



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the CoE European
Commission Against Racism and Intolerance**

**Parallel Report for the Sixth Cycle in
Monitoring the United Kingdom**

May 2023

Contents

1.0 Introduction.....	5
2.0 Overview of Mandate and Statutory Functions.....	5
3.0 Inclusive Education.....	9
Bullying in schools	9
Educational needs of specific groups of children	11
Children of migrant families	11
Educational underachievement	12
4.0 Irregular Present Migrants	14
Rwanda asylum proposals.....	14
Asylum and refugee law and resettlement.....	18
Resettlement schemes.....	18
Unaccompanied children seeking asylum.....	19
Reform of UK refugee and asylum law	19
Use of hotels as contingency accommodation	22
Access to healthcare for irregular migrants	24
UK's withdrawal from the EU	26
5.0 Lesbian, Gay, Bisexual, Transgender, Queer, Intersex+ Equality	27
Conversion therapy.....	27
Discrimination on grounds of sexual orientation.....	30
Lee v UK (2021)	31
Gender Equality Strategy.....	33
Gender recognition	33
Intersex genital mutilation	35
Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy	36
Housing selection scheme	37
Menopause	38
Relationships and sexuality education.....	40
Policy developments.....	41

6.0 Hate Speech and Hate Motivated Violence	43
Hate crime	43
7.0 Integration and Inclusion	45
Consolidating, strengthening and clarifying equality protections.....	45
Intersectional multiple discrimination	47
Racial equality.....	48
EU Racial Equality Directive	49
Ethnic monitoring.....	51
Racial profiling.....	51
Minority ethnic groups/faith communities.....	53
Refugee Integration Strategy	55
Asylum financial support.....	56
Crisis fund	59
Travellers’ accommodation.....	60
Unauthorised Encampments (NI) Order 2005	62
8.0 Additional Issues	63
Reform of the Human Rights Act 1998.....	63
Common Travel Area.....	68
Nationality and Borders Act: Electronic Travel Authorisations	69
Child, early and forced marriage.....	72
Deprivation of citizenship.....	74
Female genital mutilation.....	76
Domestic and sexual violence and abuse	78
Mechanisms to identify victims of torture detained in immigration facilities.....	81
Modern slavery and human trafficking	83
Nationality and Borders Act 2022	84
Justice (Sexual Offences and Trafficking Victims) Act 2022 (NI)	85
Illegal Migration Bill.....	87
Annex: Summary of Recommendations	90

1.0 Introduction

1.1 This evidence is submitted to the CoE European Commission Against Racism and Intolerance in respect of its monitoring of the United Kingdom (UK). It is submitted in a context where Northern Ireland (NI) has been without a fully functioning NI Executive and NI Assembly since February 2022. This is the second suspension period within this monitoring round, with a previous suspension running from January 2017 until January 2020. Between February and October 2022, the NI Ministers continued in a caretaking capacity. In October 2022, as experienced during the previous suspension, responsibility for managing devolved issues moved to the Head of the Civil Service and Departmental Permanent Secretaries.¹ Since February 2022, no new policies or legislation have been able to progress, and this will remain the case until the NI Executive and NI Assembly are reinstated. It is unclear how long this arrangement can continue for with the previous deadline of April 2023 now passed.²

2.0 Overview of Mandate and Statutory Functions

1.1 The equality and human rights mandates are separate in NI. The Equality Commission for NI focuses on equality in NI and the Northern Ireland Human Rights Commission (NIHRC) focuses on human rights in NI.

1.2 The NIHRC is one of three A-status National Human Rights Institutions of the UK. In accordance with the Paris Principles and section 69(1) of the NI Act 1998, the NIHRC reviews the adequacy and effectiveness of measures undertaken by the UK Government and NI Executive to promote and protect human rights, specifically within NI. In accordance with section 78A(1) of the NI Act, the NIHRC also monitors the UK Government's commitment under Article 2(1) of the Windsor Framework.³

¹ NI (Executive Formation etc) Act 2019.

² Jayne McCormack and Matt Fox 'Stormont stalemate: Heaton-Harris pushes back NI election deadline', *BBC News*, 9 November 2022.

³ The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement and all references to the Protocol in this document have been updated to reflect this change. (see Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework).

- 1.3 The NIHRC became operational on 1 March 2000. Its governing legislation is the Northern Ireland Act 1998, as amended by the Justice and Security (NI) Act 2007 and the European Union (Withdrawal Agreement) Act 2020.
- 1.4 The NIHRC's primary role is to make sure government and public authorities protect, respect and fulfil the human rights of everyone in NI. We also help people understand what their human rights are and what they can do if their rights are not protected or are abused. To fulfil this statutory responsibility we consider the full range of civil, political, social, economic and cultural rights. Its work is based on the international human rights treaties ratified by the UK Government, domestic legislation and other relevant standards.
- 1.5 The NIHRC's statutory functions in accordance with the NI Act 1998 are:
- keeping under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights.
 - monitoring the implementation of Windsor Framework Article 2;
 - reporting to the Secretary of State for NI and the NI Executive Office on the implementation of Windsor Framework Article 2;
 - advising the Secretary of State and the Northern Ireland Executive of legislative and other measures which ought to be taken to protect human rights and/or implement Windsor Framework Article 2—as soon as reasonably practicable after receipt of a general or specific request for advice; and on such other occasions as the NIHRC thinks appropriate.
 - advising the NI Assembly whether legislative Bills are compatible with human rights and/or Windsor Framework Article 2.
 - providing advice to the UK Government and Westminster Parliament on matters affecting human rights in NI.

- conducting investigations on systemic human rights issues. To do so, we may enter places of detention, and can compel individuals and agencies to give oral testimony or to produce documents.
- promoting understanding and awareness of the importance of human rights and/or Windsor Framework Article 2 in Northern Ireland. To do so, we may undertake or support research and educational activities.
- providing legal assistance to individuals and initiating strategic cases, including own motion legal challenges.
- taking judicial review proceedings in respect of an alleged breach (or potential future breach) of Windsor Framework Article 2 or intervening in legal proceedings concerning an alleged breach (or potential future breach) of Windsor Framework Article 2.
- monitoring the implementation of international human rights treaties and reporting to the United Nations and Council of Europe.
- bringing any appropriate matters relevant to Windsor Framework Article 2 to the attention of the Specialised Committee on issues related to the implementation of the Windsor Framework established by the UK-EU Withdrawal Agreement.

1.6 The NIHRC is a non-departmental public body. It is funded by the UK Government, but is an independent public body that operates in full accordance with the UN Paris Principles. The NIHRC receives its grant-in-aid from the UK Government through the NI Office, reporting to the UK Parliament through the Secretary of State for NI.

1.7 The NIHRC has seven Commissioners – a full time Chief Commissioner and six part-time Commissioners – that are appointed by the Secretary of State for NI. The Commissioners are

supported by a staff team of which the Commissioners, guided by the Chief Executive and Senior Management Team, decide on strategic direction and consider, amongst other things, internal structures, management of the NIHRC's budget, recruitment, deployment of staff, and what statements to make or reports to publish. The UN Paris Principles provide an important safeguard for protecting the independence of the NIHRC, including the Commissioners, CEO and Senior Management Team.

- 1.8 The NIHRC is accessible to individuals and groups experiencing discrimination or intolerance. The NIHRC operates a phoneline, website, email address, various social media accounts (Facebook, Instagram, LinkedIn, Twitter, YouTube) that can all be accessed and utilised by the public. The NIHRC ensures that all modes of communication are regularly monitored and any requests or queries are promptly responded to. The NIHRC also ensures to promote the ways in which it can be contacted by the public at every available opportunity, for example, by including links on its website and its online profiles, including details in all its publications and making announcements at events.
- 1.9 One issue of concern is that the NIHRC has received cuts to its budget, leaving it with insufficient resources to discharge all of its statutory functions fully. The Global Alliance of National Human Rights Institutions' Sub-Committee on Accreditation has deferred the NIHRC's accreditation three times due to the current and prospective funding position which it regards as very serious and time sensitive.⁴ The Sub-Committee on Accreditation has strongly recommended that an improved sustainable position is reached within the deferral period. Additionally, the NIHRC advised the UK Government that there would be a potential breach of Windsor Framework Article 2(2) if, for this reason, its 'A status' was not confirmed on review in October 2022.⁵ The Sub-Committee on

⁴ Global Alliance of National Human Rights Institutions, 'Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation: 18-29 October 2021' (GANHRI, 2021); Global Alliance of National Human Rights Institutions, 'Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation: 3-7 October 2021' (GANHRI, 2022); Global Alliance of National Human Rights Institutions, 'Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation: 20-24 March 2023' (GANHRI, 2023).

⁵ Letter from NIHRC to Brandon Lewis MP, Secretary of State for NI, 17 November 2021.

Accreditation is due to make a decision on the NIHRC's re-accreditation in Autumn 2023.

1.10 The UK Government has committed to providing budgetary compensation to enable the NIHRC to protect its short-term position and to carry out in good time a review of the budget to enable a more sustainable and independent future for the NIHRC. On that basis, the NIHRC presented to the GANHRI's Sub-Committee and asked for a further six months of deferral. The NIHRC has not yet received any further sufficient assurance as to either commitment.

1.11 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures that sufficient and sustainable long-term funding is provided to enable the NIHRC to fulfil its statutory functions independently in line with its role as an A status institution under the UN Paris Principles.

3.0 Inclusive Education

Bullying in schools

3.1 In 2021, the Addressing Bullying in Schools (NI) Act 2016 came into force.⁶ The 2016 Act places statutory duties on grant-aided schools to take steps to prevent bullying and to record bullying incidents. This includes addressing the motivation, method and how of each incident. The 2016 Act does not place a requirement on schools to report incidences of bullying to the Department of Education or the Education Authority NI.

3.2 There is evidence that specific groups of children in NI feel particularly affected by bullying.⁷ For example, as reported in 2016, of 532 lesbian, gay, bisexual, transgender, queer (or questioning) and intersex+ post-primary pupils surveyed, 255 (48 per cent) had experienced bullying as a result of their sexual orientation or gender identity, with 287 (54 per cent) feeling unsupported by the school and 239 (45 per cent) stating that school was not a safe place to

⁶ Department of Education, 'Press Release: Schools to implement Addressing Bullying Act', 21 April 2021.

⁷ Department for Communities, 'Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations' (DfC, 2021).

be.⁸ In 2021, the Executive Office published an assessment of the current racial equality strategy, which highlighted that in 2019, 45 per cent of young people said they had witnessed racist bullying or harassment in their school.⁹

- 3.3 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive conducts a review of the operation of the Addressing Bullying in Schools (NI) Act 2016 to examine its effectiveness at addressing the impact and prevalence of bullying in NI schools with immediate steps taken to address and monitor the findings of the review.**
- 3.4 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that bullying experienced by particular groups of children in NI, such as by lesbian, gay, bisexual, transgender, queer (or questioning) and intersex+ pupils and children from ethnic minorities is addressed. This includes ensuring that children, all teachers and other education providers are trained on how to identify, address and remedy the impacts of bullying, including online bullying.**
- 3.5 The CoE European Commission Against Racism and Intolerance may wish to advise the NI Executive to embed consideration of Windsor Framework Article 2 in relation to bullying of minority ethnic children in schools and to monitor any proposed changes by the EU following the ongoing consultation by the EU on the EU Racial Equality Directive, as well as relevant CJEU case law, in line with the 'keeping pace' obligations under Windsor Framework Article 2.**

⁸ Public and Corporate Economic Consultants, 'Department of Education: Post Primary School Experiences of 16-21 Year Olds' (PACEC, 2016).

⁹ NI Statistics and Research Agency, 'NI Racial Equality Indicators Report: 2014-2019' (TEO, 2021), at 18.

Educational needs of specific groups of children

Children of migrant families

- 3.6 In 2021/2022, there were 18,356 children of migrant families enrolled in NI schools.¹⁰ This was an increase from 17,694 in 2020/2021 and equated to 5 per cent of all school enrolments.¹¹ Of the 18,356 children of migrant families, 2,943 had special educational needs (17 per cent) and 5,003 were entitled to free school meals (28 per cent).¹²
- 3.7 In 2019, the Department of Education consulted on the effectiveness of its 'Newcomer' Pupils Policy, which the NIHRC responded to.¹³ In May 2023, the outcome of the consultation is still awaited.
- 3.8 In 2021, the Department of Health consulted on proposals for a new regional model of service for separated and unaccompanied children seeking asylum in NI. In its consultation response, the NIHRC recommended that the Department of Health and the Department Education collaborated on initiatives to assist long-term settlement and integration of children seeking asylum in NI. In 2023, the outcome of the consultation is awaited.
- 3.9 In 2022, the Education Authority NI's Intercultural Education Service has been providing support to the rising numbers of school-age children seeking asylum living in contingency accommodation in NI:

by offering a varied complement of provision including welcome clubs for primary and post primary pupils; laptops and Wi-Fi connections; English for speakers of other languages... classes; assistance with school registration, free school meals, uniform grants and transport applications; arranging visits by Educational Psychology

¹⁰ NI Statistics and Research Agency, 'Newcomer Pupils 2021/2022' (DoE, 2022).

¹¹ Ibid.

¹² Ibid.

¹³ NI Human Rights Commission, 'Response to Department of Education's Consultation on Supporting Newcomer Children' (NIHRC, 2019).

staff; and making statutory assessment referrals where necessary.¹⁴

3.10 However, civil society organisations have expressed serious concerns regarding timely access to education for people in contingency accommodation, with reports of some children being out of education for up to six months.¹⁵ Support from the Department of Education and the Education Authority NI is provided on an ad-hoc and short-term basis, which has any impact on provision, including access to language supports, uniform grants, free school meals and free school transport.¹⁶

Educational underachievement

3.11 In 2021, the Expert Panel on Educational Underachievement in NI published its final report finding that:

children from... Traveller [communities]... Roma children and children [with experience of care]... have some of the lowest levels of attainment of all equality groups. A combination of early intervention, a whole-school approach to nurture and schools having the scope (and budget) to provide a differentiated curriculum bespoke to their pupils' specific needs are essential in addressing these inequalities.¹⁷

3.12 The Expert Panel also noted the need for teachers to be up-skilled in a range of areas, including "supporting children most at risk of underachievement including children looked after, traveller, Roma and ... children [of migrant families]".¹⁸ The final report and accompanying action plan contains 47 actions spanning a number of NI Executive Departments.¹⁹ However, in the absence of a budget no progress can be made while the NI Executive is suspended.²⁰

¹⁴ NI Assembly Hansard, 'Written Question: Asylum seeking children - Kate Nicholl MLA - AQW 516/22-27', 14 June 2022.

¹⁵ Children's Law Centre and South Tyrone Empowerment Programme, 'Joint Submission to CoE Framework Convention on the Protection of 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).

¹⁶ Ibid.

¹⁷ Expert Panel on Educational Underachievement, 'A Fair Start: Final Report and Action Plan' (DoE, 2021).

¹⁸ Ibid, at 65.

¹⁹ Ibid.

²⁰ NI Assembly Hansard, 'Written Question: A Fair Start - Diane Dodds MLA - AQW 3017/22-27', 26 January 2022.

- 3.13 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive, as a matter of priority, expeditiously agrees and makes provision for the funding required to implement the action plan based on the Expert Panel on Educational Underachievement in NI's findings. In the interim, the Department of Education NI should take steps, where it is not able to address issues in their entirety in the absence of an NI Executive, to ensure these issues are not exacerbated by the delay.**
- 3.14 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly updates and publishes its proposals for the revised policy for children of migrant families, including an action plan that will guide its effective implementation. This should take a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. It should also include reconsidering the use of the term 'newcomer pupils'.**
- 3.15 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that teacher training that promotes cultural awareness is developed and delivered within schools and considers ways to provide a curriculum bespoke to pupils' specific needs and experiences. This should include meaningfully consulting with parents, guardians, children and representative organisations at every stage of the process.**
- 3.16 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive urgently reviews and adequately funds the Education Authority NI's Intercultural Education Service. The resulting process and funding should have sufficient flexibility built in to ensure all children seeking asylum in NI at any given time have timely access to education and other necessary**

supports, such as language classes, uniform grants, school meals and transport.

4.0 Irregular Present Migrants

Rwanda asylum proposals

4.1 In 2022, the UN Refugee Agency urged the UK to refrain from transferring people seeking asylum and refugees to Rwanda for asylum processing. It found that “the UK is adopting arrangements that abdicate responsibility to others and thus threaten the international refugee protection regime, which has stood the test of time, and saved millions of lives over the decades”.²¹ In 2022, the UN Refugee Agency published a legal opinion on the proposals that found:

the UK-Rwanda arrangement fails to meet the required standards relating to the legality and appropriateness of bilateral or multilateral transfers of asylum-seekers. This arrangement, which amongst other concerns seeks to shift responsibility and lacks necessary safeguards, is incompatible with the letter and spirit of the... [UN Refugee Convention 1951].²²

4.2 In 2022, the Home Secretary, Priti Patel MP, announced a migration and economic development partnership between the UK and Rwanda, proposing to relocate some migrants who have arrived in the UK illegally to Rwanda “to resettle and rebuild their lives”.²³ A Memorandum of Understanding was signed, with immediate effect, between the UK and Rwanda setting out the terms for the Asylum Partnership Arrangement,²⁴ within which Rwanda committed to:

receive asylum seekers from the UK, to consider their claims for asylum, giving effect to their rights under international law through the Rwanda domestic asylum

²¹ UN Refugee Agency, ‘Press Release: UN Refugee Agency opposes plan to export asylum’, 14 April 2022.

²² UN Refugee Agency, ‘UNCHR Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers Under the UK-Rwanda Arrangement’ (UNCHR, 2022).

²³ Home Office, ‘Press Release: UK and Rwanda migration and economic development partnership’, 14 April 2022.

²⁴ Memorandum of Understanding Between the Government of the UK of Great Britain and NI and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement, 13 April 2022.

system and arranging for the settlement in Rwanda of those recognised as refugees or otherwise requiring protection.²⁵

- 4.3 The Memorandum of Understanding also contained a commitment by the UK and Rwanda to uphold “fundamental human rights and freedoms without discrimination”.²⁶ Yet, the Memorandum of Understanding is not binding in international law²⁷ and compliance with this arrangement is not “justiciable in any court of law by third-parties or individuals”.²⁸
- 4.4 Under the Memorandum of Understanding and the Nationality and Borders Act 2022, if an asylum claim in the UK is deemed ‘inadmissible’ it will not be considered in the UK, but could be considered in Rwanda.
- 4.5 In 2022, the Home Office updated its guidance on inadmissible claims stating that:

asylum claims may be declared inadmissible and not substantively considered in the UK, if the claimant was previously present in or had another connection to a safe third country, where they claimed protection, or could reasonably be expected to have done so, provided there is a reasonable prospect of removing them in a reasonable time to a safe third country.²⁹

- 4.6 Where children are involved, applications should be considered in accordance with the duty to safeguard the welfare of the child under the Borders, Citizenship and Immigration Act 2009.³⁰ Unaccompanied children are not suitable for this inadmissibility process, though they may be invited to withdraw their application where certain grounds are fulfilled. However, families with children under 18 years of age may still be removed on inadmissibility grounds.³¹

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid, at Article 1.6.

²⁸ Ibid, at Article 2.2.

²⁹ Home Office, ‘Guidance, Inadmissibility: Safe Third Country Cases, Version 7’ (HO, 2022).

³⁰ Section 55, Border, Citizenship and Immigration Act 2009.

³¹ Ibid.

- 4.7 On 1 June 2022, formal directions were issued to the first group of people to be relocated to Rwanda on 14 June 2022.³² However, the initial flight was stopped by an ECtHR interim measure to prevent irreversible harm to an applicant challenging the legality of their deportation. The interim measure ceased to have effect on 6 February 2023, but the ECtHR is now considering an application for it to consider the compliance of the UK Government's actions in this case with Article 3 of the ECHR.³³
- 4.8 Legal actions against the policy were also commenced by civil society organisations. In 2022, hearings for the first judicial review application began on behalf of people seeking asylum, supported by the Public and Commercial Services Union, Care4Calais and Detention Action. This action challenges the policy on the basis that people seeking asylum removed to Rwanda would be at risk from torture and inhuman treatment.³⁴ A second challenge based on the procedural fairness of the proposals was also heard on behalf of Asylum Aid.³⁵ The England and Wales High Court, in finding that the policy was consistent with the UN Refugee Convention and the Human Rights Act 1998, held that the arrangements for relocating asylum seekers to Rwanda and to have their asylum claims determined in Rwanda rather than the UK was lawful. Nonetheless, the decisions for removal were quashed and referred back to the Home Secretary for reconsideration on the basis that the Home Secretary had enforced a blanket policy without considering the individual circumstances of the claimants.³⁶ In 2023, an appeal was granted by the England and Wales Court of Appeal on a number of grounds including concerns as to whether Rwanda's assurances to the UK amounted to sufficient guarantees of safe and fair treatment.³⁷

³² Home Office, 'Press Release: First migrants set for Rwanda to be given final notice', 1 June 2022.

³³ *NSK v UK*, Application No 28774/22, Pending.

³⁴ Dominic Casciani, 'Rwanda migrant flights plan legally viable, government lawyer say', *BBC News*, 8 September 2022; Rajeev Syal and Diane Taylor, 'UK Ministers ignored evidence Rwanda violated human rights, court told', *The Guardian*, 5 September 2022.

³⁵ Asylum Aid, 'Press Release: Rwanda Policy – Our legal fight to prevent injustice', 9 June 2022.

³⁶ *AAA and Others v Secretary of State for the Home Department* [2022] EWHC 3230.

³⁷ Dominic Casciani, 'Rwanda Asylum Policy: Migrants granted right to legal challenge', *BBC News*, 16 January 2023; *AAA and Others v Secretary of State for the Home Department* [2022] EWHC 3230; *R v Secretary of State for the Home Department* [2023] EWCA Civ 266.

4.9 Additionally in 2022, the House of Lords International Agreement Committee found that:

the arrangement will have far-reaching consequences for individuals and their rights, and the Memorandum of Understanding contains specific assurances and protections for those being relocated that both Parties commit to uphold. However, because it is a political agreement only – as opposed to a legally binding treaty – the safeguards included in it are not enforceable. This is unacceptable. Agreements that fundamentally affect individuals’ rights should be entered into through a formal treaty, so that the rights of those affected can be fully protected.³⁸

4.10 In January 2023, the UK Government responded to the International Agreement Committee stating that the Memorandum of Understanding was:

negotiated with close care and attention through a series of discussions between the UK and the Government of Rwanda. The commitments within it and the form it took were issues agreed between the two Participants. Whilst not legally binding in international law, the terms of the MoU – including the monitoring arrangements – provide the assurances we, and Rwanda, need to confirm that the arrangement will be operated in line with international obligations and in a manner which ensures the welfare and safety of those people relocated under it.³⁹

4.11 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government repeals the Memorandum of Understanding with Rwanda and ensures all people seeking asylum in the UK are processed in a human rights’ compliant way. This should

³⁸ House of Lords International Agreements Committee, ‘Memorandum of Understanding Between the UK and Rwanda for the Provision of an Asylum Partnership Arrangement - Seventh Report of Session 2022–2023’ (HoL, 2022), at 2.

³⁹ UK Government, ‘Response to the House of Lords International Agreements Committee Report on Its Inquiry: Memorandum of Understanding Between the UK and Rwanda for the Provision of an Asylum Partnership Arrangement’ (UK Gov, 2023), at para 3.

take into account the trauma likely to have affected people prior to and during the journey to the UK.

Asylum and refugee law and resettlement

4.12 While immigration and asylum matters are ultimately the responsibility of the UK Home Office, NI Executive departments are responsible for providing services to refugees and people seeking asylum to support their resettlement in NI.

Resettlement schemes

4.13 In 2022, the Afghan Relocations and Assistance Policy,⁴⁰ the Afghan Citizens Resettlement Scheme,⁴¹ the Ukraine Family Scheme⁴² and the Homes for Ukraine Scheme⁴³ were available in NI. As of 31 March 2022, no arrivals were reported in NI under these schemes.⁴⁴ However, since March 2022, the NIHRC is aware that several Ukrainians have resettled in NI under the Ukrainian-focused schemes with official figures pending. In April 2022, the Executive Office set up four Ukraine Assistance Centres across NI to provide individuals with advice on key services including health, education, jobs, benefits, housing and immigration.⁴⁵

4.14 In 2020, the Syrian Vulnerable Persons Relocation Scheme came to an end. There were 438 families comprising of 1,814 individuals resettled in NI under this scheme.⁴⁶ In 2022, the House of Commons NI Affairs Committee noted the success of the consortium model adopted by the Syrian scheme in NI for enabling joint working between the public and voluntary sectors.⁴⁷ However, the NI Affairs Committee raised concerns regarding access to and provision of services for families once they had settled. The NI

⁴⁰ Executive Office, 'Press Release: Executive agrees to support Afghan refugees', 7 September 2021.

⁴¹ Ibid.

⁴² Home Office, 'Guidance: Apply for a Ukraine Family Scheme visa'. Available at: <https://www.gov.uk/guidance/apply-for-a-ukraine-family-scheme-visa>.

⁴³ Home Office, 'Guidance: Apply for a visa under the Ukraine Sponsorship Scheme (Homes for Ukraine)'. Available at: <https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme>.

⁴⁴ Email correspondence from the Executive Office to the NI Human Rights Commission, 22 August 2022.

⁴⁵ NI Direct, 'Ukraine assistance centres'. Available at: <https://www.nidirect.gov.uk/articles/ukraine-assistance-centres>.

⁴⁶ Department for Communities, 'Syrian Vulnerable Persons Relocation Scheme'. Available at: <https://www.communities-ni.gov.uk/publications/syrian-vulnerable-persons-relocation-scheme>.

⁴⁷ NI Affairs Committee, 'The Experiences of Minority Ethnic and Migrant People in NI' (HoC, 2022), at para 26.

Affairs Committee recommended that the NI Executive reflect on and learn lessons from the Syrian scheme for future schemes.⁴⁸

Unaccompanied children seeking asylum

4.15 The Immigration Act 2016 commits the Secretary of State to “make arrangements to relocate to the UK and support a specific number of unaccompanied refugee children from other countries in Europe”.⁴⁹ The UK Government committed to transferring 480 children.⁵⁰

4.16 In 2021/2022, 66 unaccompanied children and young people seeking asylum arrived in NI and were referred to the Health and Social Care Trusts.⁵¹ In March 2022, the Trusts were supporting a total of 136 unaccompanied children and young people seeking asylum. Of these 136, 61 aged under 18 years old and 75 aged over 18 years old were in receipt of leaving and after care support services.⁵²

Reform of UK refugee and asylum law

4.17 In 2021, the UK published a new plan for immigration.⁵³ The NIHRC raised concerns relating to the proposals.⁵⁴ In May 2022, the Nationality and Borders Act received Royal Assent. The NIHRC 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.⁵⁵

4.18 In March 2023, the Illegal Migration Bill was introduced to the UK Parliament. It aims to make provision for and in connection with the

⁴⁸ Ibid, at para 28.

⁴⁹ Section 67, Immigration Act 2016.

⁵⁰ Home Office, 'Policy Statement: Section 67 of the Immigration Act 2016' (HO, 2017).

⁵¹ Email correspondence from the Executive Office to the NI Human Rights Commission, 22 August 2022.

⁵² Ibid.

⁵³ Home Office, 'New Plan for Immigration' (HO, 2017).

⁵⁴ NI Human Rights Commission, 'Response to Call for Evidence by the Joint Committee on Human Rights on the Nationality and Borders Bill' (NIHRC, 2021).

⁵⁵ Ibid, at paras 4.5-4.25 and 7.1-7.12.

removal from the UK of persons who have entered or arrived in breach of immigration control. The NIHRC shares the significant concern for the number of people who resort to dangerous Channel crossings to seek safety and protection in the UK. However, the NIHRC is gravely concerned by the current draft of the Bill and the general direction of recent developments that seek to diminish the rights of refugees, asylum seekers and migrants who arrive to the UK by irregular means.⁵⁶

4.19 The NIHRC is concerned that the Bill in its current form will create an implied hierarchy of rights-holders and adopts an unjustified blanket approach towards particular groups of migrants.⁵⁷

4.20 In the Belfast (Good Friday) Agreement, the parties affirmed their commitment to the civil rights of “everyone in the community”. The UK Government’s explainer document on Windsor Framework Article 2 acknowledges that its protections extend to everyone who is “subject to law in NI”.⁵⁸ People seeking asylum are part of the community and subject to law in NI. Therefore, the NIHRC takes the view that the rights of refugees and people seeking asylum fall within the protection of the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement 1998.⁵⁹ Thus refugees and people seeking asylum fall within scope of the non-diminution commitment under Windsor Framework Article 2 and a number of EU standards, which were binding on the UK on 31 December 2020, remain relevant in NI.⁶⁰ The NIHRC is concerned about the Human Rights memorandum to the Illegal Migration Bill fails to address compliance with Windsor Framework Article 2.

⁵⁶ See: Nationality and Borders Act 2022; Home Office, ‘Memorandum of Understanding (MoU) between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership arrangement’, (Gov.UK, 2022); Home Office, ‘New Plan for Immigration’, (Gov.UK, 2022).

⁵⁷ NI Human Rights Commission, ‘Submission to the Joint Committee on Human Rights Inquiry on Illegal Migration’ (NIHRC, 2023).

⁵⁸ NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in NI: What Does it Mean and How will it be Implemented?’ (NIO, 2020), at para 8.

⁵⁹ In ongoing court proceedings at the time of writing, the Home Office have not disputed the argument that the protections of the relevant chapter of the Belfast (Good Friday) Agreement 1998 extend to refugees and people seeking asylum.

⁶⁰ Directive 2003/9/EC, ‘Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003; Directive 2004/83/EC ‘Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted’ 29 April 2004.

4.21 The NIHRC is concerned that the proposals set out in the Illegal Migration Bill will see refugees, people seeking asylum and migrants who arrive irregularly criminalised and moved to a third country, which risks individuals being removed to places where they may experience serious human rights violations.⁶¹ The NIHRC is also concerned that the current draft of the Bill will deny access to justice in the domestic courts for any human rights violations in respect of the Bill and will have retrospective application in contravention of Article 7 of the ECHR.⁶² Furthermore, the NIHRC is concerned that the current draft of the Bill does not reflect the best interests of the child and denies victims of modern slavery access to specialised support.⁶³ The current draft of the Bill also includes a provision that enables the UK Government to disregard interim measures by the European Court of Human Rights (ECtHR), contrary to Article 34 of the ECHR and the Belfast (Good Friday) Agreement.⁶⁴

4.22 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government revises the Illegal Migration Bill to ensure that the foundational human rights principles of inalienability, universality and proportionality are embedded throughout, including in the language used, to prevent the demonisation and unjustifiable denial of human rights protection to particular groups of migrants.

4.23 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government takes steps to ensure that the Illegal Migration Bill complies with Article 2 of the Windsor Framework and that the Human Rights Memorandum to the Bill be amended to set out in detail an assessment of the compliance of the Bill with Article 2 of the Windsor Framework.

4.24 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK

⁶¹ NI Human Rights Commission, 'Submission to the Joint Committee on Human Rights Inquiry on Illegal Migration' (NIHRC, 2023).

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

Government, through meaningful engagement, immediately and thoroughly assesses the purpose and provisions of the Illegal Migration Bill. The result should ensure that all refugees, people seeking asylum and migrants arriving to the UK are processed, accommodated and supported in compliance with human rights obligations, with particular focus on if, when and how individuals are transferred to a third country. It should also ensure that continued access to domestic courts for human rights violations is ensured.

Use of hotels as contingency accommodation

4.25 In 2019, the Mears Group PLC was sub-contracted by the Home Office to provide accommodation and support for people seeking asylum in NI.⁶⁵ The £113m contract is due to run until August 2029. There are two distinct types of asylum accommodation provided for by the Home Office while asylum claims are processed – initial accommodation and dispersal accommodation.⁶⁶ Initial accommodation is short-term housing that is to be used for a period of three to four weeks. After this period, if required, individuals should be moved to longer-term dispersal accommodation to await the full determination of their asylum claim.⁶⁷

4.26 In 2020, the COVID-19 pandemic and the sharp rise in the number of people seeking asylum arriving to the UK increased the demand for asylum accommodation. To deal with the high intake, the use of hotels as ‘contingency accommodation’ increased significantly.⁶⁸ However the continued pressure on the system means such accommodation is being used for much longer than three to four weeks with no set timeframe for being moved to dispersal accommodation.⁶⁹ There have also been reports of moves from contingency accommodation to dispersal accommodation occurs that were conducted in a threatening manner, without any form of

⁶⁵ 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>.

⁶⁶ UK Visas and Immigration, 'A Home Office Guide to Living in Asylum Accommodation' (HO, 2019).

⁶⁷ Ibid.

⁶⁸ Independent Chief Inspector of Borders and Immigration, 'An Inspection of Contingency Asylum Accommodation May 2021-November 2021' (UK Gov, 2022).

⁶⁹ Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

advance notice and without any meaningful support to ensure access to education, healthcare and support services.⁷⁰

4.27 In 2022, the Independent Chief Inspector of Borders and Immigration reported that the use of hotels as contingency accommodation across the UK have negatively affected the experiences of people seeking asylum in the UK. Some issues raised included a lack of choice and quality of food, and a lack of play and leisure activities for children and families.⁷¹ One senior accommodation provider told inspectors that the mental health of people seeking asylum, including children, was being affected by the long stays.⁷²

4.28 In 2022, the NIHRC met with civil society organisations and individuals with lived experiences of hotel accommodation in NI run by the Mears Group PLC.⁷³ Their direct accounts of the living conditions in the hotels are consistent with UK-wide reports, including raising issues of inadequate access to good quality and culturally appropriate food, restrictions on private and family life, and insufficient access to basic services such as education and health. It was reported that these issues are particularly challenging for children and persons with disabilities.⁷⁴ These issues, among many others, were additionally reported in civil society submissions to the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities.⁷⁵

4.29 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government and the NI Executive 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 Windsor Framework Article 2.

⁷⁰ Ibid.

⁷¹ 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.

⁷² Ibid, at paras 9.29 and 10.17.

⁷³ Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

⁷⁴ Ibid.

⁷⁵ 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).

This review should be conducted in consultation with refugees, people that are seeking asylum and their representative organisations.

4.30 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive develops appropriate safeguards 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.

4.31 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government and the NI Executive urgently develop and resource a realistic, long-term strategy aimed at expeditiously ending the use of hotels for contingency asylum accommodation in NI, particularly for families and persons with disabilities. The strategy should be culturally appropriate, take into account individual's specific needs and be developed in consultation with refugees, people that are seeking asylum and their representative organisations.

Access to healthcare for irregular migrants

4.32 Everyone in NI is entitled to free emergency healthcare at the point of service, including irregular migrants.⁷⁶ People seeking asylum who have made an application to be granted temporary protection, asylum or humanitarian protection are also entitled to free primary and secondary healthcare.⁷⁷ This includes people seeking asylum who have exhausted the appeals process and remain in NI. It is important that information regarding the right to emergency healthcare is communicated to irregular migrants to ensure they are able to access this type of healthcare when they need it.

4.33 Several of the health and social care trusts in NI offer the NI New Entrants Service. It is the first point of contact to the health services for new migrants, including people seeking asylum. It

⁷⁶ NI Direct, 'Health and Medical Emergencies Services for Visitors to NI'. Available at:

<https://www.nidirect.gov.uk/articles/health-and-medical-emergencies-services-visitors-northern-ireland>

⁷⁷ Provision of Health Services to Persons Not Ordinarily Resident Regulations (NI) 2015; Health and Personal Services (General Medical Services Contracts) (Amendment) Regulations (NI) 2015.

offers initial health assessments, health promotion advice, and information on accessing health services in NI.⁷⁸

- 4.34 In 2021, the House of Commons NI Affairs Committee heard evidence on the lack of healthcare provision for irregular migrants who are traumatised or have complex needs.⁷⁹ Delays issuing asylum registration cards and HC2 certificates, which are required to register and receive full support for many health care services, were also reported.⁸⁰ In 2022, the Home Office published guidance on HC2 applications.⁸¹
- 4.35 The NIHRC has received reports that there are several barriers to migrants, including irregular migrants, accessing healthcare. Travelling to healthcare appointments remains difficult for people seeking asylum or those with irregular status, as financial support is provided by vouchers which cannot be used for transport. Due to delays in the decision-making process, pregnant migrant women do not receive financial support until late in their pregnancy. Furthermore, there have been reports of a lack of access to translation and interpretation services.⁸²
- 4.36 Registering for and accessing General Practitioner services and National Health Service dental services remains challenging for irregular migrants, with long waiting times for appointments.⁸³ Concerns have been raised by residents seeking asylum that are currently in temporary and contingency hotel accommodation about the lack of access to healthcare information, inadequate provision for medical needs and significant delays in health assessments.⁸⁴ The NIHRC is further aware of instances where migrants are being questioned about immigration status at point of contact with health services.⁸⁵ There are also difficulties in accessing mental health

⁷⁸ Belfast Health and Social Care Trust, 'Press Release: Screening Service for new entrants to NI', 24 May 2012.

⁷⁹ House of Commons NI Affairs Committee, 'Inquiry into the Experience of Minority Ethnic and Migrant People in NI - Oral Evidence', 8 September 2021, at Question 19.

⁸⁰ Ibid, at Question 22.

⁸¹ Home Office, 'Guidance to Support HC2 Applications for Asylum Seekers' (HO, 2022).

⁸² NI Human Rights Commission, 'Submission to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI' (NIHRC, 2021).

⁸³ Meeting between NI Human Rights Commission and NI Council for Racial Equality, 9 August 2022.

⁸⁴ Children's Law Centre and South Tyrone Empowerment Programme, 'Joint Submission to Framework Convention on the Protection of 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).

⁸⁵ Roundtable on Access to Healthcare and Protocol Article 2 hosted by the NI Human Rights Commission, 6 June 2022.

services and reports of declining mental health amongst disabled migrants.⁸⁶

UK's withdrawal from the EU

4.37 Following the UK's withdrawal from the EU, EU, EEA and Swiss citizens living in the UK must now apply for settled status, through the EU Settlement Scheme, to ensure they have leave to remain in the UK.⁸⁷ The deadline to apply for the EU Settlement Scheme was 30 June 2021.⁸⁸ Should EU, EEA and Swiss citizens not apply for settled status, they risk being viewed as irregular migrants and may lose access to healthcare among other benefits.⁸⁹ Concerns have been raised regarding the accessibility of the EU Settlement Scheme, particularly for more vulnerable members of the community, including young people who have grown up in care, victims of modern slavery and members of the Roma community.⁹⁰

4.38 In 2021, the Independent Monitoring Authority issued judicial review proceedings against the Home Office, challenging the policy where EU or EEA citizens who fail to apply for settled status before the expiry of their pre-settled status automatically lose their rights.⁹¹ The challenge was successful, with the Court agreeing that this was unlawful.⁹² In February 2023, the Home Office confirmed that it would not appeal the decision.⁹³

4.39 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes effective steps to identify and minimise procedural barriers to migrant women accessing healthcare. This includes introducing guidance for healthcare professionals on providing effective access.

⁸⁶ Independent Mechanism in NI Disability Forum Meeting, 2 August 2022.

⁸⁷ UK Government, 'Stay in the UK ('Settled Status'): Step by Step'. Available at: <https://www.gov.uk/eusetledstatus>

⁸⁸ Home Office, 'EU Settlement Scheme: Information for Late Applicants' (HO, 2021).

⁸⁹ Amelia Gentleman, 'High court rejects bid to extend UK's EU settlement scheme', *The Guardian*, 11 March 2021.

⁹⁰ Migration Observatory, 'Press Release: Vulnerable EU citizens are at risk of becoming "irregular migrants" after Brexit', 24 September 2021.

⁹¹ Independent Monitoring Authority, 'Press Release: Judicial Review claim issued by Independent Monitoring Authority', 14 December 2021.

⁹² *R (Independent Monitoring Authority for the Citizens' Rights Agreement) v Secretary of State for the Home Department* [2022] EWHC 3274 (admin).

⁹³ Independent Monitoring Authority, 'Press Release: Independent Monitoring Authority welcomes confirmation that Home Office will not pursue appeal in EU Settlement Scheme case', 16 February 2023.

4.40 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive issues an amendment or policy direction to ensure that the full set of General Practitioner services, including access to a General Practitioner list (subject to discretion) is genuinely available to any person.

4.41 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government and NI Executive minimise any procedural or informational barriers to accessing healthcare services for people in temporary and contingency accommodation that are seeking asylum.

4.42 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government provides further guidance on the rights of people with pending and late applications to the EU Settlement Scheme, to applicants to the Scheme and to healthcare professionals to ensure no diminution of the current provision and protect the rights to the highest attainable standard of healthcare.

4.43 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive provides clear, accessible and complete information on rights to healthcare post-EU withdrawal, including access to cross-border and island-of-Ireland services to ensure no diminution of the current provision and protect the rights to the highest attainable standard of healthcare.

5.0 Lesbian, Gay, Bisexual, Transgender, Queer, Intersex+ Equality

Conversion therapy

5.1 In 2020, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, defined conversion therapy as:

an umbrella term to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person's sexual orientation and gender identity, including gender expression, can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm, in particular when the person is lesbian, gay, bisexual, trans or gender diverse. Such practices are therefore consistently aimed at effecting a change from non-heterosexual to heterosexual and from trans or gender diverse to cisgender. Depending on the context, the term is used for a multitude of practices and methods, some of which are clandestine and therefore poorly documented.⁹⁴

- 5.2 In 2021, the Expert Advisory Panel on a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI defined conversion therapy as:

any practice designed to change a person's sexual orientation or gender identity. It can be distinguished from other practices designed to provide guidance and support to [lesbian, gay, bisexual, transgender, queer (or questioning), intersex +]... people provided by psychotherapists, counsellors or faith leaders because it operates under the premise that a specific sexual orientation, gender identity, or gender expression is pathological and/or evidence of a mental illness that can be cured. Unlike therapies that facilitate a person's open and autonomous exploration of their sexual and gender futures, these therapies are discriminatory from the outset because [conversion therapy]... designates identities into normal and abnormal categories. As such, it is proscriptive because it attempts to modify identity into traditional heterosexual and cis-gendered models. It includes both pseudo-psychological treatments and physical interventions. In its

⁹⁴ A/HRC/44/53, 'Report of the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity: Practices of So-called "Conversion Therapy"', 1 May 2020, at para 17.

'therapeutic' forms it is a scientifically discredited, unprofessional and dangerous practice.⁹⁵

- 5.3 The Expert Advisory Panel concluded that any such practices should be made illegal.⁹⁶ It also recommended that steps are taken to ensure such practices are not commissioned or funded and that appropriate medical services are created to provide free access to support for victims.⁹⁷
- 5.4 In 2021, the UK Government committed to banning conversion therapy⁹⁸ and consulted on proposals intending to ban conversion therapy of all kinds for anyone under the age of 18 and adults who are vulnerable and not able to consent.⁹⁹ The proposals excluded provisions relating to changing someone's gender identity, which are to be dealt with separately.¹⁰⁰ The NI Assembly also passed a motion calling on the then Minister for Communities, Deirdre Hargey MLA, to commit to bringing forward legislation to ban conversion therapy in all its forms before the end of the current NI Assembly mandate.¹⁰¹ The NIHRC wrote to the then Minister for Communities in support of the motion.¹⁰²
- 5.5 In 2022, work is continuing to inform the drafting of legislation. The Department for Communities is working closely with representatives of those most affected.¹⁰³ However, no new primary legislation can be progressed with the continued absence of a functioning NI Executive and NI Assembly.¹⁰⁴

5.6 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive, promptly introduces legislation in NI to ban all practices of conversion therapy aimed at changing or suppressing a

⁹⁵ Department for Communities, 'Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations' (DfC, 2021), at Section 6.2.

⁹⁶ Ibid, at para 33.

⁹⁷ Ibid, at para 33.

⁹⁸ Prime Minister's Office, 'The Queen's Speech 2021' (UK Gov, 2021).

⁹⁹ Government Equalities Office, 'Banning Conversion Therapy' (GEO, 2021).

¹⁰⁰ 'What is conversion therapy and when will it be banned?', *BBC News*, 11 May 2022.

¹⁰¹ Department for Communities, 'Press Release: Conversion Therapy must end – Hargey', 20 April 2021.

¹⁰² Letter from NI Human Rights Commission to the Minister for Communities, Deirdre Hargey MLA, 5 May 2021.

¹⁰³ NI Assembly Hansard, 'Written Question: Conversion Therapy - Colin McGrath MLA - AQW 2582/22-27', 14 July 2022.

¹⁰⁴ Ibid.

person's sexual orientation or gender identity, by any person or group of persons. The NI Executive should be guided by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Expert Advisory Panel on a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI's definitions of conversion therapy in developing this legislation and its broader work related to this issue. ¹⁰⁵

Discrimination on grounds of sexual orientation

- 5.7 In 2021/2022, the Police Service NI reported that there were 462 homophobic motivated incidents, an increase from 366 in 2020/2021.¹⁰⁶ The number of homophobic crimes recorded by the police was 336, an increase from 246 in 2020/2021. These are the highest annual figures since the start of the data series in 2004/2005.¹⁰⁷
- 5.8 Under the Criminal Justice (No 2) (NI) Order 2004, sexual orientation is recognised as a ground for inciting hatred. In 2020, the Independent Hate Crime Review recommended that statutory aggravations should be added to all existing offences in NI, including homophobic hate crime, following the model adopted in Scotland.¹⁰⁸ In 2021, the Department of Justice committed to considering how to implement the Independent Hate Crime Review's recommendations in a two-stage consultation process.¹⁰⁹ In 2022, stage one of the process, which considered statutory aggravations, has been completed. In its response to the first consultation, the NIHRC recommended that careful consideration is given to the statutory aggravation model, alongside an evaluation of best practice from other jurisdictions.¹¹⁰ The NIHRC also identified the relevance of the EU Victims' Directive under Windsor Framework Article 2, which creates provisions to protect and support victims of

¹⁰⁵ It should be noted that one Commissioner at the NI Human Rights Commission dissented from this recommendation.

¹⁰⁶ NI Statistics and Research Agency, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in NI: Update to 31 March 2022', 12 May 2022.

¹⁰⁷ Ibid.

¹⁰⁸ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020).

¹⁰⁹ Department of Justice, 'Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views' (DoJ, 2022).

¹¹⁰ NI Human Rights Commission, 'Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI' (NIHRC, 2022).

hate crime.¹¹¹ The EU Victims' Directive has been accepted as falling within scope of the Windsor Framework by the UK Government and therefore, its standards as they were on 31 December 2020 remain relevant in NI.¹¹² In 2023, the Department of Justice was considering the responses received and planning for the second stage of the consultation process.¹¹³

5.9 In 2020, the New Decade, New Approach Agreement committed the NI Executive to publish a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy.¹¹⁴ The Department for Communities appointed an Expert Advisory Panel and created a Co-design Group made up of key stakeholders, including the NIHRC. A cross-departmental working group was also created. In 2022, the Expert Advisory Panel for the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI published its report, which recommended that the strategy considers discrimination on the grounds of sexual orientation.¹¹⁵ As an observer member of the Co-Design Group, the NIHRC identified, among other human rights considerations, the need to embed consideration of Windsor Framework Article 2 into the strategy. A public consultation on the strategy was due to take place in early 2022, but this process has been delayed. The Department for Communities has confirmed that the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy cannot progress until a new NI Executive is in place.¹¹⁶

Lee v UK (2021)

5.10 In 2018, the UK Supreme Court held that the refusal of *Ashers Baking Company*, to make and sell a cake iced with a statement supporting the extension of civil marriage to same sex couples, was not unlawful discrimination on grounds of sexual orientation. The

¹¹¹ Article 22 and Recitals 56-57, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

¹¹² UK Government, 'UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland' (NIO, 2020), at 13.

¹¹³ Department of Justice, 'Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views' (DoJ, 2022).

¹¹⁴ NI Office, 'New Decade, New Approach' (NIO, 2020).

¹¹⁵ Department for Communities, 'Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations' (DfC, 2021), at page 76.

¹¹⁶ Letter from Minister for Communities. Deirdre Hargey MLA, to Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy Co-Design Group, 18 July 2022.

reasoning given was that Ashers Baking Company would have refused to supply this cake with its particular message to any person, whatever their personal characteristics.¹¹⁷

5.11 In 2019, Mr Lee made an application to the ECtHR on the ground that the UK Supreme Court failed to give sufficient weight to his ECHR rights.¹¹⁸ In 2022, the ECtHR declared the application inadmissible. The ECtHR found that the applicant had not exhausted all domestic remedies as he had not invoked his ECHR rights during the domestic proceedings.¹¹⁹ The ECtHR did not consider the merits of the case.

5.12 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive introduces clear guidance that provides legal certainty for businesses and customers on what constitutes discrimination. This guidance should address specifically the nature of the right and its key principles.

5.13 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that the Hate Crime Review Team's recommendations on homophobic hate crime are promptly implemented in full and that the NI Executive considers carefully and ensures compliance with Windsor Framework Article 2, including the provisions of the EU Victims' Directive in the development of hate crime legislation.

5.14 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly publishes and implements a robust and adequately resourced Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. This strategy should be accompanied by a measurable plan of action and effective monitoring mechanisms.

¹¹⁷ *Colin McArthur, Karen McArthur and Ashers Baking Company Ltd v Gareth Lee* [2018] UKSC 49.

¹¹⁸ 'Ashers 'gay cake' row referred to European Court', *BBC News*, 15 August 2019.

¹¹⁹ *Lee v UK* (2021) ECHR 1129.

Gender Equality Strategy

5.15 In 2020, the New Decade, New Approach Agreement committed the NI Executive to publish a new Gender Equality Strategy.¹²⁰ The Department for Communities appointed an Expert Advisory Panel and created a Co-Design Group made up of key stakeholders, including the NIHRC. A cross-departmental working group was also created. In 2021, the Expert Advisory Panel published its report, which highlighted key human rights obligations relevant to gender equality and outlined several key themes for discussion by the Co-Design Group.¹²¹ In 2022, the Co-Design Group and cross-departmental working groups have continued to meet regularly. The NIHRC has raised, among other human rights considerations, how gender equality engages commitments under Windsor Framework Article 2. A public consultation on the Gender Equality Strategy was due to take place in early 2022, but this process has been delayed. The Department for Communities has confirmed that the Gender Equality Strategy cannot progress until a new NI Executive is in place.¹²²

5.16 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly publishes and implements a robust, gender-sensitive Gender Equality Strategy, which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. This strategy should be accompanied by a measurable plan of action and effective monitoring mechanisms.

Gender recognition

5.17 Under the Gender Recognition Act 2004, for a transgender person's acquired gender to be legally recognised in the UK, an application must be submitted to a Gender Recognition Panel. The Gender Recognition Panel will then assess the application and, if successful, will issue a Gender Recognition Certificate. Currently, the Gender

¹²⁰ NI Office, 'New Decade, New Approach' (NIO, 2020).

¹²¹ Department for Communities, 'Gender Equality Strategy Expert Advisory Panel Report' (DfC, 2021), at 12.

¹²² Letter from Department for Communities to NI Human Rights Commission, 18 July 2022.

Recognition Panel process for the UK is centralised and based in England. Consultations on possible amendments to the gender recognition process have been conducted in England, Wales and Scotland, but not NI.¹²³ There are concerns that any change to the process for the rest of the UK, without making provision to accommodate applicants from NI seeking gender recognition, could in effect deny transgender individuals in NI from accessing a legal gender recognition process.

5.18 Eligibility criteria for a Gender Recognition Certificate requires that an applicant is over 18, diagnosed with gender dysphoria, has lived in the acquired gender for more than two years and intends to do so permanently.¹²⁴ In 2022, the fee for a gender recognition certificate in NI was reduced to five pounds.¹²⁵ Reflecting the Yogyakarta Principles,¹²⁶ transgender representatives in NI consider the self-declaration model to be more appropriate.¹²⁷ Research is currently being conducted by Queen's University Belfast, on behalf of the Department of Finance, to inform how legislative change could be brought forward to enable people to declare their own gender identity.¹²⁸

5.19 In 2022, there continues to be significant delays in accessing gender-affirming healthcare in NI, with many people having been on the waiting list to access Brackenburn clinic for three to four years.¹²⁹

5.20 In 2021, the Expert Advisory Panel for the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy recommended that gender recognition legislation is fit for purpose, including that it recognises and is reflective of the diversity of genders in NI.¹³⁰ After a process of engaging with the Co Design

¹²³ Scottish Government, 'Review of the Gender Recognition Act 2004: A Consultation' (Scottish Government, 2017); Gender Equalities Office, 'Reform of the Gender Recognition Act – Government Consultation' (GEO, 2018).

¹²⁴ NI Direct, 'Gender Recognition'. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>

¹²⁵ Ibid.

¹²⁶ The Yogyakarta Principles Plus 10, 10 November 2017, at Principle 31.

¹²⁷ Roundtable discussion with civil society representatives, November 2018.

¹²⁸ Queen's University Belfast, 'Press Release: Researchers calling for views on NI's Gender Recognition Act', 10 March 2022.

¹²⁹ Rainbow Project, 'Trans Healthcare'. Available at: <https://www.rainbow-project.org/trans-healthcare-nhs-and-private/>

¹³⁰ Department for Communities, 'Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations' (DfC, 2021).

Group and cross-departmental group focused on the strategy, it was due to be subject to a public consultation in early 2022. The NIHRC is a member of the Co-Design group and, among other human rights considerations, has identified gender identity and gender recognition as issues engaging commitments under Windsor Framework Article 2. However, the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy cannot progress any further until a new NI Executive is in place.¹³¹

5.21 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly publishes and implements a robust and adequately resourced Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI that deals with gender recognition and takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. This strategy should be accompanied by a measurable plan of action and effective monitoring mechanisms.

5.22 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that the gender recognition process in NI is amended to reflect the self-declaration model. This process should be affordable, respectful and accessible, including effectively training staff and professionals across an individual's gender recognition journey.

5.23 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that transgender children are effectively supported and that the best interests of the child are a primary consideration.

Intersex genital mutilation

5.24 The law in NI does not provide for the recognition of intersex persons. In 2003, the then Department of Health, Social Services and Public Safety issued guidance for medical practitioners in

¹³¹ Letter from Department for Communities to NI Human Rights Commission, 18 July 2022.

relation to consent for examination, treatment or care, including providing guidance on the parameters of children's capacity to consent.¹³² The NIHRC is not aware of any NI policy specific to medical treatment for intersex persons.

5.25 Civil society representatives have raised concerns about the issue of non-consensual medical intervention for intersex children.¹³³ It is unclear if any data exists in relation to the number of children in NI who would be classed as intersex or those undergoing surgery or medical treatment regarding disorders of sexual differentiation/development.

Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy

5.26 In 2020, the Department for Communities commenced work on a Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy for NI. As part of this process an Expert Advisory Panel was appointed and undertaking ongoing engagement with a Co-Design Group made up of key stakeholders, including the NIHRC, and cross-departmental working group was established. In 2021, the Expert Panel recommended that the Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy addresses issues faced by intersex persons in NI, including the healthcare needs of intersex persons, commitment to and guidance around informed consent of intersex children and a commitment to ending intersex genital mutilation in NI.¹³⁴ The strategy, which was due to be published for consultation, cannot progress until the NI Executive is reinstated.¹³⁵

5.27 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government and NI Executive, facilitate the recognition of intersex individuals before the law through the expeditious provision of birth certificates, civil registration documents,

¹³² Department of Health, Social Services and Public Safety, 'Reference Guide to Consent for Examination, Treatment or Care' (DHSSP, 2003), at para 64.

¹³³ Department for Communities, 'Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex+ Strategy Expert Advisory Panel – Themes and Recommendations' (DfC, 2021).

¹³⁴ Ibid.

¹³⁵ Letter from Department for Communities to NI Human Rights Commission, 18 July 2022.

identity papers, passports and other official personal documentation while respecting intersex persons' right to self-determination.

5.28 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes all necessary measures to protect the right of intersex children to autonomy and bodily integrity and that all medical interventions have informed consent.

Housing selection scheme

5.29 Social housing in NI is allocated through a points-based system, which uses common criteria to assess the housing needs of all social housing applicants.¹³⁶ The housing selection scheme is approved by the Department for Communities and implemented by the NI Housing Executive for all social housing, including housing provided for and managed by housing associations. Under this scheme applicants are assessed and awarded points according to their housing need. The level of points awarded determines the applicant's position on the social housing waiting list. Applicants may qualify for points under four categories – intimidation, insecurity of tenure, housing conditions and health or social well-being.¹³⁷

5.30 In 2022, the NIHRC assisted several individuals who have not been awarded intimidation points, despite being victims of intimidation. Intimidation points are awarded to applicants whose home has been destroyed or seriously damaged or they are in serious and imminent risk of being killed or seriously injured as a result of a terrorist, racial or sectarian attack, or because of an attack motivated by hostility because of an individual's disability or sexual orientation or result of an attack due to neighbourhood nuisance or other similar forms of anti-social behaviour.¹³⁸ Yet, the definition of intimidation for this purpose excludes other common scenarios of intimidation such as domestic violence, coercive control or being intimidated on other grounds, such as nationality. There is no official appeals

¹³⁶ Article 22, Housing (NI) Order 1981.

¹³⁷ NI Housing Executive, 'Housing Selection Scheme Rules' (NIHE, 2014).

¹³⁸ *Ibid*, at Rule 23.

mechanism, with only an informal complaints procedure available. The NIHRC has found that the complaints procedure is lengthy, the effect of which is exacerbated given the vulnerability of the individuals and households involved.

5.31 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that the housing selection scheme is revised to ensure that it considers properly an applicant's circumstances and reflects up-to-date common challenges faced by individuals and households in NI, particularly in relation to intimidation points. This requires meaningful consultation with individuals affected and their representative organisations.

5.32 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that an official mechanism to appeal housing selection decisions is in place, which is effectively implemented and monitored. This includes ensuring the appeals process and its outcomes are promptly and effectively implemented.

5.33 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that comprehensive equality data on housing in NI is regularly gathered, monitored, evaluated and published. This data should be disaggregated in a way that reflects NI society. The NI Executive in cooperation with housing providers, Police Service NI and community representatives should take prompt, effective steps to address and eradicate any inequalities that are identified.

Menopause

5.34 Equality laws in NI protect against discrimination relating to pregnancy and maternity,¹³⁹ but there is currently no specific

¹³⁹ See for example Equal Pay Act (NI) 1970, Sex Discrimination (NI) Order 1976; Maternity and Parental Leave etc. Regulations (NI) 1999; see also the six EU equality directives listed in Annex 1 of the Windsor Framework.

protection against discrimination relating to menopause. Menopause-related claims in the UK are often argued on the grounds of sex, age and disability discrimination.¹⁴⁰ The current law does not reflect the intersectional nature of menopause in many cases.¹⁴¹ Certain groups may face particular challenges related to menopause including lesbian, gay, bisexual, transgender, queer, intersex+ people, younger women and ethnic minority women.¹⁴²

5.35 In 2021, guidance on promoting equality in employment for women affected by menopause was published.¹⁴³ It noted that “women make up nearly half of the working population in NI and with the recent change in pension age, it is likely that more women will be working into later life”.¹⁴⁴ A survey conducted by the Irish Congress of Trade Unions found that “not only did women face real challenges in the workplace as a result of menopausal symptoms, but that often there was little or no support available to them”.¹⁴⁵ A shortage of hormone replacement therapy in NI has also contributed to women’s distress and difficulties in managing their symptoms.¹⁴⁶

5.36 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive identifies, develops, implements and monitors effective measures to ensure perimenopausal and menopausal women have equal access to employment throughout their working life and the necessary support to ensure such access is practically available. Every stage of this process should be based on meaningful engagement with perimenopausal and menopausal women and their representative organisations. It should also involve consulting on revising equality legislation and policies to include menopause as a protected characteristic.

¹⁴⁰ *Merchant v BT PLC* [2012] ET/140135/11; *A v Bonmarche Ltd (In Administration)* [2019] 4107766/2019; *Donnachie v Telent Technology Services Ltd* [2020] 1300005/2020.

¹⁴¹ House of Commons Women and Equalities Committee, ‘Menopause and the Workplace’ (HoC, 2022), at 30.

¹⁴² *Ibid*, at 11.

¹⁴³ NI Committee Irish Congress of Trade Unions, Equality Commission for NI and Labour Relations Agency, ‘Promoting Equality in Employment for Women Affected by Menopause: Guidance for Employers, Trade Union Representatives and Employees’ (ICTUNI, 2021).

¹⁴⁴ *Ibid*, at 2.

¹⁴⁵ *Ibid*, at 3.

¹⁴⁶ Marie-Louise Connolly, ‘Hormone replacement therapy: NI shortage “distressing” for women’, *BBC News*, 8 November 2021.

5.37 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes immediate steps to ensure perimenopausal and menopausal women have access to the medication and treatments that they need to treat their menopause symptoms on a long-term and affordable basis, with a view to supporting all women’s enjoyment of rights, including access to work.

Relationships and sexuality education

5.38 In 2018, the UN CEDAW Committee’s Inquiry into the impact of restrictive access to termination of pregnancy for women and girls in NI, found that “NI youth are denied the education necessary to enjoy their sexual and reproductive health and rights”.¹⁴⁷ The UN CEDAW Committee recommended that the NI Executive “make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation”.¹⁴⁸

5.39 The current structure of the curriculum, based on the Education (Curriculum Minimum Content) Order (NI) 2007, sets out the minimum content for each area of learning at each key stage, thus enabling a degree of flexibility for schools. Relationships and sexuality education is a statutory component of key stages three and four,¹⁴⁹ however, a school can provide such education in line with its ethos.¹⁵⁰

5.40 In 2015, the Council for the Curriculum, Examinations and Assessment introduced updated guidance on relationship and sexuality education for post-primary schools. A Relationships and Sexuality Hub has also been developed, which contains materials for schools to choose from regarding such education. Women’s Aid also delivers ‘Helping Hands’, a preventative education programme

¹⁴⁷ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018.

¹⁴⁸ Ibid.

¹⁴⁹ Education (NI) Order 2006.

¹⁵⁰ NI Curriculum, 'Relationships and Sexuality Education Guidance: An Update for Post-Primary Schools' (NIC, 2019).

funded by the Department of Education, to some NI primary schools.¹⁵¹ However, this programme is not mandatory.

- 5.41 In 2019, the Education Authority NI published its non-statutory guidance for supporting transgender pupils in schools, education other than at school centres, and youth services.¹⁵²
- 5.42 The statutory curriculum relating to relationship, sexuality and gender identity education is significantly less prescriptive in NI than, for example, in England and elsewhere in the UK where the public sector equality duty also applies to schools. Engagement with civil society organisations also indicates that the lack of a standardised approach across schools in NI is seeing a disparity regarding the effectiveness of relationship, sexuality and gender identity education that pupils in NI are receiving.¹⁵³

Policy developments

- 5.43 In 2019, the Gillen Review made specific reference to the need for comprehensive relationship and sexual education, recognising the role that this plays in prevention of sexual offences as well as in achieving justice in trials that take place.¹⁵⁴
- 5.44 In 2020, the New Decade New Approach Agreement made several commitments to the review and reform education in NI and made a commitment to implementation of the Gillen Review recommendations.¹⁵⁵
- 5.45 Also in 2020, the NI Commissioner for Children and Young People noted the need to focus on raising standards and improving access to the curriculum for all pupils including access to relationships and sexuality education.¹⁵⁶

¹⁵¹ Women's Aid, 'Primary Schools'. Available at: <https://www.womensaidni.org/about-us/our-work/preventative-education/working-with-children-in-primary-schools/>

¹⁵² Education Authority NI, 'Guidance for Schools, EOTAS Centres and Youth Service on Supporting Transgender Young People' (EANI, 2019).

¹⁵³ Meeting between Informing Choices and NI Human Rights Commission, 7 August 2020; NI Human Rights Commission roundtable with civil society organisations, 2 September 2020; Meeting between Brook and NI Human Rights Commission, 30 September 2020.

¹⁵⁴ Sir John Gillen, 'Report into the Law and Procedures in Serious Sexual Offences in NI - Part 1' (DoJ, 2019).

¹⁵⁵ NI Office, 'New Decade, New Approach' (NIO, 2020).

¹⁵⁶ NI Commissioner for Children and Young People, 'Statement on Children's Rights in NI' (NICCY, 2020).

5.46 In 2021, the Expert Panel for a Gender Equality Strategy and the Expert Panel for a Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex + Strategy recommended that inclusive relationships and sexuality education should be taught in a comprehensive and standardised way across all schools and that the subject should not be dependent on school ethos.¹⁵⁷ There is also cross-party support “to introduce standardised, comprehensive relationships and sexuality education in our schools” as part of any forthcoming strategy to prevent violence against women and girls.¹⁵⁸ A campaign by Raise Your Voice, a civil society organisation working on tackling sexual harassment and sexual violence, has also showed wide ranging support for this approach from civil society organisations and several MLAs.¹⁵⁹

5.47 Section 9(1) of the NI (Executive Formation etc) Act 2019 states that “the Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the UN CEDAW report are implemented in respect of NI”. These recommendations include the provision of education on sexual and reproductive health and “non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services”.¹⁶⁰

In 2021, using its powers of investigation, the NIHRC commenced an investigation into relationship and sexuality education in NI. In 2023, the investigation report is being finalised. The report will include recommendations relating to law reform, implementation measures and ongoing monitoring.

5.48 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes prompt, concrete steps to fully implement the obligations on relationship and sexuality education set out in the NI (Executive Formation etc) Act 2019, in line with the UN CEDAW Committee’s recommendations.

¹⁵⁷ Robbie Meredith, 'Sex education in NI schools is insufficient, says expert panel', *BBC News*, 13 March 2021.

¹⁵⁸ NI Assembly Hansard, 'Strategy to Prevent Violence Against Women and Girls – Sinead Bradley MLA', 23 March 2021.

¹⁵⁹ Raise your Voice, 'Press Release: Open letter call for comprehensive RSE', 8 April 2021.

¹⁶⁰ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018.

6.0 Hate Speech and Hate Motivated Violence

Hate crime

- 6.1 In 2013, the Together: Building a United Community was published, which aimed to promote good race relations and social cohesion.¹⁶¹ In 2015, the Race Equality Strategy 2015-2025 was published, which aimed to tackle racial inequalities and eradicate racism and hate crime.¹⁶²
- 6.2 In 2021/2022, there were 3,119 recorded incidents of hate crime and 2,236 recorded hate crimes, an increase from 2,493 recorded incidents of hate crime and 1,757 recorded hate crimes in 2020/2021.¹⁶³ The number of hate motivated incidents recorded rose across five of the six hate motivations (racist, homophobic, sectarian, disability and faith/religion), when compared with the previous 12 months. The number of crimes recorded also increased across all six motivations (racist, homophobic, sectarian, disability, faith/religion and transphobic). This was the highest number of crimes recorded since the beginning of the data series for four out of six motivations (racist, homophobic, disability and transphobic).¹⁶⁴
- 6.3 In 2020, the Independent Hate Crime Review Team published its report on improving hate crime legislation in NI.¹⁶⁵ In 2021, the Department of Justice published its response to the Independent Review, indicating that no recommendations had been wholly rejected at this stage.¹⁶⁶ The Department of Justice has put in place a dedicated Hate Crime Branch to take forward work on implementing the Independent Review's recommendations.¹⁶⁷
- 6.4 The Department of Justice committed to considering how to implement the Independent Hate Crime Review's recommendations

¹⁶¹ The Executive Office, 'Together: Building a United Community' (TEO, 2013).

¹⁶² The Executive Office, 'Race Equality Strategy' (TEO, 2015).

¹⁶³ Police Service NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police Service in NI' (PSNI, 2022).

¹⁶⁴ Ibid.

¹⁶⁵ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: An Independent Review - Consultation Paper' (IHCR, 2020).

¹⁶⁶ Department of Justice, 'Review of Hate Crime Legislation in NI - Departmental Response' (DoJ, 2021), at 3.

¹⁶⁷ Ibid, at 13.

in a two-stage consultation process.¹⁶⁸ In 2022, stage one of the process, which considered statutory aggravations, has been completed. The first stage focused on proposals regarding a new statutory aggravation hate crime model, sectarian offending in hate crime, stirring up offences, special measures and cross-examination and the possibility of exploring misogyny and transmisogyny in hate crime law.¹⁶⁹ In its response to the consultation, the NIHRC recommended that the Department of Justice carefully consider the provisions of the EU Victims' Directive within the context of Windsor Framework Article 2 in the development of hate crime legislation.¹⁷⁰ The EU Victims' Directive requires that victims receive "timely and individual assessments to assess their specific protection needs" which pays particular attention to victims of hate crime, gender-based violence and disabled victims.¹⁷¹ The NIHRC's response also highlighted that human rights standards are clear that a gender-sensitive approach should be taken to addressing gender-based violence,¹⁷² a position that is echoed in the EU Victims' Directive, which emphasises that women victims of gender-based violence and their children often require special support and protection.¹⁷³

6.5 Stage two is due to be consulted on in 2023. The remaining issues will cover the inclusion of age and gender as protected groups, stirring up offences and the possibility of a statutory duty on public authorities to remove hate expression from public places.¹⁷⁴

6.6 In June 2022, Commissioner Designate for Victims of Crime in NI, Geraldine Hanna, was appointed.¹⁷⁵ The Commissioner Designate's mandate includes victims of hate crime.

¹⁶⁸ Department of Justice, 'Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views' (DoJ, 2022).

¹⁶⁹ Ibid.

¹⁷⁰ NI Human Rights Commission, 'Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI' (NIHRC, 2022), at para 5.18.

¹⁷¹ Article 22, 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.

¹⁷² CEDAW/C/GC/35, UN CEDAW Committee General Recommendation No 35: Gender Based Violence Against Women', 26 July 2017; A/HRC/38/47 'UN Special Rapporteur on Violence against Women, Its Causes and Consequences, Dubravka Šimonovic, Report on Online Violence against Women and Girls from a Human Rights Perspective', 18 June 2018, at para 102.

¹⁷³ 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.

¹⁷⁴ Email correspondence from Department of Justice to NI Human Rights Commission, 7 September 2022.

¹⁷⁵ Department of Justice, 'Press Release: Victims of Crime Commissioner Designate for NI appointed', 14 March 2022.

6.7 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly and effectively improves hate crime legislation in NI, guided by the Independent Hate Crime Review Team's recommendations and the Department of Justice's consultations. The NI Executive should ensure that any new legislation compliments existing and future strategies on race and community relations.

6.8 The CoE European Commission Against Racism and Intolerance may wish to advise the NI Executive to consider carefully and ensure compliance with Windsor Framework Article 2, including the provisions of the EU Victims' Directive, in the development of hate crime legislation and ensure that a victim-centred approach is adopted when investigating, prosecuting and remedying hate crimes.

7.0 Integration and Inclusion

Consolidating, strengthening and clarifying equality protections

7.1 In NI, discrimination is prohibited across several pieces of legislation, resulting in a complex framework. Unlike other parts of the UK, there is no single legislative instrument to consolidate, clarify and enhance existing equality protections in NI. Furthermore, NI legislation does not provide for cases of intersectional multiple discrimination. At present in NI, each ground for discrimination must form its own case, meaning it must be considered and ruled on separately.

7.2 In 2022, the House of Commons NI Affairs Committee expressed concern that anti-discrimination legislation in NI "lags behind the rest of the UK".¹⁷⁶ The NI Affairs Committee welcomed proposals from the Executive Office to consult on updating NI race-related legislation, but urged for the process to be expedited "to afford the people of NI the same rights and protections as their fellow citizens throughout the rest of the UK".¹⁷⁷

¹⁷⁶ House of Commons NI Affairs Committee, 'The Experiences of Minority Ethnic and Migrant People in NI: Second Report of Session 2021-2022' (NIAC, 9 March 2022), at 3.

¹⁷⁷ Ibid, at 15.

7.3 The NIHRC responded to EU Commission public consultation on potential gaps in the EU Racial Equality Directive and how these gaps should be addressed.¹⁷⁸ In its submission, the NIHRC highlighted that there has been limited progress to consolidate, strengthen and clarify existing equality protections in NI thus far, despite numerous recommendations from various international standard bodies.¹⁷⁹ It recommended that the EU Directive be amended to include a requirement that all jurisdictions to which the EU Directive applies take steps to strengthen, simplify and harmonise anti-discrimination protections across all protected categories.¹⁸⁰ In accordance with Windsor Framework Article 2, if the EU Racial Equality Directive is amended in such a way that enhances rights and safeguards, then NI law would then be required to keep pace with those changes.

7.4 In 2022, the Executive Office confirmed that there is currently no agreement by the NI Executive to bring forward a Single Equality Act for NI.¹⁸¹

7.5 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive introduces a Single Equality Act for NI and secures the necessary political consensus to deliver this.

7.6 The CoE European Commission Against Racism and Intolerance may wish to advise that the NI Executive monitors any proposed changes by the EU to the six Annex 1 Equality Directives, as well as relevant CJEU case law, and pay particular attention to the ongoing consultation by the EU on the Racial Equality Directive.

¹⁷⁸ European Commission, 'Addressing Possible Gaps in the Racial Equality Directive – Public Consultation' (EU Commission, 2022).

¹⁷⁹ E/C.12/GBR/CO/5 'UN ICESCR Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 June 2009, at para 16; CRI(2016)38, 'European Commission on Racial Intolerance Report on the UK (Fifth Monitoring Cycle)' (ECRI, 2016), at para 22; ACFC/OP/IV(2016)005 'CoE Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the UK', 27 February 2017.

¹⁸⁰ NI Human Rights Commission, 'Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)' (NIHRC, 2022).

¹⁸¹ Email from the Executive Office to NI Human Rights Commission, 11 October 2022.

Intersectional multiple discrimination

- 7.7 NI legislation does not provide for cases of intersectional multiple discrimination. At present in NI, each ground for discrimination must form its own case, meaning it must be considered and ruled on separately.¹⁸² The Equality Act 2010 which applies in England, Scotland and Wales, contains a dual discrimination provision, which has not been brought into force.¹⁸³
- 7.8 Between 2016 and 2021, the Equality Commission for NI received 1,878 hybrid new enquiries, which raised issues on two or more equality grounds. Of these, 439 had a race discrimination element.¹⁸⁴
- 7.9 In 2015, a commitment was made to review the Race Relations (NI) Order 1997, including considering intersectional multiple discrimination.¹⁸⁵ In 2023, this has not been included as a consideration within the Executive Office's consultation on reforming the Race Relations (NI) Order 1997.¹⁸⁶
- 7.10 In 2020, the Independent Hate Crime Review Team published its report on improving hate crime legislation in NI.¹⁸⁷ In considering intersectionality, the Independent Review Team recommended that any new hate crime legislation should provide appropriate recognition of the importance of intersectionality.¹⁸⁸ It also recommended that intersectionality is reflected when considering statutory aggravations to existing offences.¹⁸⁹
- 7.11 The Department of Justice committed to considering how to implement the Independent Hate Crime Review's recommendations in a two-stage consultation process.¹⁹⁰ In 2022, stage one of the

¹⁸² Equality Commission for NI, 'Recommendations for Law Reform: Strengthening Protection Against Racial Discrimination' (ECNI, 2014), at 38.

¹⁸³ House of Lords Select Committee on the Equality Act 2010 and Disability, 'The Equality Act 2010: The Impact on Disabled People (Report of Session 2015-16)' (HoL, 2016).

¹⁸⁴ Email correspondence from Equality Commission for NI to NI Human Rights Commission, 4 February 2022.

¹⁸⁵ Eoin Mullan, Sinead Brown and Paul Roddy, 'Racial Equality Legislation Review' (TEO, 2018).

¹⁸⁶ The Executive Office, 'Consultation on the Review of the Race Relations (NI) Order 1997' (TEO, 2023).

¹⁸⁷ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: An Independent Review - Consultation Paper' (IHCRT, 2020).

¹⁸⁸ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020), at Recommendation 11.

¹⁸⁹ Ibid.

¹⁹⁰ Department of Justice, 'Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views' (DoJ, 2022).

process was completed, which confirmed that the Department of Justice accepted that hate crime legislation should address intersectionality. The NIHRC supported this approach in its consultation response.¹⁹¹

7.12 In 2022, the NIHRC responded to the EU Commission's public consultation on potential gaps in the EU Racial Equality Directive and how these gaps should be addressed.¹⁹² The submission highlighted that current NI legislation does not provide for intersectional discrimination and noted with concern the lack of legislative reform due to the absence of an Executive.¹⁹³ Given these inadequacies and delays at a domestic level, the NIHRC recommended that the EU Racial Equality Directive be amended to implement specific protections against intersectional and multiple discrimination, since Windsor Framework Article 2 would require NI law to 'keep pace' with such changes.¹⁹⁴

7.13 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures intersectional multiple discrimination claims in NI are effectively addressed, including providing for intersectionality within equality legislation as required.

7.14 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive Office monitors any proposed changes by the EU to the six Annex 1 Equality Directives, as well as relevant CJEU case law, and pay particular attention to the ongoing consultation by the EU on the EU Racial Equality Directive.

Racial equality

7.15 In 2021/2022, there were 1,334 incidents and 931 crimes recorded where there was a racist motivation.¹⁹⁵ This is an increase from 993

¹⁹¹ NI Human Rights Commission, 'Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI' (NIHRC, 2022), at para 6.10.

¹⁹² European Commission, 'Addressing Possible Gaps in the Racial Equality Directive – Public Consultation' (EU Commission, 2022).

¹⁹³ NI Human Rights Commission, 'Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)' (NIHRC, 2022).

¹⁹⁴ Article 13, Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020.

¹⁹⁵ Police Service of NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in NI: Financial Year Update' (PSNI, 2022), at 7.

incidents and 719 crimes in 2020/2021.¹⁹⁶ In 2016, the number of racist hate motivated incidents overtook sectarian motivated incidents.¹⁹⁷

7.16 In 2015, the Executive Office committed to reviewing the Race Relations (NI) Order 1997.¹⁹⁸ In 2021, a comparative study of protections offered by the Race Relations (NI) Order with laws in the rest of the UK and Ireland had been examined by the Departmental Solicitor's Office and formed part of engagement with stakeholders and other administrations.¹⁹⁹ In March 2023, the Executive Office launched a consultation on reforming the Race Relations (NI) Order 1997, which is due to close in June 2023.²⁰⁰ However, any outcome from the consultation process cannot be implemented in the absence of a NI Executive and NI Assembly.²⁰¹

EU Racial Equality Directive

7.17 In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU, including the right to equality of opportunity in all social and economic activity, regardless of ethnicity.²⁰²

7.18 Windsor Framework Article 2 provides specific protection against discrimination in the six Annex 1 Equality Directives, including the EU Racial Equality Directive, which protects against discrimination on the grounds of race and ethnicity across a range of areas, including employment and vocational training, access to goods and services, education and social security.²⁰³ NI law must keep pace

¹⁹⁶ Police Service of NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in NI: Financial Year Update' (PSNI, 2022), at 6.

¹⁹⁷ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020), at 100.

¹⁹⁸ The Executive Office, 'Racial Equality Strategy 2015-2025' (TEO, 2015).

¹⁹⁹ Email correspondence from the Executive Office to the NI Human Rights Commission, October 2021.

²⁰⁰ The Executive Office, 'Consultation on the Review of the Race Relations (NI) Order 1997' (TEO, 2023).

²⁰¹ Racial Equality Subgroup Meeting, 16 February 2022.

²⁰² Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights.

²⁰³ 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

with any changes made by the EU to these rights to improve the minimum levels of protection available, on or after 1 January 2021, including monitoring relevant current and future CJEU case law.²⁰⁴

7.19 In 2021, the NIHRC wrote to the head of the NI Civil Service, Jayne Brady, highlighting recent legal and other developments in relation to the EU Racial Equality Directive, underlining that these developments were of particular significance in relation to the ongoing review of the Race Relations (NI) Order 1997.²⁰⁵

7.20 In 2022, the NIHRC responded to EU Commission public consultation on potential gaps in the EU Racial Equality Directive and how these gaps should be addressed.²⁰⁶ As part of its mandate to monitor the implementation of Windsor Framework Article 2, in particular the obligation to keep pace with any enhancements to rights or safeguards under the EU Directive, the NIHRC reiterated its overarching concerns in relation to racial equality in NI, including lack of protection against intersectional and multiple discrimination, sectarianism, hate crime, insufficient equality data and monitoring, and lack of legislative harmonisation. Given current inadequacies in NI law, the NIHRC recommended that the EU Directive be updated in these areas to provide an enhanced layer of protection for racial equality in NI.²⁰⁷ The submission also pointed to the need to enhance the scope of discrimination and compliance under the EU Directive and highlighted the need to recognise and include discrimination arising from the use of algorithms and data-driven technology within the EU Directive. Furthermore, the NIHRC recommended that the EU Directive include a specific

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', 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.

²⁰⁴ Article 13, Ireland/NI Protocol to the UK-EU Withdrawal Agreement 2020.

²⁰⁵ COM/2021/139, 'Report to the EU Parliament and Council on the Application of Council Directive 2000/43/EC Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin and Of Council Directive 2000/78/EC Establishing a General Framework for Equal Treatment in Employment and Occupation' (EU Commission, 2021).

²⁰⁶ European Commission, 'Addressing Possible Gaps in the Racial Equality Directive – Public Consultation' (EU Commission, 2022).

²⁰⁷ NI Human Rights Commission, 'Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)' (NIHRC, 2022).

acknowledgement of the significance of Windsor Framework Article 2 and keep pace obligations for racial equality in NI.²⁰⁸

Ethnic monitoring

7.21 In 2015, the Executive Office acknowledged that ethnic monitoring is an important tool in tackling inequality and racism and committed to “examine where ethnic monitoring should be introduced and consult on proposals for implementation”.²⁰⁹ In 2021, the NIHRC highlighted the need for effective data collection on racial equality.²¹⁰ In 2022, the Executive Office is working to update its guidance on ethnic monitoring, which will be the foundation for harmonisation of data collection across the NI Civil Service.²¹¹ A cross-departmental working group has been established to take this work forward.²¹²

7.22 Furthermore, in 2020, a study to determine the feasibility of introducing ethnic monitoring to the public sector in NI was completed. It recommended that the Race Relations (NI) Order 1997 is amended to impose a duty on specified public authorities to collect data on racial equality and set racial equality objectives.²¹³ In 2023, this has not been included as a consideration within the Executive Office’s consultation on reforming the Race Relations (NI) Order 1997.²¹⁴ However, any outcome from the consultation cannot be implemented without a functioning NI Executive and NI Assembly.

Racial profiling

7.23 In 2021, the NIHRC wrote to the former Secretary of State for the Home Department, Priti Patel MP, to express concern at Home Office guidance in relation to the Common Travel Area and the proposed intelligence-led immigration checks which could lead to

²⁰⁸ Ibid.

²⁰⁹ The Executive Office, 'Racial Equality Strategy 2015-2025' (TEO, 2015), at 5.

²¹⁰ NI Human Rights Commission, 'Submission to the NI Affairs Committee Inquiry into the experience of minority ethnic and migrant people in NI' (NIHRC, 2021).

²¹¹ Email correspondence from the Executive Office to the NI Human Rights Commission, October 2021.

²¹² Racial Equality Subgroup Meeting, 17 May 2022.

²¹³ This would be analogous to sections 149 and 153 of the Equality Act 2010, which does not extend to NI.

²¹⁴ The Executive Office, 'Consultation on the Review of the Race Relations (NI) Order 1997' (TEO, 2023).

increased risk of racial profiling.²¹⁵ In 2022, the Home Office responded to this correspondence stating that all staff must undertake mandatory training to ensure they are compliant with human rights and equality law and that staff are prohibited from using racial profiling.²¹⁶ The Home Office confirmed that officers record the reasons for examination of members of the public in their notebooks, but it does not record racial profiles. The Home Office further confirmed that intelligence led checks were conducted under Common Travel Area guidance on journeys between Ireland and the UK to identify people who need permission to enter the UK and to identify anyone attempting to circumvent UK immigration controls. However, the Home Office confirmed that it does not operate routine immigration controls on journeys from within the Common Travel Area and that there are no immigration controls whatsoever on the Ireland-Northern Ireland border. As such, data is not recorded in a way which would make it possible to answer this question on how many intelligence led checks were conducted under Common Travel Area guidance.

7.24 Section 75 of the Nationality and Borders Act 2022 amends the Immigration Act 1971 to introduce Electronic Travel Authorisations. This requires that all non-British or Irish citizens obtain an Electronic Travel Authorisation before travelling to the UK from Ireland. Previously, most non-visa nationals in Ireland could travel freely into NI as a visitor without any requirement to make an application. The NIHRC expressed concern about associated checks, and the risk of increased racial profiling.²¹⁷

7.25 In 2022, Robert Jenrick MP, Minister for the Home Office indicated that the UK Government's long-term aim is that all visitors and migrants entering the UK will provide both facial and fingerprint biometrics under a single global immigration system. However, in respect of Electronic Travel Authorisations, currently applicants only need to provide facial images until such times as there is a

²¹⁵ Letter from the NI Human Rights Commission to the Secretary of State for the Home Department, Priti Patel MP, 20 December 2021.

²¹⁶ Letter from the Home Office to the NI Human Rights Commission, 5 July 2022.

²¹⁷ NI Human Rights Commission and Equality Commission for NI, 'Joint Submission to House of Lords on the Nationality and Borders Bill' (NIHRC/ECNI, 2022).

technological solution to allow applicants to self-upload fingerprints as well.²¹⁸

7.26 In March 2023, the UK Government identified that third country nationals who are resident in Ireland and from a nationality that does not usually require a visa to visit the UK would be exempt from requiring an Electronic Travel Authorisation to enter the UK, which partially addresses the NIHRC's concerns. However, individuals not resident in Ireland will still need to apply for an Electronic Travel Authorisation when traveling from Ireland to NI.²¹⁹

Minority ethnic groups/faith communities

7.27 In 2022, in a joint submission with the Equality Commission for NI to the House of Lords Sub-Committee on the Ireland/NI Protocol, the NIHRC reiterated concerns on access to, cost, and the availability of, halal and kosher food and ritual items and the impact on Jewish and Islamic communities in NI.²²⁰ In March 2023, the UK and EU came to a negotiated agreement in relation to the trading arrangements under the Windsor Framework, which aimed at improving arrangements for the flow of goods between Great Britain and NI.²²¹ The NIHRC will monitor the impact of the developments in the Windsor Framework to facilitate goods coming into NI from Great Britain in terms of the ability of these communities to access these food products and ritual items.

7.28 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes effective steps to ensure its data collection on racial equality is consistent, extensive and disaggregated. This includes working with the NI Assembly to promptly amend the Race Relations (NI) Order 1997 so that it imposes a duty

²¹⁸ UK Parliament Hansard, 'Written Question: Immigration Controls: Biometrics – Stephen Farry MP – UIN 77641, 2 November 2022.

²¹⁹ Home Office, 'Electronic Travel Authorisation (ETA)', Available at <https://www.gov.uk/guidance/electronic-travel-authorisation-eta>

²²⁰ UK Parliament Hansard, 'European Affairs Committee – Sub-Committee on the Protocol on Ireland/NI Follow up Inquiry on the Impact of the Protocol – Joint Written Evidence from NI Human Rights Commission and Equality Commission for NI', 8 June 2022.

²²¹ Decision No 1/2023 of the Joint Committee Established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 Laying Down Arrangements Relating to the Windsor Framework.

on specified public authorities to collect data on racial equality and set racial equality objectives.

- 7.29 The CoE European Commission Against Racism and Intolerance may wish to advise that the NI Executive monitors any proposed changes by the EU to the six Annex 1 Equality Directives, as well as relevant CJEU case law, and pay particular attention to the ongoing consultation by the EU on the EU Racial Equality Directive, in line with the 'keeping pace' obligations under Windsor Framework Article 2.**
- 7.30 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government, in the implementation of the revised guidance on the Common Travel Area and the European Travel Authorisation requirements, take effective steps to prevent and address racial profiling at entry to NI at ports and airports and in the context of cross-border travel. This should include effective gathering and monitoring of disaggregated data, including racial and ethnic monitoring, of people examined by enforcement officers. It should also include effective monitoring and provision of training to enforcement officers, including review mechanisms and disciplinary procedures in cases of racial profiling.**
- 7.31 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures all journeys into NI, that originate from Ireland, are exempt from Electronic Travel Authorisation requirements.**
- 7.32 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government monitors the impact of developments to facilitate goods coming into NI from Great Britain to ensure Muslim and Jewish communities in NI are able to access halal and kosher food products and ritual items respectively.**

Refugee Integration Strategy

7.33 Despite a commitment within the Racial Equality Strategy 2015-2025,²²² NI remains the only part of the UK without a Refugee Integration Strategy.

7.34 In 2021, the Executive Office consulted on a draft Refugee Integration Strategy,²²³ which sought to address the pressure “exerted on the voluntary sector to backfill, what should be, essential services”.²²⁴ In 2022, the NIHRC responded to the consultation raising several concerns, particularly around the language used throughout.²²⁵

7.35 The NIHRC also highlighted that the UK Government recognises that Windsor Framework Article 2 applies to “everyone who is subject to [NI]... law”.²²⁶ The NIHRC advised that the commitment in the Belfast (Good Friday) Agreement 1998 to the civil rights and religious liberties of “everyone in the community” includes asylum seekers and refugees. The NIHRC has identified a number of EU measures relating to asylum seekers and refugees as falling within Windsor Framework Article 2 including the EU Reception Directive,²²⁷ the EU Qualification Directive²²⁸ and the EU Procedures Directive.²²⁹ The EU Charter on Fundamental Rights also continues to apply in the context of those provisions of EU law within scope of Windsor Framework Article 2.

7.36 In 2022, the House of Commons NI Affairs Committee published its inquiry findings on the experiences of minority ethnic and migrant people in NI.²³⁰ It highlighted issues relating to the experiences of refugees, including housing provision, access to healthcare services

²²² The Executive Office, 'Racial Equality Strategy 2015-2025' (TEO, 2015).

²²³ The Executive Office, 'Refugee Integration Strategy Consultation Document' (TEO, 2021).

²²⁴ Dr Fiona Murphy and Dr Ulrike M Vieten, 'Asylum Seekers and Refugees' Experiences of Life in NI' (QUB, 2017).

²²⁵ NI Human Rights Commission, 'Response to Public Consultation on Draft Refugee Integration Strategy' (NIHRC, 2022).

²²⁶ NI Office, 'UK Government Commitment To “No Diminution of Rights, Safeguards and Equality of Opportunity” In NI: What Does It Mean and How Will It Be Implemented?' (NIO, 2020), at para 8.

²²⁷ Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers', 27 January 2003.

²²⁸ Directive 2004/83/EC, 'EU Council Directive on Minimum Standards For the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted', 29 April 2004.

²²⁹ Directive 2005/85/EC, 'EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status', 1 December 2005.

²³⁰ House of Commons NI Affairs Committee, 'The Experiences of Minority Ethnic and Migrant People in NI' (HoC, 2022).

and the Belfast-centred provision of services. The NI Affairs Committee recommended that the final Refugee Integration Strategy addressed the issues cited and was delivered at pace.²³¹

7.37 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive introduces a Refugee Integration Strategy that reflects the outcomes of the consultation process and the NI Affairs Committee’s inquiry and takes a human rights-based approach in line with international human rights standards and the Windsor Framework Article 2 without further delay. The final strategy should be accompanied by a comprehensive action plan and adequate, long-term resources.

7.38 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly develops, implements, monitors, and adequately funds public education and community integration initiatives across NI, which raise awareness about the issues facing people seeking asylum and refugees in order to tackle fear, stigma, and discrimination. This should be included as a commitment within the Refugee Integration Strategy.

Asylum financial support

7.39 People seeking asylum are not able to work in the UK, including NI. Section 95 of the Immigration and Asylum Act 1999 provides for support for people seeking asylum and their dependents who appear to the Home Secretary to be destitute or who are likely to become destitute. In 2021, this support was increased from £39.63 to £40.85 per week for each supported person.²³² Up to £5 per week is available for people seeking asylum that are pregnant or a mother of a child under three years old.²³³ At June 2022, 2,413 people seeking asylum were in receipt of section 95 support in NI, compared to 810 people seeking asylum at June 2021.²³⁴ Of those

²³¹ Ibid, at para 28.

²³² Home Office, 'Report On Review of Weekly Allowances Paid To Asylum Seekers and Failed Asylum Seekers: 2021' (HO, 2022).

²³³ Gov.UK, 'What You'll Get'. Available at: <https://www.gov.uk/asylum-support/what-youll-get>.

²³⁴ Office for National Statistics, 'Immigration Statistics: Asylum and Protection - Section 95 Support By Local Authority' (ONS, 2021).

2,413 persons, 23 were in receipt of subsistence only and 2,390 in dispersed accommodation.²³⁵

- 7.40 The Immigration Act 2016 amended the Asylum and Immigration Act 1999 by creating a new power to support rejected people seeking asylum who can demonstrate that they are destitute and face a genuine obstacle to leaving the UK at the point their appeal rights have been exhausted.²³⁶ Individuals refused asylum will be given somewhere to live and £40.85 per person on a payment card for food, clothing and toiletries. They will not be given any money and will not be given the payment card if they do not take the offer of somewhere to live. Individuals refused asylum can apply for a one-off £250 maternity payment under certain conditions.²³⁷
- 7.41 In 2021, it was reported that people seeking asylum find it difficult to make their support payments stretch to cover their living costs, particularly when local, more expensive shops are the only or most convenient option.²³⁸ It is also not possible for the asylum support payments to be made online. It has been reported that children are facing extreme poverty, homelessness and destitution due to their parent's or carer's immigration status.²³⁹ This situation was exacerbated by the COVID-19 pandemic.²⁴⁰
- 7.42 In 2021, the NIHRC highlighted that people whose immigration status is based on having 'no recourse to public funds' have not been effectively provided for, noting that the reliance on local authority provision as an alternative source of support is a problem in NI where local councils do not have responsibility for housing, social services or education.²⁴¹ In 2022, the NIHRC raised these issues with the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities.²⁴²

²³⁵ Office for National Statistics, 'Immigration Statistics: Asylum and Resettlement - Asylum Seekers In Receipt of Support' (ONS, 2022).

²³⁶ Schedule 11, Immigration Act 2016.

²³⁷ Gov.UK, 'What You'll Get'. Available at: <https://www.gov.uk/asylum-support/what-youll-get>.

²³⁸ British Red Cross, 'The Longest Year: Life Under Local Restrictions - NI Briefing' (BRC, 2021).

²³⁹ NI Commissioner for Children and Young People, 'A Hostile Environment: Children and Families Affected By Immigration Status and NI Recourse to Public Funds' (NICCY, 2021), at 42.

²⁴⁰ Ibid.

²⁴¹ NI Human Rights Commission, 'Response to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI' (NIHRC, 2021).

²⁴² NI Human Rights Commission, 'Submission to the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities - Parallel Report to the CoE Advisory Committee on the Fifth Monitoring Report of the UK' (NIHRC, 2022), at para 4.81.

7.43 In 2022, it was reported that households having food and energy bills greater than their disposable income in 2022/2023 will be a particular concern in NI.²⁴³ People seeking asylum are at an even greater risk of destitution as they currently have no means to supplement their income.

7.44 As noted above, the NIHRC has identified a number of EU measures relating to asylum seekers and refugees as falling within Windsor Framework Article 2 including the EU Reception Directive.²⁴⁴

7.45 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government urgently increases the level of financial support provided to people seeking asylum to reflect the rising cost of living across the UK.

7.46 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government to review the restrictions placed on people seeking asylum, which prevent the taking up of work while claims are being processed.

7.47 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensure that payments to people seeking asylum can be used online.

7.48 The CoE European Commission Against Racism and Intolerance may wish to advise the UK Government to embed consideration of Windsor Framework Article 2 with respect to financial support for asylum seekers in NI to ensure there is no diminutions of rights, including the provisions set out in the EU Reception Directive.

²⁴³ National Institute of Economic and Social Research, 'What Can Be Done About the Cost of Living Crisis?' (NIESR, 2022).

²⁴⁴ Directive 2003/9/EC, 'EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers', 27 January 2003.

Crisis fund

7.49 In 2016, it was reported that UK Government and NI Executive practices make refugees extremely vulnerable in the transition from asylum support “as they have to negotiate a confusing range of government agencies that do not always consult with each other”.²⁴⁵

7.50 The Crisis Fund, which is managed by the Racial Equality Unit in the Executive Office, aims “to help minority ethnic individuals with no other means of support through emergency situations, such as vulnerable migrants, refugees and people seeking asylum and other vulnerable groups”.²⁴⁶ It is not a permanent arrangement, but has proved to be “critical in alleviating short-term hardships for destitute people seeking asylum and refugees”.²⁴⁷

7.51 In 2021/2022, the Executive Office allocated £202,000 to the Crisis Fund,²⁴⁸ supporting 2,366 people, including 932 children, from 57 countries.²⁴⁹ The Executive Office reported that the primary causes of destitution that led to reliance on the Crisis Fund “were asylum issues (including No Recourse to Public Funds), benefits issues and employment issues”.²⁵⁰ The NIHRC has repeated concerns that the Crisis Fund should be put on a permanent footing with guaranteed funding, and that the UK Government and NI Executive addresses the causes of destitution more broadly.²⁵¹ The Executive Office has stated that:

the Crisis Fund is not intended to address indefinite gaps in welfare coverage but is there to support individual cases such as a refugee waiting for their benefit payment or a

²⁴⁵ NI Community of Refugees and Asylum Seekers, 'The Effects of Destitution on Refugees in NI' (NICRAS, 2016), at 6.

²⁴⁶ NI Executive, 'Press Release: Junior Ministers Jennifer McCann and Jonathan Bell today outlined the benefits of the new Crisis Fund for vulnerable minority ethnic people,' 4 February 2015.

²⁴⁷ Fiona Murphy and Ulrike Vieten, 'Asylum Seekers' and Refugee's Experiences of Life in NI: Report of the First Study on the Situation of Asylum Seekers and Refugees in NI - 2016' (QUB, 2017).

²⁴⁸ NI Assembly Hansard, 'Written Answers: Racial Equality Unit - Gerry Carroll MLA - AQW 24178/17-22', 5 November 2021.

²⁴⁹ Email correspondence from the Executive Office to NI Human Rights Commission, 6 September 2022.

²⁵⁰ Ibid.

²⁵¹ NI Human Rights Commission, 'Response to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI' (NIHRC, 2021); NI Human Rights Commission, 'Response to Public Consultation on Draft Refugee Integration Strategy' (NIHRC, 2022), at para 2.15; NI Human Rights Commission, 'Submission to the CoE Advisory Committee on the Framework Convention for the protection of National Minorities - Parallel Report to the CoE Advisory Committee on the Fifth Monitoring Report of the UK' (NIHRC, 2022), at 34-35.

person seeking asylum facing destitution through an unexpected and necessary expense.²⁵²

7.52 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive places the Crisis Fund on a permanent footing, with guaranteed funding.

7.53 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government and NI Executive address the causes of destitution in the first instance, rather than rely on a discretionary fund to address destitution when it emerges. The CoE European Commission Against Racism and Intolerance may also wish to recommend that the UK Government and NI Executive to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty, including people seeking asylum, refugees, migrants and other vulnerable groups.

Travellers' accommodation

7.54 In 2018, the NIHRC published its investigation report into Travellers' accommodation in NI.²⁵³ Thirteen systemic issues were identified, including that existing law and practice did not provide for sufficient, habitable and culturally adequate Travellers' accommodation; inadequacy of current Travellers' sites; discrimination; the disproportionate impact of the Unauthorised Encampments (NI) Order 2005 on Traveller communities; the general lack of disaggregated data on Travellers' accommodation; insufficient resources available for developing and maintaining Traveller-specific accommodation; and ineffective and inadequate efforts made for participation of Travellers in decision-making processes.²⁵⁴

²⁵² The Executive Office, 'Draft Refugee Integration Strategy 2022-2027' (TEO, 2021), at 32.

²⁵³ NI Human Rights Commission, 'Out of Sight, Out of Mind: Travellers' Accommodation in NI' (NIHRC, 2018).

²⁵⁴ Ibid.

- 7.55 In 2019, the NIHRC noted mixed progress in the implementation of its 45 recommendations aimed at addressing the investigation's findings.²⁵⁵ In 2022, this mixed progress continues.
- 7.56 In 2020, the Department for Communities published a revised Design Guide for Travellers' Sites in NI, which has been updated to include current health and safety requirements, fire safety guidance, legal and technical advice in relation to fitness standards, service provisions, adaptations and advice on site licencing. It is intended to support the provision of appropriate, cost-effective facilities for Travellers living in NI.²⁵⁶
- 7.57 In 2021, the NI Housing Executive published its updated Irish Traveller Accommodation Strategy.²⁵⁷ The Department of Communities also consulted on a draft Housing Supply Strategy, which highlighted access to appropriate accommodation for Irish Travellers is limited.²⁵⁸ In its response, the NIHRC recommended that any housing strategy should ensure sufficient sites for Travellers to set up accommodation, recognising the cultural rights of the Irish Traveller Community to live their traditional lifestyle, and that these sites have sufficient access to essential utilities.²⁵⁹ In 2022, publication of the Housing Supply Strategy has been delayed by the suspension of the NI Assembly and NI Executive.
- 7.58 In 2022, the NI Housing Executive Travellers' Forum, of which the NIHRC is a member, was established. The forum has a consultative and advisory role to inform the NI Housing Executive's work.
- 7.59 The rights of Traveller communities fall within scope of the non-diminution commitment in Windsor Framework Article 2 as the relevant chapter of the Belfast (Good Friday) Agreement 1998 protects the right to "equal opportunity in all social and economic activity, regardless of ethnicity".²⁶⁰ Additionally, the six EU equality

²⁵⁵ NI Human Rights Commission, 'Implementation of Travellers' Accommodation Recommendations' (NIHRC, 2019).

²⁵⁶ Department for Communities, 'Design Guide for Travellers' Sites in NI' (DfC, 2020).

²⁵⁷ NI Housing Executive, 'Irish Traveller Accommodation Strategy 2020-2025' (NIHE, 2020).

²⁵⁸ Department for Communities, 'Consultation on the New Housing Supply Strategy Call For Evidence' (DfC, 2021), at 24.

²⁵⁹ NI Human Rights Commission, 'Response to Public Consultation on New Housing Supply Strategy Call for Evidence' (NIHRC, 2021).

²⁶⁰ Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights.

Directives listed in Annex 1 of the Windsor Framework includes the EU Racial Equality Directive, which protects against discrimination on the grounds of race and ethnicity across a range of areas including access to goods and services.²⁶¹

7.60 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive to ensure the full implementation of the remaining recommendations in its investigation report. The CoE European Commission Against Racism and Intolerance may also wish to recommend that the NI Executive develops long-term strategies to ensure that implemented recommendations continue to be adhered to.

7.61 The CoE European Commission Against Racism and Intolerance may wish to advise the NI Executive to embed consideration of Windsor Framework Article 2 in its housing supply strategy and monitor any proposed changes by the EU to the six Annex 1 Equality Directives, as well as relevant CJEU case law, and pay particular attention to the ongoing consultation by the EU on the Racial Equality Directive.

Unauthorised Encampments (NI) Order 2005

7.62 In 2018, use of the Unauthorised Encampments (NI) Order 2005 was considered by the NIHRC as part of its Travellers' accommodation investigation, which confirmed that the 2005 Order "has a disproportionate impact on the Traveller communities and threatens their nomadic culture".²⁶²

7.63 The Department for Communities accepts that the powers under the 2005 Order have a particular impact on Travellers in NI, but has stated that annual monitoring of the impact of the 2005 Order "indicates that the provisions of the 2005 Order have been applied sensitively, pragmatically and proportionately and are effective in balancing the rights of the Irish Travellers, landowners and the

²⁶¹ 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.

²⁶² NI Human Rights Commission, 'Out of Sight, Out of Mind: Travellers' Accommodation in NI' (NIHRC, 2018), at 288.

settled community”.²⁶³ For example, the NI Housing Executive operates a co-operation policy. This policy permits Travellers to set up an unauthorised encampment on public land for which there is no current or immediate use and permits them to occupy the land provided it does not create a public health or traffic hazard and the land is maintained in a reasonable and orderly manner. The NI Housing Executive emphasises that the policy is not a substitute for permanent or transit sites, but is intended to act as a way of dealing with a humane requirement.²⁶⁴

7.64 In 2022, the Department for Communities has no plans to repeal the 2005 Order. Any proposed change to legislation would require the approval of the Minister for Communities and NI Executive and the agreement of the NI Assembly.²⁶⁵

7.65 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive, supported by the NI Assembly, ensures that the Unauthorised Encampments (NI) Order 2005 is promptly repealed.

8.0 Additional Issues

Reform of the Human Rights Act 1998

8.1 In 2019, the Conservative Party’s manifesto included a commitment to “update the Human Rights Act”.²⁶⁶ In 2021, the Independent Human Rights Act Review Team published its report, which considered the Human Rights Act 1998’s operational mechanisms. The review was not tasked with considering the rights contained within the Human Rights Act and was undertaken on the basis that “the [Human Rights Act] is underpinned by the UK’s international obligations under the [ECHR], and the UK remains committed to upholding those obligations”.²⁶⁷

²⁶³ Letter from Permanent Secretary of Department for Communities, Leo O’Reilly, to the NI Human Rights Commission, 18 May 2018.

²⁶⁴ NI Housing Executive, ‘Our Cooperation Policy for Travellers’. Available at: http://www.nihe.gov.uk/index/advice/advice_for_travellers/co-operation_policy.htm.

²⁶⁵ NI Human Rights Commission, ‘Implementation of Travellers’ Accommodation Recommendations’ (NIHRC, 2019), at 9.

²⁶⁶ The Conservative Party, ‘Get Brexit Done, Unleash Britain’s Potential: The Conservative and Unionist Party Manifesto 2019’ (Conservative Party, 2019), at 48.

²⁶⁷ Independent Human Rights Act Review Team, ‘Independent Human Rights Act Review: Terms of Reference’ (MoJ, 2020), at 1.

- 8.2 In 2021, the NIHRC responded to the Independent Human Rights Act Review Team’s Call for Evidence, identifying the specific impact that altering the operational mechanisms of the Human Rights Act could have on NI and recommending that “the [Independent Review of the Human Rights Act] Team consider the Belfast (Good Friday) Agreement 1998 and the UK Government’s commitment to non-diminution when considering its deliberations”.²⁶⁸
- 8.3 Further engagement and consultation were undertaken by the Independent Human Rights Act Review Team, which reported “an overwhelming body of support for retaining the Human Rights Act”.²⁶⁹ It also noted that the proposals the Independent Review Team considered [i.e., a British Bill of Rights or repeal of the Human Rights Act] “could have a significant impact on devolution” and the Belfast (Good Friday) Agreement 1998 “in the case of straightforward repeal”.²⁷⁰ The Independent Review Panel did state that “depending on how a British Bill of Rights was framed, it might pose less of a risk of such an impact in the devolution context if it substantially replicated the Human Rights Act”.²⁷¹
- 8.4 Immediately following publication of the Independent Human Rights Act Review report, the UK Government launched a public consultation on proposals to replace the Human Rights Act 1998 with a British Bill of Rights “for the whole of the UK” and to make significant changes to the current mechanisms for enforcing human rights in the Human Rights Act.²⁷² The consultation stated that proposals will “ensure that human rights continue to be fully protected in NI... through an improved framework that provides greater legal certainty and respects our constitutional principles” and that “these proposals will be fully in line with our commitments under the Withdrawal Agreement, the NI Protocol and the TCA [Trade and Cooperation Agreement]”.²⁷³ However, there was no

²⁶⁸ NI Human Rights Commission, 'Submission to the Independent Human Rights Act Review Team's Call for Evidence' (NIHRC, 2021), at 3.

²⁶⁹ Independent Human Rights Act Review Team, 'Independent Human Rights Act Review' (MoJ, 2021), at para 19.

²⁷⁰ Ibid, at para 23.

²⁷¹ Independent Human Rights Act Review Team, 'Independent Human Rights Act Review' (MoJ, 2021), at para 23.

²⁷² Ministry of Justice, 'Human Rights Act Reform: A Modern Bill Of Rights - A Consultation to Reform the Human Rights Act 1998' (MoJ, 2021).

²⁷³ Ibid, at paras 68-70.

analysis on the impact of these proposals on Windsor Framework Article 2, nor any clarity on how the UK Government intends to ensure compliance with Windsor Framework Article 2.

- 8.5 In 2022, the NIHRC responded to the consultation rejecting in totality the proposals made in the consultation document.²⁷⁴ The NIHRC warned that the proposals would significantly weaken, not strengthen, human rights protection across the UK. The NIHRC had particular concerns that the proposals hinder individual's access to the courts in general, create a hierarchy of rights, depart from the core principle of human rights are for everyone, and ignore commitments made in the Belfast (Good Friday) Agreement 1998 that underpin NI's peace process.
- 8.6 The NIHRC also noted that, under Windsor Framework Article 2, there can be no diminution of those ECHR rights which were underpinned by EU law prior to 1 January 2021.²⁷⁵ The NIHRC advised that, where required by Windsor Framework Article 2, the EU Charter of Fundamental Rights continues to have relevance in NI²⁷⁶ and highlighted that the link between rights in the EU Charter and the ECHR is well established.²⁷⁷ The NIHRC also raised concerns that the timing and circumstances surrounding the consultation period made it difficult for the consultation process to be deemed meaningful.
- 8.7 In 2022, the NIHRC raised concerns regarding the UK Government's plans to replace the Human Rights Act 1998 in its submission to the fourth cycle of the UN Human Rights Council's Universal Periodic Review of the UK. It highlighted in particular the failure of the proposals to adequately consider the Belfast (Good Friday) Agreement 1998, Windsor Framework Article 2 and the integral role of ECHR in NI.²⁷⁸

²⁷⁴ NI Human Rights Commission, 'Response to the Consultation on Human Rights Act Reform: A Modern Bill of Rights' (NIHRC, 2022).

²⁷⁵ Ibid.

²⁷⁶ *Re SPUC Pro-Life Ltd* [2022] NIQB 9, at 115.

²⁷⁷ *WebMindLicences Kft v Nemzeti Adó*, Case C-419/14, 17 December 2015, at para 70; *AK v Krajowa Rada Sadownictwa v Sad Najwyzszy*, Case C-585/18, C-624/18 C-625/18, 19 November 2019, at para 116-118; *Rayonna Prokuratura Lom*, Case C-467/18, 19 September 2019, at paras 42-45.

²⁷⁸ NI Human Rights Commission, 'NI Human Rights Commission Submission to the UN Human Rights Council's Universal Periodic Review of the UK' (NIHRC, 2022), at para 9.

8.8 In 2022, the House of Commons and House of Lords Joint Committee on Human Rights published its report on Human Rights Act reform.²⁷⁹ The Joint Committee on Human Rights found that “the Human Rights Act has had a positive impact on the enforcement and accessibility of rights in the UK, both in and out of court”.²⁸⁰ In summary, the Joint Committee on Human Rights stated that:

we are concerned that the proposals and their consequences run counter to three central principles of human rights law. Human rights are universal; they apply to everyone. Human rights are fundamental and require special protection within the domestic and international legal order. Human rights must be able to adapt to stand the test of time, as the common law does. We do not think a case has been made for replacing the Human Rights Act with the British Bill of Rights in the form proposed by the [UK] Government.²⁸¹

8.9 The NIHRC provided written and oral evidence to help inform the Joint Committee on Human Rights’ report.²⁸² The NIHRC highlighted how the Human Rights Act has a specific effect on NI, including by reference to the Belfast (Good Friday) Agreement 1998 and Windsor Framework Article 2.²⁸³ In July 2022, the UK Government responded that it “disagreed” with the Joint Committee on Human Rights’ findings.²⁸⁴

8.10 In 2022, the Ministry for Justice stated that the proposed reforms to the Human Rights Act were “fully in line with our obligations under the Withdrawal Agreement, the NI Protocol and the UK–EU Trade

²⁷⁹ House of Commons and House of Lords Joint Committee on Human Rights, ‘Human Rights Act Reform: Thirteenth Report of the Session 2021-2022’ (JCHR, 2022).

²⁸⁰ *Ibid.*, at 4.

²⁸¹ *Ibid.*

²⁸² UK Parliament Hansard, ‘House of Commons and House of Lords Joint Committee on Human Rights: Oral Evidence Session on Human Rights Act Reform’, 11 May 2022.

²⁸³ NI Human Rights Commission, ‘Submission to the Joint Committee on Human Rights on the Independent Human Rights Act Review’ (NIHRC, 2021), at 3; House of Commons and House of Lords Joint Committee on Human Rights, ‘Oral Evidence: Human Rights Act Reform – Baroness Falker of Margravine, Chair, Equality and Human Rights Commission; Alyson Kilpatrick, Chief Commissioner, NI Human Rights Commission; Barbara Bolton, Head of Legal and Policy, Scottish Human Rights Commission’, 11 May 2022.

²⁸⁴ UK Government, ‘Human Rights Act Reform: Government Response to the Committee’s Thirteenth Report of Session 2021-22’ (UK Gov, 2022).

and Cooperation Agreement”.²⁸⁵ Consequently, the Bill of Rights Bill was introduced to the UK Parliament.

- 8.11 The Bill of Rights Bill ignores the findings of the Independent Human Rights Review team, the Joint Committee on Human Rights and majority of views expressed by consultation responders, it seeks to repeal the Human Rights Act and replace it with legislation that significantly weakens human rights protections across the UK. In doing so and contrary to the ECHR, it creates a hierarchy of rights by elevating freedom of speech and freedom of religion. It creates a hierarchy of rights protection for individuals, particularly focusing on expressly denying perceived criminals’ and immigrants’ full enjoyment of their rights. It also reduces access to domestic courts for individuals seeking human rights-based remedy, which is contrary to the ECHR and the Belfast (Good Friday) Agreement 1998. In 2022, the NIHRC provided evidence to the Joint Committee on Human Rights’ legislative scrutiny of the Bill raising these concerns.²⁸⁶
- 8.12 The NIHRC also advised that the Bill of Rights Bill is not a substitute for the comprehensive framework of human rights protections under the Human Rights Act. Moreover, the Bill will create uncertainty and confusion, making the interpretation of Windsor Framework Article 2 more challenging and may lead to a culture shift that will further reduce the robustness of human rights protections in NI. In addition, irrespective of the provisions of the Bill, future ECtHR jurisprudence will continue to inform the interpretation of Windsor Framework Article 2, where ECHR rights correspond to those in the EU Charter of Fundamental Rights.
- 8.13 In January 2023, the NIHRC provided oral evidence to the House of Commons NI Affairs Committee raising its concerns at the proposed Bill of Rights Bill.²⁸⁷ In March 2023, the Bill of Rights Bill was awaiting its second reading at the House of Commons, with no confirmed date for progression.

²⁸⁵ Ministry of Justice, ‘Human Rights Act Reform: A Modern Bill of Rights – Consultation Response’ (MoJ, 2022).

²⁸⁶ NI Human Rights Commission, ‘Evidence to Joint Committee on Human Rights Legislative Scrutiny of the Bill of Rights Bill’ (NIHRC, 2022).

²⁸⁷ House of Commons NI Affairs Committee, ‘Formal Meeting (Oral Evidence Session): Implications of the Bill of Rights for NI – Alyson Kilpatrick, Dr David Russell and Colin Caughey’, 11 January 2023.

8.14 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government recognises the Human Rights Act 1998 as a constitutional statute and ensures any reform builds on the 1998 Act as part of further progress in the promotion and protection of human rights.

8.15 The CoE European Commission Against Racism and Intolerance may wish to advise that the protections in Windsor Framework Article 2, while an important safeguard against the diminution of rights following UK withdrawal from the EU, are not a substitute for the comprehensive framework of human rights protections under the Human Rights Act.

Common Travel Area

8.16 Article 3 of the Windsor Framework recognises that the UK and Ireland “may continue to make arrangements between themselves relating to the movement of persons between their territories”, subject to Ireland’s obligations under EU law.

8.17 In 2019, the UK Government and Government of Ireland signed a Memorandum of Understanding setting out what they understand by the Common Travel Area and associated rights and privileges.²⁸⁸ The Memorandum of Understanding clarifies that the Common Travel Area only extends to British and Irish citizens and further clarifies that it does not create “legally binding obligations”.²⁸⁹

8.18 The UK Government and the Government of Ireland have agreed a treaty which codifies the areas relating to social security coordination.²⁹⁰ However, all other rights associated with the Common Travel Area, including free movement of people, the rights to reside and to work, the rights to social housing, social protection,

²⁸⁸ Memorandum of Understanding between the Government of the UK of Great Britain and NI and the Government of Ireland Concerning the Common Travel Area and Associated Reciprocal Rights and Privileges, 8 May 2019.

²⁸⁹ Ibid, at para 2 and 17.

²⁹⁰ Convention on Social Security between the Government of the UK and the Government of Ireland 2019. This Convention has not yet entered into force.

healthcare and education, are based on reciprocal protections in the domestic law in the UK and Ireland.

8.19 In 2021, the NIHRC provided oral evidence to the House of Commons NI Affairs Committee's inquiry on Citizenship and Passport Processes in NI and outlined the limited legal underpinning to Common Travel Area rights in the absence of supporting EU law.²⁹¹ UK withdrawal from the EU has brought these matters into sharper focus and has, in part, prompted the NIHRC to undertake further research on Windsor Framework Article 2 and the right to health and the rights of frontier workers.²⁹²

8.20 In 2021, the Home Office new Home Office guidance on the Common Travel Area took effect, stating that while travellers into the UK from Ireland need not show a passport to a Border Force officer, they may be asked to show a document confirming their identity and nationality.²⁹³ EEA and Swiss citizens may be asked to show their passport or identity card to enter Great Britain when travelling from Ireland if they are encountered by Border Force. Only certain categories of people may use their identity card, such as those who have EU settled status, the rest will be required to show their passport. The NIHRC has raised concerns about the risk of racial profiling in the context of additional checks arising from EU exit²⁹⁴ and wrote to the Home Office inquiring about the training, guidance and procedure in place to prevent and address such occurrences.²⁹⁵

Nationality and Borders Act: Electronic Travel Authorisations

8.21 The Nationality and Borders Act provided for Electronic Travel Authorisations, which will be required for all non-British citizens who require leave to enter the UK when travelling from Ireland to the UK. Irish citizens are excluded as individuals not requiring leave to

²⁹¹ NI Human Rights Commission, 'Submission to the NI Affairs Committee Inquiry into Citizenship and Passport Processes' (NIHRC, 2021); NI Human Rights Commission, 'NI Affairs Committee Inquiry into Citizenship and Passport Processes in NI: NIHRC Commentary on the NI Office/Home Office Submission to the Committee' (NIHRC, 2021); UK Parliament Hansard, 'NI Affairs Committee Inquiry into Citizenship and Passport Processes in NI - NI Human Rights Commission' 10 March 2021.

²⁹² Tamara Hervey, 'Brexit, Health and Its Potential Impact on Article 2 of the Ireland/NI Protocol' (NIHRC, 2022).

²⁹³ Home Office, 'Common Travel Area - Version 11.0' (HO, 2021), at 44-47.

²⁹⁴ Joint Committee of the Irish Human Rights and Equality Commission and the NI Human Rights Commission, 'Policy Statement on the UK Withdrawal from the EU' (NIHRC and IHREC, 2018), at 10-11.

²⁹⁵ Letter from NI Human Rights Commission to Home Office, 20 December 2021.

enter the UK by virtue of Section 3ZA of the Immigration Act 1971. However, a significant number of individuals who do not hold recognised UK immigration status will be affected despite free travel across the island of Ireland being available to them under the current system.

- 8.22 While the Explanatory Notes confirm that 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'.²⁹⁶ It is not known what measures are in place to decide which individuals will be required to 'demonstrate' that permission to travel.
- 8.23 In 2021, the NIHRC wrote to the former Secretary of State for the Home Department, to raise concerns about proposals to introduce Electronic Travel Authorisations.²⁹⁷ The letter identified that the imposition of restrictions and checks engages Article 8 of the ECHR (the right to private and family life), particularly of those who cross the border to shop, work, access services or visit family and that related checks raised the risk of racial profiling. The NIHRC noted that, under the Windsor Framework, the UK Government committed to avoiding a hard border, including related checks and controls, and gave undertakings in respect of protecting North-South co-operation and the Common Travel Area.
- 8.24 In January 2022, the NIHRC and ECNI published a briefing advising that no provision made in or under the draft legislation should be inconsistent with Windsor Framework Article 2 and calling for all journeys to NI from Ireland be exempt from Electronic Travel Authorisation requirements.²⁹⁸
- 8.25 The NIHRC and ECNI jointly sent letters to Rt Hon Priti Patel MP, Home Secretary²⁹⁹ and Rt Hon Brandon Lewis MP, Secretary of State for NI³⁰⁰ and, alongside IHREC, an additional letter to Simon

²⁹⁶ House of Commons, 'Explanatory Notes to the Nationality and Borders Bill as brought from the House of Commons on 9 December 2021 (HL Bill 82)' (UK Gov, 2021), at para 676.

²⁹⁷ Letter from NI Human Rights Commission to Priti Patel MP, Home Secretary, 20 December 2021.

²⁹⁸ NI Human Rights Commission and Equality Commission for NI, 'Joint NI Human Rights Commission/Equality Commission for NI Briefing Paper in the Modern Slavery and Human Trafficking and Electronic Travel Authorisation Provisions in the Nationality and Borders Bill' (NIHRC/ECNI, 2022), at 13-14.

²⁹⁹ Letter from NI Human Rights Commission and Equality Commission NI to Home Office, 9 February 2022.

³⁰⁰ Letter from NI Human Rights Commission and Equality Commission NI to NI Office, 9 February 2022.

Coveney TD, Irish Minister for Foreign Affairs outlining potential Protocol Article 2 concerns with Electronic Travel Authorisations.

- 8.26 In March 2022, the House of Lords Sub-Committee on the Ireland/NI Protocol sent a letter to the then Minister for the Home Office, Baroness Williams of Trafford, asking for a specific response on the NIHRC and ECNI's recommendations.³⁰¹ In April 2022, the then Minister for the Home Office responded by assuring the Sub-Committee that the Bill was compliant with international obligations, including the Windsor Framework. This response also confirmed that the criteria against which any Electronic Travel Authorisation application would be assessed would be determined after Royal Assent and that exemptions for journeys into NI from Ireland would pose too much of a risk to UK border control and to efforts to strengthen borders.³⁰² The letter further provided an assurance that the UK would not operate routine immigration controls on journeys from within the Common Travel Area, with no immigration controls whatsoever on the Ireland-NI land border.³⁰³ The UK Government has since confirmed this directly with the NIHRC and ECNI.
- 8.27 In April 2022, the Nationality and Borders Act received Royal Assent, with no amendments to Electronic Travel Authorisation provisions.³⁰⁴
- 8.28 In November 2022, Stephen Farry MP asked the Secretary of State for the Home Department, Robert Jenrick MP, whether applicants for Electronic Travel Authorisations entering NI from Ireland would be required to submit biometric data upon entry to the UK.³⁰⁵ The Secretary of State indicated that the UK Government's long-term aim is that all visitors and migrants entering the UK will provide both facial and fingerprint biometrics under a single global immigration system. However, in respect of Electronic Travel Authorisations, currently applicants only need to provide facial

³⁰¹ Letter from Chair of the Protocol on Ireland/NI Sub-Committee, Lord Jay of Ewelme, to Minister for the Home Office, Baroness Williams of Trafford, 3 March 2022.

³⁰² Letter from Chair of the Protocol on Ireland/NI Sub-Committee, Lord Jay of Ewelme, to Minister for the Home Office, Baroness Williams of Trafford, 1 April 2022.

³⁰³ Letter from Chair of the Protocol on Ireland/NI Sub-Committee, Lord Jay of Ewelme, to Minister for the Home Office, Baroness Williams of Trafford, 1 April 2022.

³⁰⁴ Section 75, Nationality and Borders Act 2022.

³⁰⁵ UK Parliament Hansard, 'Written Question: Immigration Controls: Biometrics – Stephen Farry MP – UIN 77641', 2 November 2022.

images until such times as there is a technological solution to allow applicants to self-upload fingerprints as well.³⁰⁶

8.29 In March 2023, the UK Government updated its guidance on Electronic Travel Authorisations confirming that third country nationals, who are resident in Ireland and from a nationality that does not usually require a visa to visit the UK, will be exempt from requiring an Electronic Travel Authorisation to enter the UK. This partially addressed the NIHRC's concerns, however, as the scheme is extended, individuals not resident in Ireland will still need to apply for an Electronic Travel Authorisation when traveling from Ireland to NI.³⁰⁷

8.30 Recommendations on racial profiling and Electronic Travel Authorisations are found above, at paragraphs 7.30 and 7.31.

8.31 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures that the Common Travel Area and rights associated with it are enshrined in domestic law. The CoE European Commission Against Racism and Intolerance may also wish to recommend that this agreement codifies reciprocal free movement rights and rights to employment, education, health care, justice and security to maintain the same level of protection as existed on 31 December 2020.

Child, early and forced marriage

8.32 The Marriage (NI) Order 2003 permits the marriage of a child aged 16 or 17 years old with the consent of their parents or legal guardians or the courts. In Scotland, children aged 16 and 17 years old are allowed to marry without parental consent.³⁰⁸

8.33 In 2022, the Marriage and Civil Partnership (Minimum Age) Act 2022 raised the legal age of marriage and civil partnerships in England and Wales to 18.³⁰⁹ Under the 2022 Act, children will not face penalties, but adults who facilitate underage marriages could

³⁰⁶ UK Parliament Hansard, 'Written Question: Immigration Controls: Biometrics – Stephen Farry MP – UIN 77641', 2 November 2022.

³⁰⁷ Home Office, 'Statement of changes to the immigration rules - HC 1160', 9 March 2023.

³⁰⁸ Marriage (Scotland) Act 1977.

³⁰⁹ Marriage and Civil Partnership (Minimum Age) Act 2022.

face imprisonment for up to seven years and a fine. The 2022 Act applies to children taken abroad from England and Wales to marry.³¹⁰

- 8.34 In 2021, 39 girls and 15 boys were married in NI.³¹¹ In 2020, 24 girls and seven boys married in NI, which due to COVID-19 and associated lockdown restrictions was lower than previous years.³¹² For example in 2019, there were 54 girls and 15 boys married in NI.³¹³
- 8.35 The Home Office has implemented several UK-wide measures for tackling forced marriage, including awareness raising campaigns.³¹⁴
- 8.36 In 2021, the Department of Finance consulted on changes to Marriage Law in NI,³¹⁵ including raising the minimum age at which people can legally marry or enter into a civil partnership. In 2022, the NIHRC responded to the consultation noting that, if NI retains current laws, it would create a divergence of child protection laws within the UK.³¹⁶ The NIHRC's response also noted that international human rights standards consider child marriage to be a form of forced marriage and the EU Victims' Directive recognises forced marriage as a form of gender-based violence.³¹⁷ The NIHRC advised that it considers that certain provisions on marriage law engage Windsor Framework Article 2 and that any legislation or policy resulting from this consultation process must consider Windsor Framework Article 2 throughout its development and implementation.³¹⁸

³¹⁰ Section 2, Marriage and Civil Partnership (Minimum Age) Act 2022.

³¹¹ Email correspondence from NI Statistics and Research Agency to NI Human Rights Commission, 4 August 2022.

³¹² Email correspondence from NI Statistics and Research Agency to NI Human Rights Commission, 2 July 2021.

³¹³ Email correspondence from NI Statistics and Research Agency to NI Human Rights Commission, 17 August 2020.

³¹⁴ Home Office, 'Press Release: What the Government is doing to tackle forced marriage', 24 May 2019.

³¹⁵ Department of Finance, 'Belief Marriage and Minimum Age for Marriage or Civil Partnership – A Public Consultation' (DoF, 2021).

³¹⁶ NI Human Rights Commission, 'Submission to Department of Finance Consultation on Marriage Law' (NIHRC, 2022), at para 3.5.

³¹⁷ 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.

³¹⁸ NI Human Rights Commission, 'Submission to the Department of Finance Consultation on Marriage Law' (NIHRC, 2022).

8.37 In 2022, the Department of Finance published its consultation analysis report, which revealed near unanimous support among respondents for increasing the minimum age for marriage and civil partnerships to 18 years.³¹⁹ The then Minister for Finance, Conor Murphy MLA, responded by issuing a Written Ministerial Statement signalling his intention to prepare legislation to raise the minimum age for marriage to 18 years old.³²⁰ Such legislation is subject to the reinstatement of the NI Executive and NI Assembly.

8.38 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive expeditiously introduces 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.

8.39 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures the Windsor Framework Article 2 is considered and complied with throughout the development of legislation and policy in relation to marriage law including changing the minimum age for marriage to 18.

8.40 The CoE European Commission Against Racism and Intolerance may wish to recommend that the cross-Departmental efforts within the NI Executive to combat forced marriages are strengthened, including by sensitising parents on the need for full and free consent of their child to marry.

Deprivation of citizenship

8.41 In 2014, the British Nationality Act 1981 was amended to empower the Home Secretary to deprive a naturalised British citizen of their citizenship if they have engaged in conduct “seriously prejudicial” to the UK’s vital interests, and the Home Secretary has reasonable grounds to believe the person is able, under the law of a country or

³¹⁹ Department of Finance, 'Marriage Law Consultation: Results and Analysis' (DoF, 2022).

³²⁰ Department of Finance, 'Marriage Law: Written Ministerial Statement - Conor Murphy MLA - Minister of Finance' (DoF, 2022).

territory outside the UK, to become a national of such a country or territory.³²¹ This power may be exercised when an individual is in the UK and when they are abroad.³²²

8.42 In 2022, the Nationality and Borders Act received Royal Assent. Section 10 of the 2022 Act further amends the British Nationality Act by exempting the UK Government from having to give notice of a decision to deprive a person of British citizenship if it is not reasonably practicable to do so, or in the interests of national security, diplomatic relations or otherwise in the public interest.

8.43 The Counter Terrorism and Security Act 2015 makes provision for Temporary Exclusion Orders, which prohibit the return of an individual to the UK without a permit to return. An individual subject to a Temporary Exclusion Order can apply to the court for a statutory review of the Order on their return to the UK.³²³ In 2020, one Temporary Exclusion Order was imposed and the subject returned to the UK in 2021.³²⁴ This was a decrease from four imposed Temporary Exclusion Orders in 2019, with two returned to the UK in 2019 and one returned in 2020.³²⁵

8.44 In 2020, the Independent Reviewer of Terrorism Legislation, Jonathan Hall KC, noted that “the power to deprive a dual national of their British citizenship was used 104 times in 2017, but there does not appear to be any sufficient form of independent review of its use for suspected terrorists”.³²⁶ He recommended that the “Independent Reviewer be given statutory authority to review any immigration power used by the Home Secretary to the extent that it is used in counter-terrorism”.³²⁷ In 2021, this recommendation was rejected by the UK Government.³²⁸

8.45 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK

³²¹ Section 40, British Nationality and Citizenship Act 1981.

³²² Melanie Gower, 'Deprivation of British Citizenship and Withdrawal of Passport Facilities' (HoC 2015).

³²³ Section 10, Counter Terrorism and Security Act 2015.

³²⁴ HM Government, 'Transparency Report: Disruptive Powers 2018/2019' (HoC 2020), at 21.

³²⁵ Ibid.

³²⁶ Jonathan Hall KC, 'The Terrorism Acts in 2018 - Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006' (IRTL, 2020), at para 1.15.

³²⁷ Ibid, at para 1.16.

³²⁸ Ibid.

Government, as a minimum, introduces a requirement to ensure judicial scrutiny before exercising the power to deprive an individual of their UK citizenship.

8.46 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government only utilises the power to withhold notice of a decision to deprive a person of British citizenship when it is absolutely necessary.

Female genital mutilation

8.47 Female genital mutilation is illegal under the Female Genital Mutilation Act 2003. The Serious Crime Act 2015 provides for Female Genital Mutilation Protection Orders. In 2014, the NI Executive published the Multi-Agency Practice Guidelines on female genital mutilation.³²⁹

8.48 In Scotland, the Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020 Bill provides for Female Genital Mutilation Protection Orders and directed guidance on the prevention of female genital mutilation. No such steps have been taken in NI.

8.49 In 2019, a woman from East London became the first person to be prosecuted for female genital mutilation in the UK. There have been no prosecutions in NI and no recorded instances of female genital mutilation being performed in NI. The Department of Health is aware of historical cases of female genital mutilation in NI, these have been identified at maternity appointments of the affected women. The NI Maternity System records and collates data on such historical cases as they present to maternity services. In 2016/2017, the most recent available statistics, there were 32 incidences of female genital mutilation recorded in NI.

8.50 In 2021, the Department of Health reported that it was revising multi-agency guidelines that would take into account Female Genital Mutilation Protection Orders, new care pathways and a risk

³²⁹ NI Executive, 'Multi-Agency Practice Guidelines: Female Genital Mutilation' (NIE, 2014).

assessment tool.³³⁰ In 2023, , no date for publication has been confirmed.³³¹

8.51 In 2022, the Department of Finance is progressing work to introduce NI legislation to define Health and Social Care Trusts in NI as 'relevant third parties' in relation to Female Genital Mutilation Protection Orders. Presently, Emergency Protection Orders can be arranged by Health and Social Care organisations should they suspect a child to be at risk of female genital mutilation.³³² In addition, Section 116 of the Adoption and Children (NI) Act 2022 amends Article 8(4) of the Children Order so that proceedings for Female Genital Mutilation Protection Orders will be classified as family proceedings. This will enable a court, when dealing with an application for a Female Genital Mutilation Protection Order, to make other orders regarding the welfare of the child, for example an interim care order or a care order. This will improve the ability of the court to act quickly to protect children at risk. Beginning in 2022/2023, the 2022 Act will be implemented on a phased basis over a period of five years. It is anticipated that Section 116 of the 2022 Act will be commenced in 2023/2024 under Phase 2.³³³

8.52 In 2022, the Domestic and Sexual Abuse Strategy and Equally Safe Strategy were consulted on.³³⁴ In its consultation response, the NIHRC advised that the EU Victims' Directive identifies female genital mutilation as a form of gender-based violence and advised on the protection and supports for victims required by the Directive.³³⁵ The NIHRC also advised that both strategies engaged the EU Victims' Directive and, therefore, fall within scope of Windsor Framework Article 2.

8.53 In 2022, NI continues to operate the Child Protection Senior Officials Group, a cross-departmental group tasked with

³³⁰ Email correspondence from the Department of Justice to the NI Human Rights Commission, July 2021.

³³¹ Email correspondence from the Department of Health to the NI Human Rights Commission, 18 August 2022.

³³² Email correspondence from the Department of Justice to the NI Human Rights Commission, July 2021.

³³³ Email correspondence from the Department of Health to the NI Human Rights Commission, 18 August 2022.

³³⁴ Department of Justice, 'Call For Views: New Strategies – Domestic and Sexual Abuse Strategy and Violence Against Women and Violence Against Women and Girls Strategy' (DoJ, 2022).

³³⁵ NI Human Rights Commission, 'Response to Call for Views: Domestic Abuse Strategy and Equally Safe Strategy - A Strategy to Tackle Violence Against Women and Girls' (NIHRC, 2022).

implementing an action plan to protect against the risk of female genital mutilation.³³⁶

8.54 The CoE European Commission Against Racism and Intolerance may wish to recommend that measures are taken by the NI Executive to investigate and prosecute perpetrators of female genital mutilation. This includes implementing a prevention strategy and action plan, which includes increasing efforts to raise awareness, particularly within affected communities, that female genital mutilation is a form of both child abuse and gender-based violence against women and girls. It also includes ensuring specialised support is available and accessible to victims of female genital mutilation. The CoE European Commission Against Racism and Intolerance may also wish to recommend that that disaggregated data on the prevalence of female genital mutilation in NI is gathered and monitored.

8.55 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive considers and takes into account the EU Victims' Directive and Windsor Framework Article 2 during the development and implementation of the Domestic Abuse Strategy and the Equally Safe Strategy.

Domestic and sexual violence and abuse

8.56 In 2020/2021, there were 31,196 domestic abuse incidents recorded, the third highest level recorded since the data series began in 2004/05.³³⁷ This latest figure is one and a half times higher than the level of 20,959 recorded at the start of the data series in 2004/05.³³⁸ In 2020/2021, 69 per cent of victims of domestic abuse crimes were women and 31 per cent were men.³³⁹ At least 85 per cent of offenders are men and up to 14 per cent are women.³⁴⁰ Due to lack of reporting, these figures are only indicative of the extent of the issue, particularly regarding violence against

³³⁶ Email correspondence from the Department of Justice to the NI Human Rights Commission, July 2021.

³³⁷ Police Service NI, 'Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in NI 2004/2005 to 2020/2021' (PSNI, 2021), at para 5.

³³⁸ Ibid.

³³⁹ Ibid, at 14.

³⁴⁰ Ibid, at 16.

women and girls.³⁴¹ The public data available in NI is also not disaggregated for example to clarify the prevalence of domestic violence among migrants, including individuals that are subject to immigration restrictions.

8.57 In 2020/2021, 530 women and 319 children in NI accessed refuges run by Women's Aid NI. However, in that same period, 276 women could not access a refuge because there was no space.³⁴² Women's Aid NI recorded 5,536 women and 5,143 children accessed outreach support, allowing them to stay in their own homes.³⁴³

8.58 In 2023, the no recourse to public funds rule continues to operate, preventing persons with insecure immigration status from accessing benefits, such as refuge support. The strict eligibility criteria for the Destitute Domestic Violence concession also continues, which may prevent some groups, such as women from the EEA, from benefiting. Delays in issuing the concession also continue.³⁴⁴

8.59 Windsor Framework Article 2 protects everyone subject to the law in NI, regardless of immigration status. The UK Government recognises that Windsor Framework 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".³⁴⁵

8.60 The UK Government has accepted that the EU Victims' Directive falls within scope of Windsor Framework Article 2 and therefore, its standards as they were on 31 December 2020 remain relevant in NI.³⁴⁶ Article 1 of the EU Victims' Directive states that "rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status".³⁴⁷ The EU Directive recognises the disproportionate impact of domestic

³⁴¹ Women's Policy Group NI, 'Violence against Women and Girls in NI: Primary Research Findings' (WPGNI, 2022).

³⁴² Women's Aid Federation NI, 'Annual Report 2019–20' (WAFNI, 2020).

³⁴³ Ibid.

³⁴⁴ Nisan Zerai Kesete, 'Destitution Domestic Violence Concession - Monitoring Research Report (Unbound Philanthropy, 2013).

³⁴⁵ NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in NI: What Does It Mean and How Will It Be Implemented?' (NIO, 2020), at para 8.

³⁴⁶ NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in NI: What Does It Mean and How Will It Be Implemented?' (NIO, 2020), at para 13.

³⁴⁷ Article 1, 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.

violence on women, which can be exacerbated if she is dependent on her partner for her right to reside.³⁴⁸

8.61 In November 2022, the Istanbul Convention came into force in the UK. However, the UK has placed a reservation against the provision that requires the UK to prosecute for offences committed outside of UK territory by a person who has her or his habitual residence in its territory.³⁴⁹ The UK Government has also placed a reservation against the provision that requires States to grant residence to victims of abuse whose immigration status depends on an abusive partner,³⁵⁰ which has faced particular criticism. Civil society organisations have warned that:

this reservation, which denies migrant women survivors life-saving support, would be disastrous for them. It will mean migrant women, who will be some of the most reliant on the protections of the [Istanbul] Convention, will be excluded from it. This is in direct opposition to the spirit of the [Istanbul] Convention, which is firmly based on the principles of equality and non-discrimination.³⁵¹

8.62 Chair of the International Agreements Committee, Baroness Hayter, has stated that:

we are deeply concerned that the UK Government is opting out of a key provision—the obligation to provide, in particularly difficult circumstances, an autonomous residence permit to migrant victims of domestic violence who rely on their spouse or partner for their own residency.³⁵²

8.63 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK

³⁴⁸ Recital 18, 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.

³⁴⁹ Article 44(3), CoE Convention on Preventing and Combating Violence against Women and Domestic Violence 2011.

³⁵⁰ Article 59, CoE Convention on Preventing and Combating Violence against Women and Domestic Violence 2011.

³⁵¹ ICChange, 'Press Release: Letter to Home Secretary – over 80 organisations call for ratification of the Istanbul Convention without reservations', 30 May 2022.

³⁵² House of Lords International Agreements Committee, 'Press Release: All migrant victims of domestic abuse and violence must be protected, says Lords committee', 17 June 2022.

Government withdraws its reservations against the Istanbul Convention.

8.64 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that support for domestic and sexual violence and abuse is available regardless of an individual's immigration status, in line with international human rights standards and Windsor Framework Article 2.

8.65 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes immediate steps to ensure there are enough refuge places for those that need them, when they need them.

8.66 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that all policies and support for victims of domestic and sexual violence and abuse are specialised, accessible, gender-sensitive and guaranteed sustainable funding. Including that these factors are taken into account when commissioning services aimed at supporting victims and survivors. Also that the steps taken are guided by disaggregated data and meaningful engagement with victims, survivors and representative organisations.

Mechanisms to identify victims of torture detained in immigration facilities

8.67 In 2021, there were 59 immigration detainees held at the short-term holding facility, Larne House. Of these, 55 were men and 4 were women. There were no children held during this period. There has been a significant decline in immigration detainees held at Larne House. In 2020, there were 97 immigration detainees. In 2019, there were 473 immigration detainees.³⁵³

8.68 Rule 35(3) of the Detention Centre Rules places an obligation on a medical practitioner to report to the manager of the Centre any

³⁵³ Home Office, 'Immigration Statistics Data Tables: Year Ending September 2020' (HO, 2020), at Table Dt_01.

detained person who they are concerned may have been the victim of torture. The Detention Centre Rules do not apply to Larne House, due to its classification as a short-term holding facility.

8.69 In 2021, the HM Chief Inspector of Prisons, Charlie Taylor, reported improvements to staff training within Larne House on keeping residents safe and on mental health awareness.³⁵⁴ The Chief Inspector of Prisons also found that good quality safeguarding adult polices were observed.³⁵⁵ This includes a Vulnerable Adult Care Plan for anyone who was at risk and Assessment, Care in Detention and Teamwork forms for detainees at risk of suicide or self-harm. Staff were also reportedly aware of the National Referral Mechanism and their role as first responders.³⁵⁶

8.70 However, the Chief Inspector of Prison's previous recommendation for men and women to be held separately was repeated.³⁵⁷ In 2021, the Home Office advised of plans to update the accommodation within Larne House, which includes providing a separate contained wing for women, with single occupancy bedrooms and a separate association room.³⁵⁸

8.71 Further concerns have been raised by civil society that the private company that manages the facility employs the nurse in Larne House, which may be inhibiting the independence of health assessments within the facility.³⁵⁹

8.72 In 2021, the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation raised concerns that the NIHRC is not able to enter places of detention, such as Larne House, without providing advance notice.³⁶⁰

8.73 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK

³⁵⁴ HM Inspectorate of Prisons, 'Report on an Unannounced Inspection of the Residential Short-term Holding Facilities at Larne House, Manchester Airport and Yarl's Wood by HM Chief Inspector of Prisons' (HMIP, 2021), at paras 2.6-2.11.

³⁵⁵ Ibid, at para 2.6.

³⁵⁶ Ibid, at para 2.8.

³⁵⁷ Ibid, at para 2.30.

³⁵⁸ Email correspondence from Home Office to NI Human Rights Commission, 26 August 2021.

³⁵⁹ Meeting between NI Human Rights Commission and civil society representatives, November 2018.

³⁶⁰ Global Alliance of National Human Rights Institutions, 'Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation – October 2021' (GANHRI, 2021).

Government ensures effective, consistent implementation of the Short-term Holding Facility Rules 2018, including comprehensive training of all staff in Larne House on identifying and reporting torture, and the local services and safeguarding services available.

8.74 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures the independence of health care professionals dealing with detained asylum seekers.

8.75 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government takes prompt steps to amend the NI Act 1998 to allow the NIHRC to enter Larne House without having to provide advance notice.

Modern slavery and human trafficking

8.76 In 2021, 363 potential victims of human trafficking were identified in NI, an increase from 128 in 2020.³⁶¹ The figure of 363 included 38 child victims. The reasons for exploitation included for criminal activity, labour and sexual exploitation.³⁶² Of 363 potential victims, 38 were children. Additionally, 325 were from overseas.³⁶³ This differs from trends in England and Wales, where the majority of potential victims identified were from the UK.³⁶⁴ The actual number of people in NI affected by modern slavery is unknown, as it often goes unreported and undetected within the community.³⁶⁵

8.77 Between April 2018 and May 2021, Barnardo's NI provided an Independent Guardian for 121 young people in NI who are unaccompanied or separated from a legal guardian and who are at risk of human trafficking. Of these, 23 per cent were referred within the National Referral Mechanism.³⁶⁶

³⁶¹ Home Office, 'Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary 2021: Data Tables', 3 March 2021, at Table 2.

³⁶² Ibid.

³⁶³ Ibid, at Table 3.

³⁶⁴ Ibid.

³⁶⁵ 'Potential upsurge in modern slavery in NI', *ITV News*, 18 October 2018.

³⁶⁶ Barnardo's NI, 'Consultation Response to the Home Office New Plan for Immigration' (Barnardo's NI, 2021).

Nationality and Borders Act 2022

- 8.78 In 2021, the UK Government introduced the then Nationality and Borders Bill in the UK Parliament, which included provisions relating to victims of human trafficking. The then Nationality and Borders Bill did not specifically mention child victims of human trafficking, nor were they discussed in the explanatory notes to the Bill. In responding to the House of Commons and House of Lords Joint Committee on Human Rights' call for evidence on the then Nationality and Borders Bill, the NIHRC raised concerns about the Part 4 of the then Bill related to modern slavery.³⁶⁷ The NIHRC also advised that the UK Government should ensure that any changes to provisions extending to NI, that fall within scope of Windsor Framework Article 2, including changes to domestic law deriving from the EU Trafficking Directive, do not result in a diminution of rights, safeguards and equality of opportunity in that field.³⁶⁸
- 8.79 In 2022, the NIHRC, jointly with the Equality Commission for NI, provided a briefing paper on the Bill's provisions on modern slavery and human trafficking to members of the House of Lords. The paper identified a number of ways in which the provisions of the Bill may breach the minimum standards laid out in the EU Trafficking Directive and therefore, potentially breach Windsor Framework Article 2.³⁶⁹
- 8.80 In 2022, the NIHRC, jointly with the Equality Commission for NI, wrote to the then Home Secretary, Priti Patel MP, and then Secretary of State for NI, Brandon Lewis MP, on concerns relating to the then Nationality and Borders Bill's compliance with Windsor Framework Article 2.³⁷⁰ In 2022, the then Minister for the Home Office, Baroness Williams of Trafford, wrote to the House of Lords Sub-Committee on the Ireland/NI Protocol indicating that the UK Government considered the EU Victims' Directive as applying only to victims of the conflict in NI and, therefore, did not consider the

³⁶⁷ Part 4, Nationality and Borders Bill as introduced in the House of Commons on 6 July 2021.

³⁶⁸ NI Human Rights Commission, 'Response to Call for Evidence by the Joint Committee on Human Rights on the Nationality and Borders Bill' (NIHRC, 2021).

³⁶⁹ NI Human Rights Commission and Equality Commission for NI, 'Joint NI Human Rights Commission/Equality Commission for NI Briefing Paper in the Modern Slavery and Human Trafficking and Electronic Travel Authorisation Provisions in the Nationality and Borders Bill' (NIHRC/ECNI, 2022).

³⁷⁰ 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; Letter from the NI Human Rights Commission and the Equality Commission for NI to Secretary of State for NI, Brandon Lewis MP, 9 February 2022.

EU Trafficking Directive as falling within scope of Windsor Framework Article 2.³⁷¹

8.81 In 2022, the NIHRC published legal research on the human trafficking provisions of the Nationality and Borders Bill and Windsor Framework Article 2.³⁷² This research supported the NIHRC's position that the EU Trafficking Directive falls within scope of Windsor Framework Article 2.³⁷³

8.82 In 2022, the Nationality and Borders Act received Royal Assent. The NIHRC remains concerned that the 2022 Act requires that a potential victim's late compliance with a Trafficking Information Notice, without good reason, must be taken into account as damaging the person's credibility.³⁷⁴ Additionally, the 2022 Act does not extend to child victims of human trafficking, nor does it recognise that the rights of the child should be a primary consideration.³⁷⁵ The NIHRC is considering what further action should be taken to address potential incompatibility with Windsor Framework Article 2.

Justice (Sexual Offences and Trafficking Victims) Act 2022 (NI)

8.83 In 2021, the NIHRC provided written and oral evidence to the NI Assembly Committee for Justice on the then Justice (Sexual Offences and Trafficking Victims) Bill advising that the Department of Justice continue to ensure there is no diminution of victims' rights in line with Windsor Framework Article 2.³⁷⁶ In 2022, the Justice (Sexual Offences and Trafficking Victims) Act 2022 (NI) received Royal Assent.

³⁷¹ Letter from Minister of State in the Home Office, Baroness Williams of Trafford, to Chair of the Protocol on Ireland/NI Sub-Committee, Lord Jay of Ewelme, 1 April 2022.

³⁷² Alison Harvey, 'Human Trafficking and Article 2 of the Ireland/NI Protocol' (NIHRC, 2022).

³⁷³ As noted in this section above, the NIHRC considers that victims of trafficking fall within scope of Protocol Article 2 for a number of reasons: first, since these are sub-categories of victims and victims' rights are recognised in the relevant chapter of the Belfast (Good Friday) Agreement 1998; second, on the basis that these EU Directives underpin Article 4 of the ECHR; and third, on the basis of the equality commitments in the relevant chapter of the Belfast (Good Friday) Agreement 1998.

³⁷⁴ NI Human Rights Commission, 'Joint NI Human Rights Commission/Equality Commission for NI Briefing Paper on the Modern Slavery and Human Trafficking and Electronic Travel Authorisation Provisions in the Nationality and Borders Bill' (NIHRC, 2022).

³⁷⁵ Ibid.

³⁷⁶ NI Human Rights Commission, 'NIHRC Response to Committee for Justice Call for Evidence on the Justice (Sexual Offences and Trafficking Victims) Bill' (NIHRC, 2021).

8.84 In 2022, the Department of Justice consulted on a range of tools that could be utilised to help tackle modern slavery and human trafficking, including possible amendments to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015. These tools included the use of Slavery and Trafficking Risk Orders, the implementation of the Duty to Notify and additional search powers for police officers.³⁷⁷ In responding to this consultation, the NIHRC recommended that Slavery and Trafficking Risk Orders are promptly introduced and accompanied by robust statutory guidance in line with international human rights obligations, which explicitly incorporates with best interests of the child principle.³⁷⁸ The NIHRC's response also outlined that Windsor Framework Article 2 is engaged by proposed provisions in the consultation and that the EU Trafficking Directive³⁷⁹ and the EU Child Sexual Exploitation Directive³⁸⁰ place positive obligations on States to prevent and investigate crimes and to protect victims.

8.85 In addition, the NIHRC noted that new powers to impose Slavery and Trafficking Risk Orders and Prevention Orders will require the processing of personal data. The NIHRC advised that the UK had not, to date, diverged significantly from EU General Data Protection Regulations, but may do so in the future and that any data processing may still be subject to EU General Data Protection Regulations and diverging from these standards may engage Windsor Framework Article 2.

8.86 In 2022, the Department of Justice published a consultation on its three-year strategy on Modern Slavery and Human Trafficking. The strategy seeks to operationalise the measures brought in under the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.³⁸¹ In January 2023, the NIHRC submitted a response reiterating previous recommendations in support of introducing Slavery and

³⁷⁷ Department of Justice, 'Public Consultation on Measures to Strengthen Response to Modern Slavery and Human Trafficking - Proposed amendments to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015' (DoJ, 2022).

³⁷⁸ NI Human Rights Commission, 'Submission to Department of Justice Consultation on Measures to Strengthen the Response to Modern Slavery and Human Trafficking' (NIHRC, 2022).

³⁷⁹ Directive 2011/36/EU, 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims', 5 April 2011.

³⁸⁰ Directive 2011/92/EU, 'EU Directive of the European Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, and Replacing Council Framework Decision 2004/68/JHA', 13 December 2011.

³⁸¹ Department of Justice, 'NI Draft Modern Slavery and Human Trafficking Strategy: Consultation' (DoJ, 2022).

Trafficking Risk Orders to NI and ensuring specialised support is available and accessible to victims and survivors.³⁸²

Illegal Migration Bill

8.87 In March 2023, the UK Government introduced the Illegal Migration Bill. The Bill makes provisions for the removal of people who have entered the UK in breach of laws on migration. Clauses 21-28 of the Bill make provisions regarding modern slavery and human trafficking.

8.88 In April 2023, the NIHRC responded to the Joint Committee on Human Rights' inquiry on the Bill. The NIHRC is concerned that the current draft of the Bill denies victims of modern slavery who have arrived in the UK irregularly access to existing support.³⁸³ The NIHRC has also noted that the EU Victims' Directive and the EU Trafficking Directive remain relevant for determining the minimum standards for protecting victims of human trafficking in NI under Windsor Framework Article 2. The NIHRC is considering the compliance of the Bill with Windsor Framework Article 2.³⁸⁴

8.89 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly introduces legislation providing for Trafficking and Exploitation Risk Orders in NI. In line with international human rights standards and Windsor Framework Article 2, this guidance should require individual assessments of victims to be conducted for the purposes of identifying the necessity and proportionality of a risk order.

8.90 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that the root causes of human trafficking and exploitation are addressed. Trauma-informed, specialised, accessible support for victims of human trafficking and exploitation in NI should be sufficiently and promptly

³⁸² NI Human Rights Commission, 'Submission to the Department of Justice's Consultation on the Draft Modern Slavery and Human Trafficking Strategy' (NIHRC, 2023).

³⁸³ Ibid, at 15.

³⁸⁴ Ibid.

available when required, and adequately funded. This includes effective access to social security benefits and specific provision for specialised care and support for child victims of human trafficking, many of whom may have experienced complex trauma.

8.91 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government embeds consideration of Windsor Framework Article 2 in the development and implementation of subsequent Regulations and Guidance on human trafficking resulting from the Nationality and Borders Act 2022 and establishes processes to ensure compliance with this obligation. The CoE European Commission Against Racism and Intolerance may also wish to recommend 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.

8.92 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that Windsor Framework Article 2 is built into and considered actively during the development and implementation of all legislation and/or policy; and that the Department continues to monitor relevant EU Directives and related CJEU jurisprudence to ensure there is no diminution of victims' rights within the scope of Windsor Framework Article 2.

8.93 The CoE European Commission Against Racism and Intolerance may wish to recommend that, in line with international human rights standards and Windsor Framework Article 2, the NI Executive requires compulsory specialised training and guidance to all relevant staff, which is trauma-informed and victim-centred, to ensure victims are accurately identified and supported.

8.94 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures trauma-informed specialist services which are adequately funded, inclusive and accessible, to assist women and girls to exit prostitution are practically available. Furthermore, the NI Executive should ensure women in vulnerable situations in NI have effective access to employment opportunities, housing and social security so that they are not vulnerable to prostitution or 'sex for rent'.

8.95 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes effective steps to reduce demand for commercial sex in NI, including by carrying out educational and awareness-raising measures targeted at men and boys and focused on combating all notions of subordination and objectification of women.

8.96 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures policies and legislation, such as the Illegal Migration Bill, are human rights compliant, including that adequate support is accessible and available to all victims and potential victims of modern slavery and human trafficking.

8.97 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government considers and details its analysis of the compliance of the modern slavery provisions within the Illegal Migration Bill with Windsor Framework Article 2.

Annex: Summary of Recommendations

- 2.11 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures that sufficient and sustainable long-term funding is provided to enable the NIHRC to fulfil its statutory functions independently in line with its role as an A status institution under the UN Paris Principles.**
- 3.3 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive conducts a review of the operation of the Addressing Bullying in Schools (NI) Act 2016 to examine its effectiveness at addressing the impact and prevalence of bullying in NI schools with immediate steps taken to address and monitor the findings of the review.**
- 3.4 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that bullying experienced by particular groups of children in NI, such as by lesbian, gay, bisexual, transgender, queer (or questioning) and intersex+ pupils and children from ethnic minorities is addressed. This includes ensuring that children, all teachers and other education providers are trained on how to identify, address and remedy the impacts of bullying, including online bullying.**
- 3.5 The CoE European Commission Against Racism and Intolerance may wish to advise the NI Executive to embed consideration of Windsor Framework Article 2 in relation to bullying of minority ethnic children in schools and to monitor any proposed changes by the EU following the ongoing consultation by the EU on the EU Racial Equality Directive, as well as relevant CJEU case law, in line with the 'keeping pace' obligations under Windsor Framework Article 2.**
- 3.13 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive, as a matter of priority, expeditiously agrees and makes**

provision for the funding required to implement the action plan based on the Expert Panel on Educational Underachievement in NI's findings. In the interim, the Department of Education NI should take steps, where it is not able to address issues in their entirety in the absence of an NI Executive, to ensure these issues are not exacerbated by the delay.

3.14 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly updates and publishes its proposals for the revised policy for children of migrant families, including an action plan that will guide its effective implementation. This should take a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. It should also include reconsidering the use of the term 'newcomer pupils'.

3.15 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that teacher training that promotes cultural awareness is developed and delivered within schools and considers ways to provide a curriculum bespoke to pupils' specific needs and experiences. This should include meaningfully consulting with parents, guardians, children and representative organisations at every stage of the process.

3.16 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive urgently reviews and adequately funds the Education Authority NI's Intercultural Education Service. The resulting process and funding should have sufficient flexibility built in to ensure all children seeking asylum in NI at any given time have timely access to education and other necessary supports, such as language classes, uniform grants, school meals and transport.

4.11 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK

Government repeals the Memorandum of Understanding with Rwanda and ensures all people seeking asylum in the UK are processed in a human rights' compliant way. This should take into account the trauma likely to have affected people prior to and during the journey to the UK.

- 4.22 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government revises the Illegal Migration Bill to ensure that the foundational human rights principles of inalienability, universality and proportionality are embedded throughout, including in the language used, to prevent the demonisation and unjustifiable denial of human rights protection to particular groups of migrants.**
- 4.23 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government takes steps to ensure that the Illegal Migration Bill complies with Article 2 of the Windsor Framework and that the Human Rights Memorandum to the Bill be amended to set out in detail an assessment of the compliance of the Bill with Article 2 of the Windsor Framework.**
- 4.24 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government, through meaningful engagement, immediately and thoroughly assesses the purpose and provisions of the Illegal Migration Bill. The result should ensure that all refugees, people seeking asylum and migrants arriving to the UK are processed, accommodated and supported in compliance with human rights obligations, with particular focus on if, when and how individuals are transferred to a third country. It should also ensure that continued access to domestic courts for human rights violations is ensured.**
- 4.29 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government and the NI Executive 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 Windsor Framework Article 2. This review should be conducted in consultation with refugees, people that are seeking asylum and their representative organisations.

4.30 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive develops appropriate safeguards 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.

4.31 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government and the NI Executive urgently develop and resource a realistic, long-term strategy aimed at expeditiously ending the use of hotels for contingency asylum accommodation in NI, particularly for families and persons with disabilities. The strategy should be culturally appropriate, take into account individual's specific needs and be developed in consultation with refugees, people that are seeking asylum and their representative organisations.

4.39 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes effective steps to identify and minimise procedural barriers to migrant women accessing healthcare. This includes introducing guidance for healthcare professionals on providing effective access.

4.40 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive issues an amendment or policy direction to ensure that the full set of General Practitioner services, including access to a General Practitioner list (subject to discretion) is genuinely available to any person.

4.41 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK

Government and NI Executive minimise any procedural or informational barriers to accessing healthcare services for people in temporary and contingency accommodation that are seeking asylum.

- 4.42 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government provides further guidance on the rights of people with pending and late applications to the EU Settlement Scheme, to applicants to the Scheme and to healthcare professionals to ensure no diminution of the current provision and protect the rights to the highest attainable standard of healthcare.**
- 4.43 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive provides clear, accessible and complete information on rights to healthcare post-EU withdrawal, including access to cross-border and island-of-Ireland services to ensure no diminution of the current provision and protect the rights to the highest attainable standard of healthcare.**
- 5.6 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive, promptly introduces legislation in NI to ban all practices of conversion therapy aimed at changing or suppressing a person's sexual orientation or gender identity, by any person or group of persons. The NI Executive should be guided by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Expert Advisory Panel on a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI's definitions of conversion therapy in developing this legislation and its broader work related to this issue.³⁸⁵**

³⁸⁵ It should be noted that one Commissioner at the NI Human Rights Commission dissented from this recommendation.

- 5.12 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive introduces clear guidance that provides legal certainty for businesses and customers on what constitutes discrimination. This guidance should address specifically the nature of the right and its key principles.**
- 5.13 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that the Hate Crime Review Team’s recommendations on homophobic hate crime are promptly implemented in full and that the NI Executive considers carefully and ensures compliance with Windsor Framework Article 2, including the provisions of the EU Victims' Directive in the development of hate crime legislation.**
- 5.14 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly publishes and implements a robust and adequately resourced Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. This strategy should be accompanied by a measurable plan of action and effective monitoring mechanisms.**
- 5.16 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly publishes and implements a robust, gender-sensitive Gender Equality Strategy, which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. This strategy should be accompanied by a measurable plan of action and effective monitoring mechanisms.**
- 5.21 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly publishes and implements a robust and adequately resourced Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI that deals with**

gender recognition and takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. This strategy should be accompanied by a measurable plan of action and effective monitoring mechanisms.

- 5.22 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that the gender recognition process in NI is amended to reflect the self-declaration model. This process should be affordable, respectful and accessible, including effectively training staff and professionals across an individual's gender recognition journey.**
- 5.23 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that transgender children are effectively supported and that the best interests of the child are a primary consideration.**
- 5.27 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government and NI Executive, facilitate the recognition of intersex individuals before the law through the expeditious provision of birth certificates, civil registration documents, identity papers, passports and other official personal documentation while respecting intersex persons' right to self-determination.**
- 5.28 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes all necessary measures to protect the right of intersex children to autonomy and bodily integrity and that all medical interventions have informed consent.**
- 5.31 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that the housing selection scheme is revised to ensure that it considers properly an applicant's circumstances and reflects up-to-date common challenges**

faced by individuals and households in NI, particularly in relation to intimidation points. This requires meaningful consultation with individuals affected and their representative organisations.

- 5.32 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that an official mechanism to appeal housing selection decisions is in place, which is effectively implemented and monitored. This includes ensuring the appeals process and its outcomes are promptly and effectively implemented.**
- 5.33 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that comprehensive equality data on housing in NI is regularly gathered, monitored, evaluated and published. This data should be disaggregated in a way that reflects NI society. The NI Executive in cooperation with housing providers, Police Service NI and community representatives should take prompt, effective steps to address and eradicate any inequalities that are identified.**
- 5.36 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive identifies, develops, implements and monitors effective measures to ensure perimenopausal and menopausal women have equal access to employment throughout their working life and the necessary support to ensure such access is practically available. Every stage of this process should be based on meaningful engagement with perimenopausal and menopausal women and their representative organisations. It should also involve consulting on revising equality legislation and policies to include menopause as a protected characteristic.**
- 5.37 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes immediate steps to ensure perimenopausal and menopausal women have access to the medication and**

treatments that they need to treat their menopause symptoms on a long-term and affordable basis, with a view to supporting all women's enjoyment of rights, including access to work.

- 5.48 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes prompt, concrete steps to fully implement the obligations on relationship and sexuality education set out in the NI (Executive Formation etc) Act 2019, in line with the UN CEDAW Committee's recommendations.**
- 6.7 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly and effectively improves hate crime legislation in NI, guided by the Independent Hate Crime Review Team's recommendations and the Department of Justice's consultations. The NI Executive should ensure that any new legislation compliments existing and future strategies on race and community relations.**
- 6.8 The CoE European Commission Against Racism and Intolerance may wish to advise the NI Executive to consider carefully and ensure compliance with Windsor Framework Article 2, including the provisions of the EU Victims' Directive, in the development of hate crime legislation and ensure that a victim-centred approach is adopted when investigating, prosecuting and remedying hate crimes.**
- 7.5 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive introduces a Single Equality Act for NI and secures the necessary political consensus to deliver this.**
- 7.6 The CoE European Commission Against Racism and Intolerance may wish to advise that the NI Executive monitors any proposed changes by the EU to the six Annex 1 Equality Directives, as well as relevant CJEU case law, and pay particular attention to the ongoing consultation by the EU on the Racial Equality Directive.**

- 7.13 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures intersectional multiple discrimination claims in NI are effectively addressed, including providing for intersectionality within equality legislation as required.**
- 7.14 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive Office monitors any proposed changes by the EU to the six Annex 1 Equality Directives, as well as relevant CJEU case law, and pay particular attention to the ongoing consultation by the EU on the EU Racial Equality Directive.**
- 7.28 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes effective steps to ensure its data collection on racial equality is consistent, extensive and disaggregated. This includes working with the NI Assembly to promptly amend the Race Relations (NI) Order 1997 so that it imposes a duty on specified public authorities to collect data on racial equality and set racial equality objectives.**
- 7.29 The CoE European Commission Against Racism and Intolerance may wish to advise that the NI Executive monitors any proposed changes by the EU to the six Annex 1 Equality Directives, as well as relevant CJEU case law, and pay particular attention to the ongoing consultation by the EU on the EU Racial Equality Directive, in line with the 'keeping pace' obligations under Windsor Framework Article 2.**
- 7.30 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government, in the implementation of the revised guidance on the Common Travel Area and the European Travel Authorisation requirements, take effective steps to prevent and address racial profiling at entry to NI at ports and airports and in the context of cross-border travel. This should include effective gathering and monitoring of disaggregated data, including racial and ethnic monitoring,**

of people examined by enforcement officers. It should also include effective monitoring and provision of training to enforcement officers, including review mechanisms and disciplinary procedures in cases of racial profiling.

7.31 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures all journeys into NI, that originate from Ireland, are exempt from Electronic Travel Authorisation requirements.

7.32 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government monitors the impact of developments to facilitate goods coming into NI from Great Britain to ensure Muslim and Jewish communities in NI are able to access halal and kosher food products and ritual items respectively.

7.37 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive introduces a Refugee Integration Strategy that reflects the outcomes of the consultation process and the NI Affairs Committee's inquiry and takes a human rights-based approach in line with international human rights standards and the Windsor Framework Article 2 without further delay. The final strategy should be accompanied by a comprehensive action plan and adequate, long-term resources.

7.38 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly develops, implements, monitors, and adequately funds public education and community integration initiatives across NI, which raise awareness about the issues facing people seeking asylum and refugees in order to tackle fear, stigma, and discrimination. This should be included as a commitment within the Refugee Integration Strategy.

7.45 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK

Government urgently increases the level of financial support provided to people seeking asylum to reflect the rising cost of living across the UK.

- 7.46 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government to review the restrictions placed on people seeking asylum, which prevent the taking up of work while claims are being processed.**
- 7.47 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensure that payments to people seeking asylum can be used online.**
- 7.48 The CoE European Commission Against Racism and Intolerance may wish to advise the UK Government to embed consideration of Windsor Framework Article 2 with respect to financial support for asylum seekers in NI to ensure there is no diminutions of rights, including the provisions set out in the EU Reception Directive.**
- 7.52 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive places the Crisis Fund on a permanent footing, with guaranteed funding.**
- 7.53 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government and NI Executive address the causes of destitution in the first instance, rather than rely on a discretionary fund to address destitution when it emerges. The CoE European Commission Against Racism and Intolerance may also wish to recommend that the UK Government and NI Executive to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty, including people seeking asylum, refugees, migrants and other vulnerable groups.**

- 7.60 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive to ensure the full implementation of the remaining recommendations in its investigation report. The CoE European Commission Against Racism and Intolerance may also wish to recommend that the NI Executive develops long-term strategies to ensure that implemented recommendations continue to be adhered to.**
- 7.61 The CoE European Commission Against Racism and Intolerance may wish to advise the NI Executive to embed consideration of Windsor Framework Article 2 in its housing supply strategy and monitor any proposed changes by the EU to the six Annex 1 Equality Directives, as well as relevant CJEU case law, and pay particular attention to the ongoing consultation by the EU on the Racial Equality Directive.**
- 7.65 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive, supported by the NI Assembly, ensures that the Unauthorised Encampments (NI) Order 2005 is promptly repealed.**
- 8.14 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government recognises the Human Rights Act 1998 as a constitutional statute and ensures any reform builds on the 1998 Act as part of further progress in the promotion and protection of human rights.**
- 8.15 The CoE European Commission Against Racism and Intolerance may wish to advise that the protections in Windsor Framework Article 2, while an important safeguard against the diminution of rights following UK withdrawal from the EU, are not a substitute for the comprehensive framework of human rights protections under the Human Rights Act.**

- 8.31 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures that the Common Travel Area and rights associated with it are enshrined in domestic law. The CoE European Commission Against Racism and Intolerance may also wish to recommend that this agreement codifies reciprocal free movement rights and rights to employment, education, health care, justice and security to maintain the same level of protection as existed on 31 December 2020.**
- 8.38 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive expeditiously introduces 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.**
- 8.39 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures the Windsor Framework Article 2 is considered and complied with throughout the development of legislation and policy in relation to marriage law including changing the minimum age for marriage to 18.**
- 8.40 The CoE European Commission Against Racism and Intolerance may wish to recommend that the cross-Departmental efforts within the NI Executive to combat forced marriages are strengthened, including by sensitising parents on the need for full and free consent of their child to marry.**
- 8.45 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government, as a minimum, introduces a requirement to ensure judicial scrutiny before exercising the power to deprive an individual of their UK citizenship.**
- 8.46 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government only utilises the power to withhold notice of a**

decision to deprive a person of British citizenship when it is absolutely necessary.

- 8.54 The CoE European Commission Against Racism and Intolerance may wish to recommend that measures are taken by the NI Executive to investigate and prosecute perpetrators of female genital mutilation. This includes implementing a prevention strategy and action plan, which includes increasing efforts to raise awareness, particularly within affected communities, that female genital mutilation is a form of both child abuse and gender-based violence against women and girls. It also includes ensuring specialised support is available and accessible to victims of female genital mutilation. The CoE European Commission Against Racism and Intolerance may also wish to recommend that that disaggregated data on the prevalence of female genital mutilation in NI is gathered and monitored.**
- 8.55 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive considers and takes into account the EU Victims' Directive and Windsor Framework Article 2 during the development and implementation of the Domestic Abuse Strategy and the Equally Safe Strategy.**
- 8.63 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government withdraws its reservations against the Istanbul Convention.**
- 8.64 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that support for domestic and sexual violence and abuse is available regardless of an individual's immigration status, in line with international human rights standards and Windsor Framework Article 2.**
- 8.65 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive**

takes immediate steps to ensure there are enough refuge places for those that need them, when they need them.

- 8.66 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that all policies and support for victims of domestic and sexual violence and abuse are specialised, accessible, gender-sensitive and guaranteed sustainable funding. Including that these factors are taken into account when commissioning services aimed at supporting victims and survivors. Also that the steps taken are guided by disaggregated data and meaningful engagement with victims, survivors and representative organisations.**
- 8.73 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures effective, consistent implementation of the Short-term Holding Facility Rules 2018, including comprehensive training of all staff in Larne House on identifying and reporting torture, and the local services and safeguarding services available.**
- 8.74 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures the independence of health care professionals dealing with detained asylum seekers.**
- 8.75 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government takes prompt steps to amend the NI Act 1998 to allow the NIHRC to enter Larne House without having to provide advance notice.**
- 8.89 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive promptly introduces legislation providing for Trafficking and Exploitation Risk Orders in NI. In line with international human rights standards and Windsor Framework Article 2, this guidance should require individual assessments of**

victims to be conducted for the purposes of identifying the necessity and proportionality of a risk order.

8.90 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that the root causes of human trafficking and exploitation are addressed. Trauma-informed, specialised, accessible support for victims of human trafficking and exploitation in NI should be sufficiently and promptly available when required, and adequately funded. This includes effective access to social security benefits and specific provision for specialised care and support for child victims of human trafficking, many of whom may have experienced complex trauma.

8.91 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government embeds consideration of Windsor Framework Article 2 in the development and implementation of subsequent Regulations and Guidance on human trafficking resulting from the Nationality and Borders Act 2022 and establishes processes to ensure compliance with this obligation. The CoE European Commission Against Racism and Intolerance may also wish to recommend 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.

8.92 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures that Windsor Framework Article 2 is built into and considered actively during the development and implementation of all legislation and/or policy; and that the Department continues to monitor relevant EU Directives and related CJEU jurisprudence to ensure there is no diminution of victims' rights within the scope of Windsor Framework Article 2.

- 8.93 The CoE European Commission Against Racism and Intolerance may wish to recommend that, in line with international human rights standards and Windsor Framework Article 2, the NI Executive requires compulsory specialised training and guidance to all relevant staff, which is trauma-informed and victim-centred, to ensure victims are accurately identified and supported.**
- 8.94 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive ensures trauma-informed specialist services which are adequately funded, inclusive and accessible, to assist women and girls to exit prostitution are practically available. Furthermore, the NI Executive should ensure women in vulnerable situations in NI have effective access to employment opportunities, housing and social security so that they are not vulnerable to prostitution or 'sex for rent'.**
- 8.95 The CoE European Commission Against Racism and Intolerance may wish to recommend that the NI Executive takes effective steps to reduce demand for commercial sex in NI, including by carrying out educational and awareness-raising measures targeted at men and boys and focused on combating all notions of subordination and objectification of women.**
- 8.96 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government ensures policies and legislation, such as the Illegal Migration Bill, are human rights compliant, including that adequate support is accessible and available to all victims and potential victims of modern slavery and human trafficking.**
- 8.97 The CoE European Commission Against Racism and Intolerance may wish to recommend that the UK Government considers and details its analysis of the compliance of the modern slavery provisions within the Illegal Migration Bill with Windsor Framework Article 2.**

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