



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**NIHRC Response to the UK Joint Committee on
Human Rights' Call for Evidence on the Human
Rights of Asylum Seekers in the UK**

19 December 2022

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Summary of Recommendations

- 3.4** The NIHRC recommends that the Home Office ensures that there are safe and effective routes for people to exercise their right to claim asylum in the UK and that those who come by alternative routes are not discriminated against for doing so.
- 3.8** The NIHRC recommends that the UK Government revokes the Memorandum of Understanding with Rwanda and ensures all people seeking asylum in the UK are processed in a manner compliant with human rights standards and accounts for the trauma experienced by many prior to arrival in the UK.
- 3.13** The NIHRC recommends the Home Office ensures that immigration detention is a measure of last resort and that appropriate alternatives to detention that meet the demand and consider specific needs are available. This includes ensuring that hotels are not used as contingency accommodation for people seeking asylum in NI.
- 3.14** The NIHRC recommends that, in line with international obligations and Protocol Article 2, the Home Office promptly takes effective steps to ensure that women immigration detainees are safe and have the option of gender-specific communal areas and take immediate steps to end detention of pregnant women and nursing mothers in NI.
- 3.19** The Commission recommends that the Home Office does not apply an electronic tag to any person who has not been charged with an offence.
- 3.27** The NIHRC recommends that the Home Office and the Executive Office urgently review the support and accommodation provided to refugees and people seeking asylum in NI to ensure it is adequate, fit for purpose and culturally appropriate in compliance with international human rights standards and Protocol Article 2. This review should be conducted in consultation with refugees, people that are seeking asylum and their representative organisations.
- 3.28** The NIHRC recommends the UK Government takes immediate steps to ensure people seeking asylum in NI are not destitute and

are provided with financial support proportional to the cost of living and takes account of specific needs.

- 3.32 The Commission recommends the UK Home Office reviews the restrictions placed on people seeking asylum, including a prohibition on taking up work while claims are being processed.**
- 3.37 The Commission recommends that the Home Office embeds consideration of Protocol Article 2 to ensure compliance in the development and implementation of subsequent Regulations and Guidance on human trafficking resulting from the Nationality and Borders Act 2022.**
- 3.38 The Commission further recommends that subsequent regulations and guidance should ensure the needs of child victims of modern slavery and human trafficking are safeguarded and the best interests principle is embedded.**
- 3.43 The Commission recommends that appropriate safeguards are developed through statutory regulations and guidance to ensure the enactment of the Nationality and Borders Act 2022 does not have a negative effect on refugees and people seeking asylum.**
- 3.44 The Commission recommends that effective steps are taken by the Home Office to prevent and address racial profiling, including through appropriate training and monitoring, in the implementation of the revised guidance on the Common Travel Area and Electronic Travel Authorisation requirements, including at entry to NI at ports and airports and in the context of cross-border travel.**
- 3.45 The Commission recommends that the Home Office ensures that all journeys into NI, originating from Ireland, are exempt from Electronic Travel Authorisation requirements.**

1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland (NI) Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in NI. The NIHRC is also mandated, under section 78A(1) to monitor the implementation of Article 2(1) of the Protocol on Ireland/NI of the UK-EU Withdrawal Agreement, to ensure there is no diminution of rights protected in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998 as a result of the United Kingdom (UK)'s withdrawal from the EU. In accordance with these functions, the following evidence is submitted to the Joint Committee on Human Rights (Joint Committee) for its call for evidence on the human rights of asylum seekers.

2.0 Article 2 of the Ireland/Northern Ireland Protocol

- 2.1 Section 7A EU (Withdrawal) Act 2018 provides that all rights, obligations and remedies from UK-EU Withdrawal Agreement, including Protocol Article 2, are recognised and available in domestic law.¹
- 2.2 Protocol Article 2 requires the UK Government to ensure there is no diminution of rights, safeguards and equality of opportunity, as set out in the relevant chapter of the Belfast (Good Friday) Agreement 1998, as a result of the UK's withdrawal from the EU. That chapter includes a commitment to the "civil rights and religious liberties of everyone in the community" and a non-exhaustive list of rights. In addition to a number of rights which are "affirmed in particular", the relevant chapter specifically recognises the right of victims to remember, as well as to contribute to, a changed society.²
- 2.3 Protocol Article 2 includes a commitment to 'keep pace' with EU law developments falling within the six EU Equality Directives listed in Annex 1 to the Protocol which improve the minimum levels of protection available after 1 January 2021, including relevant case law of the Court of Justice of the EU.³ This means that if the minimum standards in the Annex 1 Equality

¹ Sections 6(2)(ca) and 24(1)(aa) of the NI Act 1998 limit the competence of the NI Assembly and Executive and proscribe making any law which is incompatible with Protocol Article 2.

² Belfast (Good Friday) Agreement 1998.

³ Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation',

Directives are amended or replaced, the UK Government and NI Executive must ensure that domestic legislation in NI reflects any substantive enhancements in relevant protections.⁴

- 2.4 In addition to the six Annex 1 Equality Directives, there is other relevant EU law that underpins rights set out in the relevant chapter of the Belfast (Good Friday) Agreement. The UK Government has committed to ensuring that there will be no diminution of protections as were contained in relevant EU law on 31 December 2020.
- 2.5 Protocol Article 2 protects everyone subject to the law in NI, regardless of immigration status. The UK Government recognises that Protocol Article 2 applies to “everyone who is subject to NI law – irrespective of whether that law has been passed by the NI legislature or Westminster”.⁵
- 2.6 The non-exhaustive list of rights which are “affirmed in particular” in the relevant chapter of the Belfast (Good Friday) Agreement 1998 include the right to freely choose one’s place of residence and the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity.⁶ The NIHRC considers that all EU law in force in NI on or before 31 December 2020 which underpins an ECHR right falls within scope of the non-diminution commitment in Protocol Article 2.⁷ The Directives also underpin rights protected by Articles 2, 3, 8 and 13 of the ECHR. The EU Reception Directive⁸ and the EU Procedures Directive underpin the non-diminution commitment with respect to refugees and people seeking asylum.⁹ The Directives create minimum standards for the treatment of asylum seekers, including children, which remain relevant to NI.

3.0 Human Rights of Asylum Seekers in the UK

Safe and Legal Routes

3.1 Article 31 of the Refugee Convention 1951 stipulates that Contracting

⁵ July 2006; Directive 2010/41/EU, ‘EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity’, 7 July 2010.; Directive 79/7/EEC, ‘EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security’, 19 December 1978.

⁴ Article 13, The Ireland/NI Protocol to the EU/UK Withdrawal Agreement 2020.

⁵ NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 8.

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

⁷ NI Human Rights Commission and Equality Commission NI, ‘Working Paper: Scope of Article 2(1) of the Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020’, (NIHRC and ECNI, 2022).

⁸ Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

⁹ Directive 2005/85/EC, ‘EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005.

States:

shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

- 3.2 The UN High Commissioner for Refugees noted “the right to seek and enjoy asylum does not depend on the regularity of arrival of an asylum-seeker to a country. In reality, asylum-seekers are often forced to arrive at or enter a territory without prior authorisation”.¹⁰
- 3.3 In the year ended June 2022, 76 per cent of initial decisions resulted in the grant of asylum or humanitarian protection.¹¹ The number of positive outcomes suggests the need to ensure safe routes for people seeking asylum in the UK and that people arriving by other routes are not penalised for doing so.
- 3.4 **The Commission recommends that the Home Office ensures that there are safe and effective routes for people to exercise their right to claim asylum in the UK and that those who come by alternative routes are not discriminated against for doing so.**

Relocation of asylum seekers

- 3.5 In June 2022, following domestic legal action against the UK Government’s Rwanda policy,¹² the ECtHR indicated an interim measure to stop the flight on behalf of an individual affected that was facing irreversible harm.¹³
- 3.6 The UN Refugee Agency urged the UK to refrain from transferring people seeking asylum to Rwanda for processing, finding that the UK was “adopting arrangements that abdicate responsibility to others and thus

¹⁰ UN High Commissioner for Refugees, ‘Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom’, (UNHCR, 2021), para 5.

¹¹ Refugee Council, ‘Top facts from the latest statistics on refugees and people seeking asylum’. Available at: [Top facts from the latest statistics on refugees and people seeking asylum - Refugee Council](#)

¹² Home Office, ‘Press Release: First migrants set for Rwanda to be given final notice’, 1 June 2022.

¹³ European Court of Human Rights, ‘Press Release: The European Court grants urgent interim measure in case concerning asylum-seeker’s imminent removal from the UK to Rwanda’, 14 June 2022.

threaten the international refugee protection regime".¹⁴ The Agency further stated that the policy was incompatible with the letter and spirit of the UN Refugee Convention 1951.¹⁵

- 3.7 The EU Procedures Directive protects the applicant's right to "be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision".¹⁶ The Procedures Directive, which sets minimum standards for granting and withdrawing refugee status, falls within scope of Protocol Article 2.
- 3.8 **The NIHRC recommends that the UK Government revokes the Memorandum of Understanding with Rwanda and ensures all people seeking asylum in the UK are processed in a manner compliant with human rights standards and accounts for the trauma experienced by many prior to arrival in the UK.**

Detention

- 3.9 The EU Reception Directive commits States to "take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture".¹⁷
- 3.10 The UN CEDAW Committee recommended that the UK Government and NI Executive "introduce a general time limit on immigration detention and implement alternatives to detention".¹⁸
- 3.11 The Home Office policy is that immigration detention "must be used sparingly and for the shortest period necessary".¹⁹ There is one short-term holding facility operating in NI – Larne House. The concern in NI is people seeking asylum in Larne House being moved on to other detention centres in the UK for an undefined period.²⁰ Additionally, women are

¹⁴ UN Refugee Agency, 'Press Release: UN Refugee Agency opposes plan to export asylum', 14 April 2022.

¹⁵ UN Refugee Agency, 'UNCHR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers Under the UK-Rwanda Arrangement' (UNCHR, 2022).

¹⁶ Article 7, Directive 2005/85/EC, 'EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status', 1 December 2005.

¹⁷ Article 17, Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers', 27 January 2003.

¹⁸ 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.

¹⁹ Home Office, 'Detention: General Instructions', (UK Gov, 2022), at 7.

²⁰ The Migration Observatory, 'Immigration Detention in the UK' (OU, 2022).

accommodated in a separate area in Larne House, but this area cannot be locked off from the men's section and there is no separate communal room.²¹

3.12 The UN CEDAW Committee further recommended that the UK Government and NI Executive "take immediate measures to end the detention of pregnant women and nursing mothers". Between June 2016 and June 2022, eight pregnant women were detained in Larne House.²²

3.13 **The NIHRC recommends the Home Office ensures that immigration detention is a measure of last resort and that appropriate alternatives to detention that meet the demand and consider specific needs are available. This includes ensuring that hotels are not used as contingency accommodation for people seeking asylum in NI.**

3.14 **The NIHRC recommends that, in line with international obligations and Protocol Article 2, the Home Office promptly takes effective steps to ensure that women immigration detainees are safe and have the option of gender-specific communal areas and take immediate steps to end detention of pregnant women and nursing mothers in NI.**

Electronic Tagging

3.15 The electronic tagging of people on immigration bail subject to deportation was extended to NI on 5th December 2022.²³ Under current guidance, electronic tags may not be applied to a child under 18, a person released from detention under Sections 77 or 41 of the Mental Health Act 1983 or a pregnant person (18 weeks+) or a person who has recently given birth (up to 3 months prior).²⁴

3.16 GPS electronic tagging, particularly of people seeking asylum who are not at risk of absconding, is likely to disproportionately interfere with Article 8 ECHR (right to private and family life).²⁵ While States have certain

²² Faith Voices for Reproductive Justice, End Deportations Belfast, Alliance for Choice Belfast, Alliance for Choice Derry et al, 'Press Release: Statement criticising the detention of pregnant women in Larne House', 31 October 2022.

²³ The Immigration Act 2016 (Commencement No. 1 and Transitional Provisions) (Scotland and Northern Ireland) Regulations 2022.

²⁴ Home Office, 'Immigration Bail Conditions: Electronic monitoring (EM) expansion pilot', (UK Gov, 2022), at 7.

²⁵ *Libert v France* (2018) ECHR 185.

discretion to limit Article 8 ECHR,²⁶ any interference on the basis of, for example national security or public safety, must be necessary and proportionate.²⁷ This requires consideration of the surrounding circumstances of each proposed tagging, including the extent of the threat (if any) that the specific individual poses.

- 3.17 Electronic tagging can cause perceived or increased stigmatisation and isolation, a negative impact on how parents are able to care for their children, a detrimental impact on mental health and an exacerbation of psychological illness or the impeding of recovery of already marginalised people who have experienced trauma.²⁸
- 3.18 Specific concerns for NI include the presence of an open land border with Ireland, which can be crossed without a person's knowledge, especially a person seeking asylum who might not understand the geographical and political context of NI. With the increased risk of people seeking asylum being trafficked, there is also the potential for that trafficking to take place across the Ireland/NI border, increasing the likelihood of criminalisation of the individual.
- 3.19 **The Commission recommends that the Home Office does not apply an electronic tag to any person who has not been charged with an offence.**

Accommodation and subsistence

- 3.20 The UN CRC Committee has noted that "asylum-seeking, refugee and migrant children and their families in the UK face difficulty in accessing basic services, such as education and health care, and are at a high risk of destitution" and called for "sufficient support to... access basic services".²⁹
- 3.21 The EU Reception Directive states that the best interests of the child shall be the primary consideration when implementing provisions of the Directive that relate to minors.³⁰ The Directive provides that states must

²⁶ *Dudgeon v UK* (1981) ECHR 5, at para 51-53.

²⁷ Article 8(2), ECHR.

²⁸ Bail for Immigration Detainees, Medical Justice and Public Law Project, 'Every Move You Make: The Human Cost of GPS Tagging in the Immigration System', (2022).

²⁹ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 76-77.

³⁰ Article 18, Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers', 27 January 2003.

grant asylum seeking minors access to education³¹ and ensure that all applicants receive access to necessary healthcare.³² Additionally, the Directive obligates States to take into consideration the specific situation of, among others, children and young people and disabled people.³³

- 3.22 The best interests of the child principle is not reflected in all asylum and refugee status legislative and policy matters.³⁴ Due to the low levels of financial support available to them, women seeking asylum are placed at higher risk of exploitation, abuse and trafficking.³⁵ Additionally, there has been a significant rise in homelessness affecting people seeking asylum, among other groups, particularly in England and NI.³⁶
- 3.23 In June 2022, 2,413 people seeking asylum were in receipt of section 95 support in NI,³⁷ with 23 in receipt of subsistence only.³⁸ The £40.85 per week payments are not proportional to the cost of living and are issued on cards that cannot be used online and can only be used in certain shops.³⁹
- 3.24 There is an unknown number of people seeking asylum in NI who have no recourse to public funds. Reliance on local authority provision as an alternative source of support is a specific problem in NI, where local councils do not have responsibility for housing, social services or education.⁴⁰
- 3.25 Since 2019, hotels have been increasingly used as contingency accommodation for people seeking asylum in NI.⁴¹ A scheme that is

³¹ Article 10, Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers', 27 January 2003.

³² Article 15, Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers', 27 January 2003.

³³ Article 17, Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers', 27 January 2003.

³⁴ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 76-77.

³⁵ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 55.

³⁶ E/C.12/GBR/CO/6, 'UN CESCR Committee concluding observations on the sixth periodic report of the UK of Great Britain and NI', 14 July 2016, at para 51.

³⁷ Home Office, 'Report on review of weekly allowances paid to asylum seekers and failed asylum seekers: 2021' (HO, 2022).

³⁸ Office for National Statistics, 'Immigration Statistics: Asylum and Resettlement - Asylum Seekers in Receipt of Support' (ONS, 2022).

³⁹ British Red Cross, 'The Longest Year: Life Under Local Restrictions – NI Briefing' (BRC, 2021).

⁴⁰ NI Human Rights Commission, 'Response to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI' (NIHRC, 2021).

⁴¹ UK Government, 'Contracts Finder – Asylum Accommodation and Support Services Contract NI'. Available at: <https://www.contractsfinder.service.gov.uk/Notice/af043016-dd83-4308-8b3c-0d134a3a89c9>; UK Visas and Immigration, 'A Home Office Guide to Living in Asylum Accommodation' (HO, 2019).

managed by Mears Group PLC.⁴² In November 2022, 1,267 people seeking asylum were accommodated in hotels in NI, of which 174 were school aged children under 16 years old.⁴³ Contingency accommodation is being used for prolonged periods without defined timeframes for moving to dispersal accommodation.⁴⁴ It is reported that movement from contingency to dispersal accommodation can often occur in a threatening way, with no advanced notice, limited information and without any meaningful support to ensure access to education, healthcare and support services.⁴⁵

- 3.26 Direct accounts of the living conditions in the NI hotels are consistent with UK-wide reports, including raising issues of inadequate access to food that meet dietary requirements or is culturally appropriate. There are also restrictions on private and family life, and insufficient access to basic services.⁴⁶ These issues are particularly challenging for children and persons with disabilities.⁴⁷
- 3.27 **The NIHRC recommends that the Home Office and the Executive Office urgently review the support and accommodation provided to refugees and people seeking asylum in NI to ensure it is adequate, fit for purpose and culturally appropriate in compliance with international human rights standards and Protocol Article 2. This review should be conducted in consultation with refugees, people that are seeking asylum and their representative organisations.**
- 3.28 **The NIHRC recommends the UK Government takes immediate steps to ensure people seeking asylum in NI are not destitute and are provided with financial support proportional to the cost of living and takes account of specific needs.**

Right to Work

⁴² UK Government, 'Contracts Finder – Asylum Accommodation and Support Services Contract NI'. Available at: <https://www.contractsfinder.service.gov.uk/Notice/af043016-dd83-4308-8b3c-0d134a3a89c9>; UK Visas and Immigration, 'A Home Office Guide to Living in Asylum Accommodation' (HO, 2019).

⁴³ Email from the Home Office to the NI Human Rights Commission, 14 November 2022.

⁴⁴ Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

⁴⁵ Ibid; The UK Government is obligated to ensure access to education under Article 13 UN ICESCR, Article 28 UN CRC, and Article 5(e)(v) UN CERD, and the right to health under Article 12 UN ICESCR, Article 24 UN CRC and Article 5(e)(iv) UN CERD. See also Council Directive 2000/43/EC, Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 29 June 2000, which creates provisions for equal access to healthcare and education with respect to race. The Race Equality Directive is listed in Annex 1 of the Ireland/Northern Ireland Protocol, and therefore the UK Government and NI Executive is required to keep pace with the Directive with respect to standards in NI.

⁴⁶ Independent Chief Inspector of Borders and Immigration, 'An Inspection of Contingency Asylum Accommodation May 2021-November 2021' (UK Gov, 2022), at paras 9.7 and 9.41.

⁴⁷ Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

- 3.29 The UN ICESCR Committee recommended that the UK Government “ensure that asylum seekers are not restricted from accessing employment while their claims were being processed.”⁴⁸
- 3.30 The UN CEDAW Committee recommended that the UK Government “take measures to enable asylum-seeking and refugee women to access employment”.⁴⁹
- 3.31 It has been reported that people seeking asylum find it difficult to make their support payments cover their living costs.⁵⁰ This becomes increasingly challenging as costs increase without a proportional rise in support.⁵¹ People seeking asylum in the UK, including NI, are not able to work for the first 12 months of a claim, after which they can take up limited roles.⁵² Without the means to supplement income, people seeking asylum are at a greater risk of destitution. This is particularly true for people seeking asylum with no recourse to public funds.
- 3.32 **The Commission recommends the UK Home Office reviews the restrictions placed on people seeking asylum, including a prohibition on taking up work while claims are being processed.**

Modern Slavery

- 3.33 The UN CAT Committee recommends that the UK Government and NI Executive “ensure access to sufficient protection and support for all victims of trafficking” including child victims.⁵³
- 3.34 Three UN Special Rapporteurs have jointly expressed concerns about the compliance of the then Nationality and Borders Bill with the UK Government’s obligations “to prevent trafficking in persons, and assist and protect all victims of trafficking, without discrimination, as well as on the

⁴⁸ E/C.12/GBR/CO/6, ‘UN CESCR Committee concluding observations on the sixth periodic report of the UK of Great Britain and NI’, 14 July 2016, at paras 24-25.

⁴⁹ CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 55(c).

⁵⁰ Children’s Law Centre and South Tyrone Empowerment Programme, ‘Joint Submission to Framework Convention on National Minorities Advisory Committee: Rights of Asylum Seeker Children Living in Contingency Accommodation (Hotel Buildings) in NI, run by Mears Group PLC’ (CLC and STEP, 2022), at 11.

⁵¹ National Institute of Economic and Social Research, ‘What Can Be Done About the Cost of Living Crisis?’ (NIESR, 2022).

⁵² Home Office, ‘Permission to work and volunteering for asylum seekers’, (UK Gov, 2022).

⁵³ 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.

potential impact on the human rights of victims of trafficking and of contemporary forms of slavery".⁵⁴ They have also highlighted the need to "recognise the impact of trauma" on victims of trafficking and contemporary forms of slavery, including not over-relying on victim statements and the lack of recognition for the primacy of the rights of the child.⁵⁵

3.35 The Nationality and Borders Act 2022 seeks to disapply the EU Trafficking Directive where it conflicts with a provision of the Act. The Commission considers the EU Trafficking Directive as underpinning victims' rights, which are protected under the Belfast (Good Friday) Agreement and thus falls within scope of Protocol Article 2.⁵⁶ The Commission is concerned that Protocol Article 2 was not fully considered in the drafting of the 2022 Act. The UK Government should ensure compliance with the EU Trafficking Directive to ensure there is no diminution of rights as a result of the 2022 Act.

3.36 Section 58 of the 2022 Act introduces Trafficking Information Notices, while Section 59 states that late compliance with such notices, without a valid excuse, must be taken as damaging a person's credibility. There are concerns that this does not adequately take into consideration the trauma that victims of trafficking experience.⁵⁷

3.37 The Commission recommends that the Home Office embeds consideration of Protocol Article 2 to ensure compliance in the development and implementation of subsequent Regulations and Guidance on human trafficking resulting from the Nationality and Borders Act 2022.

3.38 The Commission further recommends that subsequent regulations

⁵⁴ Letter from the UN Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally; UN Special Rapporteur on the human rights of migrants, Felipe González Morales; UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata; and UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin to the UK Government, 5 November 2021.

⁵⁵ Ibid.

⁵⁶ Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights; the Agreement protects a victim's right to remember as well as contribute to a changed society. There are additional arguments as to why the EU Trafficking Directive falls within scope of Protocol Article 2, including the equality of opportunity protections under the agreement and under Article 4 of the ECHR, which the Commission interprets as falling within scope of the non-diminution commitment insofar as it is underpinned by EU legislation; NI Human Rights Commission and Equality Commission NI, 'Scope of Article 2(1) of the Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement 2020', (NIHRC/ECNI, 2022).

⁵⁷ Letter from the UN Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally; UN Special Rapporteur on the human rights of migrants, Felipe González Morales; UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata; and UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin to the UK Government, 5 November 2021.

and guidance should ensure the needs of child victims of modern slavery and human trafficking are safeguarded and the best interests principle is embedded.

Nationality and Borders Act 2022

- 3.39 In addition to the concerns on the 2022 Act's modern slavery provisions, the Commission remains concerned about the creation of a two-tier system of legal protections and the penalising of refugees who arrive in the UK through irregular means. The changes to procedures and the appeals processes also remove important safeguards and undermines the long-established principle that refugees and people seeking asylum should receive the benefit of the doubt in their applications.⁵⁸
- 3.40 The Act introduces Electronic Travel Authorisations, which will be required for all non-British who require leave to enter the UK when travelling from Ireland. Irish citizens are excluded as they do not require leave to enter the UK under Section 3ZA of the Immigration Act 1971.
- 3.41 The Explanatory Notes confirmed that, while British and Irish citizens do not require an Electronic Travel Authorisation, their permission to travel will require evidence of their nationality, as "demonstrated by their passports".⁵⁹ It is unclear what measures are in place to decide which individuals will be required to 'demonstrate' that permission to travel but concerns have been raised that this may lead to an increase in racial profiling.
- 3.42 The Commission has raised concerns that additional restrictions or checks would likely engage Article 8 ECHR. The Commission has recommended to the Home Office that the then draft Nationality and Borders Bill be amended to provide a mechanism for timely review and/or appeal and that all journeys to NI from Ireland be exempt from Electronic Travel Authorisation requirements.⁶⁰
- 3.43 **The Commission recommends that appropriate safeguards are developed through statutory regulations and guidance to ensure**

⁵⁸ NI Human Rights Commission, 'Response to Call for Evidence by the Joint Committee on Human Rights on the Nationality and Borders Bill' (NIHRC, 2021), at paras 4.5-4.25 and 7.1-7.12.

⁵⁹ UK Parliament, 'Nationality and Borders Bill: Explanatory Notes' (HoL, 2021), at para 676.

⁶⁰ Letter from the NI Human Rights Commission and the Equality Commission for NI to Secretary of State for the Home Department, Priti Patel MP, 9 February 2022.

the enactment of the Nationality and Borders Act 2022 does not have a negative effect on refugees and people seeking asylum.

- 3.44 The Commission recommends that effective steps are taken by the Home Office to prevent and address racial profiling, including through appropriate training and monitoring, in the implementation of the revised guidance on the Common Travel Area and Electronic Travel Authorisation requirements, including at entry to NI at ports and airports and in the context of cross-border travel.**
- 3.45 The Commission recommends that the Home Office ensures that all journeys into NI, originating from Ireland, are exempt from Electronic Travel Authorisation requirements.**

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