity for Registrars.

2.17 **The NIHRC recommends that the Department of Finance develops specific statutory criteria to define belief groups and religious groups. Any guidance produced should be subject to further consultation with key stakeholders.**

2.18 **The NIHRC recommends that any new proposal by the Department to amend marriage law and/or policy in NI is subject to a comprehensive human rights impact assessment which outlines any potential interference with Article 9 ECHR, Article 12 ECHR and Article 14 ECHR in particular.**

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<sup>30</sup> HRI/GEN/1/Rev.1, 'UN Human Rights Committee General Comment No.22: Article 18' 1993, at para 2.

## 3.0 Child Marriage

### Raising the Minimum Age

- 3.1 International human rights law guarantees the right to marry for those of 'marriageable age' according to national laws.<sup>31</sup> The UN CRC Committee and the UN CEDAW Committee recommend setting the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.<sup>32</sup>
- 3.2 The Marriage (NI) Order 2003 permits the marriage of a child aged 16 or 17 years with the consent of their parents or legal guardians or the courts. In 2016, the UN CRC Committee specifically recommended that the UK Government and the NI Executive raise the minimum age of marriage to 18 years.<sup>33</sup>
- 3.3 Within its Annual Statements, the NIHRC has continued to recommend the repeal of all legal provisions permitting the marriage of children in NI and has highlighted this as an outstanding issue in its most recent submission to the UN CRC regarding the Sixth Periodic Report of the UK and NI.<sup>34</sup> Notably, raising the minimum age of marriage to 18, without exception, has been identified in the UN CRC List of Issues Prior to Reporting and is therefore again likely to be considered at the main examination, which is currently scheduled for January 2023.<sup>35</sup> The NIHRC will be engaging with the UN CRC periodic reporting process and is likely to raise this issue with the Committee.
- 3.4 The NIHRC notes with interest the recent developments in England and Wales, where the Marriage and Civil Partnership (Minimum Age) Bill 2021-22 recently passed its second reading in the House of Commons.<sup>36</sup> If enacted, the Bill will revoke parental or judicial consent which permits the marriage or civil partnership of a child and expand the offence of forced marriage to encompass the arranging of marriages or civil partnerships

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<sup>31</sup> Article 12, ECHR; Article 9, CFR; Article 16(2), UN CEDAW; Article 23(2) ICCPR.

<sup>32</sup> CRC/GC/2003/4, 'UN CRC Committee, General Comment No. 4' 1 July 2003 at para. 20; A/49/38 'UN CEDAW Committee, General Recommendation No. 21: Equality in Marriage and Family Relations' 13th session, 1994, at para. 36.

<sup>33</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland' 3 June 2016.

<sup>34</sup> NI Human Rights Commission, 'Submission to the UN CRC 88th Session on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland on compliance with the UN CRC' December 2020

<sup>35</sup> CRC/C/GBR/QPR/6-7, 'UN Committee on the Rights of the Child List of issues prior to submission of the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland' March 2021.

<sup>36</sup> Marriage and Civil Partnership (Minimum Age) Bill (Bill 18 2021-22).

under the age of 18. Those found guilty of the offence of forced marriage currently face a maximum of seven years imprisonment and a fine.<sup>37</sup>

- 3.5 The Bill intends to act as an obstacle to those seeking to take children abroad to marry by criminalising any marriage involving a child domiciled in England and Wales, or who is a UK national, whether or not the actual conduct or marriage takes place in England and Wales.<sup>38</sup> However, clause 2(7) contains an exemption to allow the arrangement of child marriages in Scotland and Northern Ireland without risk of prosecution.<sup>39</sup> While recognising that this provision was drafted to respect devolution, if NI retain current laws, it essentially creates a divergence of child protection laws within the UK.
- 3.6 In addition, Ireland has already prohibited under-18s from marrying and where a person permits or is party to such a marriage, they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.<sup>40</sup> Therefore Ireland has a higher level of protection for the rights of the child within its own jurisdiction. However, in the event the Marriage and Civil Partnership (Minimum Age) Bill is enacted, a child from Ireland could be moved to NI to marry and have it legally recognised across the UK, despite the more progressive legislation of the other jurisdictions. The NIHRC highlights its concern that the number of children coming to NI to marry may increase to take advantage of the lesser degree of rights protection.
- 3.7 **The NIHRC recommends that the Department of Finance introduce legislation to repeal all legal provisions permitting the marriage of children in NI and increase the minimum age for marriage to 18 years, for both girls and boys.**

## Gender Impact

- 3.8 As set out in the consultation documentation, a significant majority of child marriages in NI involve girls, although at times their spouses are also under 18. There were 54 girls and 15 boys (aged 16-17) married in 2019, and 11 registered marriages where both the bride and groom were aged 16-17.

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<sup>37</sup> Anti-social Behaviour, Crime and Policing Act 2014, Section 121

<sup>38</sup> UK House of Commons Hansard, Marriage and Civil Partnership (Minimum Age) Bill: Volume 703: debated on Friday 19 November 2021

<sup>39</sup> Marriage and Civil Partnership (Minimum Age) Bill (Bill 18 2021-22), Clause 2(7): see also UK House of Commons Hansard, Marriage and Civil Partnership (Minimum Age) Bill: Volume 703: debated on Friday 19 November 2021

<sup>40</sup> Family Law Act 1995, Section 31

3.9 The UN CRC and UN CEDAW Committees have highlighted that child marriage often coincides with other rights violations and harmful consequences disproportionality affecting girls:

“Child marriage is often accompanied by early and frequent pregnancy and childbirth, resulting in higher than average maternal morbidity and mortality rates. Pregnancy-related deaths are the leading cause of mortality for girls between 15 and 19 years of age, whether married or unmarried, around the world. Infant mortality among the children of very young mothers is higher (sometimes as much as two times higher) than among those of older mothers. In cases of child and/or forced marriage, in particular where the husband is significantly older than the wife, and where girls have limited education, the girls generally have limited decision-making power in relation to their own lives. Child marriage also contributes to higher rates of school dropout, especially among girls, forced exclusion from school and an increased risk of domestic violence, in addition to limiting the enjoyment of the right to freedom of movement.”<sup>41</sup>

3.10 These extensive health and education related consequences can threaten the lives and futures of girls and women. Without education, girls and women have fewer opportunities to financially provide for themselves and their families, impacting their personal, social, and economic autonomy. This reduced capacity to make decisions about their lives makes them more vulnerable to domestic violence and abuse.

3.11 The NIHRC additionally highlights that, through primary and secondary education there is an opportunity to prepare women and girls to better claim their right to freedom from violence and increase their opportunities for effective participation in all spheres of life. Education and prevention measures are discussed further below.

## **Forced Marriage**

3.12 Article 19 of the UN CRC obliges States to protect children from all forms of physical or mental violence. In Joint General Recommendation No.31 and

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<sup>41</sup> CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1, ‘Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices’ 8 May 2019, at para 22.

General Comment No.18, the UN CEDAW Committee and UN CRC Committee clarify that “child marriage is considered to be a form of forced marriage, given that one or both parties have not expressed full, free and informed consent”.<sup>42</sup> The Committee noted that given their specific vulnerability to maltreatment, the obligation to protect a child from all forms of violence should continue to apply when children under the age of 18 attain majority or emancipation through early marriage and/or forced marriage.<sup>43</sup>

- 3.13 The CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) provides a legal framework at pan-European level to protect women and girls against all forms of violence, and prevent, prosecute, and eliminate violence against women and girls. The UK Government has made it clear that it intends to ratify the Istanbul Convention and is currently in the process of addressing existing areas of non-compliance.<sup>44</sup>
- 3.14 The Istanbul Convention considers forced marriage as a serious form of violence to which women and girls are exposed. The Convention promotes the criminalisation of forcing a child, boy or girl, to enter into a marriage, as well as luring a child to another country with the intention of marrying the child, against his or her will.<sup>45</sup>
- 3.15 Protocol Article 2 requires the UK Government and the NI Executive to ensure that no diminution of rights, safeguards and equality of opportunities contained in the relevant part of the Belfast (Good Friday) Agreement 1998 occurs as a result of the UK’s withdrawal from the EU. This includes an obligation to “keep pace” with any changes made by the six Annex 1 Equality Directives which improve the minimum levels of protection available, after 1 January 2021.<sup>46</sup>
- 3.16 For other EU obligations which underpin the rights, safeguards and equality of opportunity in Article 2, the UK Government commitment to ensure ‘no diminution’ is measured by the relevant EU standards on 31

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<sup>42</sup> CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1, at para. 20; see also, CRC/C/GC/13, ‘UN CRC Committee General Comment No.13: The right of the child to freedom from all forms of violence’ 18 April 2011, at para.29

<sup>43</sup> CRC/C/GC/13, at para 33.

<sup>44</sup> Preventing and Combating Violence against Women and Domestic Violence (Ratification of Convention) Act 2017; Home Office, ‘Ratification of the CoE Convention on Combating Violence against Women and Girls and Domestic Violence (Istanbul Convention) – 2020 Report on progress’ (HO, 2020), at Annex A.

<sup>45</sup> Article 37, the Istanbul Convention.

<sup>46</sup> UK Government, ‘UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland’, (NIO, 2020), at 13.

December 2020.<sup>47</sup>

- 3.17 The rights, safeguards and equality of opportunity in the relevant part of the Belfast (Good Friday) Agreement include “the rights of victims to remember as well as to contribute to a changed society”.<sup>48</sup> The UK Government has recognised a non-exhaustive list of relevant measures which fall within scope of the commitment in Protocol Article 2, which include the Victim’s Directive.<sup>49</sup>
- 3.18 The Victim’s Directive recognises forced marriage as a form of gender-based violence.<sup>50</sup> Therefore, while no breach of Protocol Article 2 has been identified, the NIHRC considers that provisions on marriage law engage Protocol Article 2. Any subsequent legislation or policy that may result from this consultation process must consider Protocol Article 2 throughout its development and implementation.
- 3.19 **The NIHRC advises that the Department of Finance is required to screen all legislation for compliance with Protocol Article 2.**
- 3.20 **The NIHRC recommends that the Department of Finance ensure that Protocol Article 2 is considered throughout the development and implementation of any subsequent legislation or policy in relation to Marriage Law.**
- 3.21 While forced marriage has been criminalised across the UK including NI, the NIHRC notes that legislation which permits the marriage of a child with the consent of their parents or legal guardians can be used to coerce children into early marriages.<sup>51</sup> This would require the child to secure their own protection by speaking out against their own family or community, putting them in a difficult and/or dangerous position. The NIHRC therefore notes with caution the reliance on there being “no evidence that any [NI] marriages involving under-18s were forced marriages”<sup>52</sup> in the context of the current consultation.

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<sup>47</sup> UK Government, ‘UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland’, (NIO, 2020), at para 13.

<sup>48</sup> Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity.

<sup>49</sup> Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012.

<sup>50</sup> Recital 17, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012.

<sup>51</sup> See: Correspondence from the Karma Nirvana and The Five Foundation to RT Hon Boris Johnson MP, 2 March 2021, available at: [Letter-to-UK-PM-on-Child-Marriage-Ban.pdf \(thefivefoundation.org\)](#); ‘Child Marriage ‘thriving in UK’ due to legal loophole, warn rights groups’ The Guardian, 4 May 2021 at [Child marriage ‘thriving in UK’ due to legal loophole, warn rights groups | Child marriage | The Guardian](#)

<sup>52</sup> DoF, Consultation document at para 16.



3.22 Given that the UN CRC Committee and the UN CEDAW consider all child marriage a form of forced marriage, the NIHRC highlights the importance of building a robust body of context-specific knowledge and data on the factors leading to child marriage, the decision-making process by families pursuing child marriage, and what are the main health or education related consequences.

3.23 In December 2020, the UN General Assembly passed a resolution that highlighted the:

“the need for States and relevant United Nations entities and agencies to improve the collection and use of quantitative, qualitative and comparable data on violence against women and harmful practices, including in humanitarian settings and in the context of public health emergencies such as COVID-19, disaggregated by sex, age, disability, civil status, race, ethnicity, migratory status, geographical location, socioeconomic status, education level and other key factors, as appropriate, to enhance research and dissemination of evidence-based and good practices relating to the prevention and elimination of child, early and forced marriage and to strengthen monitoring and impact assessment of existing policies and programmes as a means of ensuring their effectiveness and implementation”<sup>53</sup>

3.24 The NIHRC notes that the consultation document does not contain the range of disaggregated data identified above. Improved data collection or research in this area would assist our understanding of child marriage and forced child marriage in NI, including how to anticipate or mitigate against the identifiable risks and vulnerabilities faced by children, particularly girls.

3.25 **The NIHRC recommends that government departments collaborate with statutory bodies and other relevant actors to improve data collection for monitoring the prevention and elimination of child, early and forced marriage.**

3.26 The NIHRC highlights the importance of shifting attitudes and beliefs around early and forced marriage, which cannot be achieved by legislation

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<sup>53</sup> A/RES/75/167, 'UN General Assembly Resolution adopted by the General Assembly on 16 December 2020', 23 December 2020

alone and must be supported with educational and community outreach programmes. In 2019, the UN CEDAW and the UN CAT Committee in their Concluding Observations on the UK emphasised the need for the UK Government and the NI Executive to strengthen efforts and effectiveness in combating forced marriage, including preventative and protection measures.<sup>54</sup>

3.27 The Istanbul Convention outlines practical measures for States to take in relation to prevention of violence against women and girls. For instance, Article 13 requires states to:

“promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women’s organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence. Parties shall ensure the wide dissemination among the general public of information on measures available to prevent acts of violence covered by the scope of this Convention.”

3.28 Article 14 of the Convention relates to education and requires the state:

“shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education. Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.”

3.29 Article 15 of the Convention relates to training of professionals. It states that:

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<sup>54</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 59(b); and CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 57(f).

“Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.”

- 3.30 The NIHRC advises that, under current laws, children are particularly vulnerable to forced marriage and recommends that preventative and protection efforts must be strengthened, including by sensitising parents on the need for full and free consent of their daughter or son, to her or his marriage. Other measures should include research, awareness-raising, education, and training of professionals.**

### **Recognition of Foreign Marriages or Civil Partnerships**

- 3.31 The NIHRC reiterates that the right to marry guaranteed under Article 12 ECHR is subject to domestic legislation governing its exercise. The ECtHR has previously held that the obligation to respect the legal marriageable age does not amount to a denial of the right to marry, even if the individual’s religion permits marriage at a younger age.<sup>55</sup>
- 3.32 In *Z.H. and R.H. v Switzerland*<sup>56</sup> the applicants sought asylum in Switzerland as a married couple, claiming that they had contracted marriage in a religious ceremony in a third country when the first and second applicants were 14 and 18 years of age, respectively. The ECtHR considered that neither Articles 8 nor 12 of the Convention could be interpreted as imposing on any State party to the Convention an obligation to recognise a marriage, religious or otherwise, contracted by a 14-year-old child:
- “Article 12 expressly provides for regulation of marriage by national law, and given the sensitive moral choices concerned and the importance to be attached to the protection of children and the fostering of secure family environments, this Court must not rush to substitute its own judgment in place of the authorities who are best placed to assess and respond to the needs of society.”<sup>57</sup>

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<sup>55</sup> Khan v UK, Application no.11579/85, 7 July 1986.

<sup>56</sup> *Z.H. and R.H. v Switzerland*, Application no.60119/12, 8 December 2015.

<sup>57</sup> *Ibid*, at para 44.

**3.33 The NIHRC advises that the right to marry under Article 12 ECHR is subject to domestic legislation. ECtHR jurisprudence indicates that an obligation for marriages contracted outside the jurisdiction to respect the legal marriageable age, would not alone amount to a denial of the right to marry.**

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