



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the UN Committee on the
Rights of the Child**

**Parallel Report to the Pre-Session on the
Combined Sixth and Seventh Reports of the
United Kingdom of Great Britain and
Northern Ireland**

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1.0 Introduction

- 1.1 The NIHRC is one of three A-status National Human Rights Institutions of the United Kingdom (UK). In accordance with the Paris Principles and pursuant to Section 69(1) of the Northern Ireland (NI) Act 1998, the NIHRC reviews the adequacy and effectiveness of measures undertaken by the United Kingdom Government and Northern Ireland Executive to promote and protect human rights, specifically within NI.
- 1.2 The NIHRC further monitors the UK Government's commitment under Article 2 of the Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement to ensure there is no diminution of rights, safeguards and equality of opportunity contained in the relevant chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK's withdrawal from the EU, including the requirement that NI law keeps pace with any changes made by EU to six EU Equality Directives in Annex 1 to the Protocol.¹
- 1.3 This submission is presented to the UN Committee on the Rights of the Child (the Committee) in respect of the protection of rights in NI.
- 1.4 This submission uses the term 'children' to include children and young people.

2.0 Context

NI Executive

- 2.1 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

¹ This is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 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.

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. 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. In the absence of any political developments, this arrangement can continue until at least April 2023.² Additionally, the lack of a functioning NI Executive may inhibit the Department of Education, which is the coordinating department in NI, from fully engaging with the UN CRC monitoring process.

- 2.2 The Committee may wish to recommend that, where children’s rights issues in NI are not capable of being addressed in their entirety due to the absence of an NI Executive, effective steps are taken by the State Party to ensure issues are not further exacerbated by the delay. This includes ensuring that the Department of Education in NI is able to fully engage with the UN CRC Committee’s monitoring of the UK at all times.**

Northern Ireland Human Rights Commission

- 2.3 The NIHRC has received further cuts to its budget, leaving it without sufficient resources to discharge all of its functions. The Global Alliance of National Human Rights Institutions’ Sub-Committee on Accreditation has twice deferred the NIHRC’s accreditation due to the current and prospective funding position which it regards as very serious and time sensitive.³ The Sub-Committee on Accreditation has strongly recommended that an improved sustainable position is reached within the deferral period. It is due to consider the NIHRC’s accreditation in early 2023.

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

³ 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).

2.4 The Committee may wish to recommend that the State Party ensures that adequate and secure long-term funding is provided to enable the NIHRC to fulfil its statutory functions, in line with its role as an A status institution under the UN Paris Principles.

3.0 Article 2 – Non-discrimination

Discrimination in the provision of goods, facilities and services

3.1 The Committee previously recommended that the UK, including NI, expand legislation to protect all children against discrimination.⁴

3.2 Discrimination based on age is prohibited regarding employment and vocational training,⁵ however there remains no prohibition on discrimination in the provision of goods, facilities and services in NI based on age.⁶

3.3 The Committee may wish to recommend that the State Party ensures that discrimination in the provision of goods, facilities and services based on age is prohibited in NI, this includes ensuring that the necessary legislative changes are promptly made.

Conversion therapy

3.4 The Committee has previously condemned so-called “treatments” to try to change sexual orientation or gender identity and urged States to eliminate such practices for discriminating against individuals based on their sexual orientation, gender identity or intersex status.⁷

3.5 Before the end of the last NI Assembly mandate, a motion was passed to bring forward legislation banning conversion in all its

⁴ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 22.

⁵ Employment Equality (Age) Regulations (NI) (2006).

⁶ This refers to non-discrimination, save where there is an objective justification.

⁷ CRC/C/GC/20, 'UN CRC Committee General Comment No 20: Implementation of the Rights of the Child During Adolescence', 6 December 2016, at 34.

forms.⁸ Policy work has commenced to inform the drafting process.⁹ The UK Government has also set out proposals intending to ban conversion therapy for children, but it relates to practices aimed at changing sexual orientation and not gender identity.¹⁰

3.6 The Committee may wish to recommend that the State Party ensures that all practices aimed at changing a child’s sexual orientation or gender identity are banned in NI, this includes introducing the necessary legislation.

4.0 Article 4 – Implementation of UN CRC

Implementation within domestic law

4.1 In NI, a piecemeal and non-specific approach towards implementation of the UN CRC into domestic law exists. For example, different pieces of child-related legislation may refer to the best interests of the child, but not specifically refer to the UN CRC.¹¹ Precedent exists in the UK for expressly implementing the UN CRC into domestic law. In Wales a duty is placed on Ministers to have due regard to the UN CRC when developing child-related policies.¹² Scotland is currently working towards incorporating UN CRC into domestic law, subject to the limits of devolution.¹³

4.2 The Committee may wish to recommend that the State Party ensures that the UN CRC is expressly incorporated into domestic law in NI.

⁸ NI Assembly Hansard, 'Written Question: Conversion therapy – Colin McGrath MLA – AQW 2582/22-27', 14 July 2022.

⁹ Ibid.

¹⁰ UK Government Equalities Office, 'Banning conversion therapy'. Available at: <https://www.gov.uk/government/consultations/banning-conversion-therapy>

¹¹ Children's (NI) Order 1995.

¹² Rights of Children and Young Persons (Wales) Measure 2011.

¹³ The UK Supreme Court judgment on the UN CRC (Incorporation) Scotland Bill held that certain provisions of the Bill are outside of devolved competence, in so far as they extend to UK legislation and UK public bodies. See UN Convention on the Rights of the Child (Incorporation) (Scotland) Bill; *Reference by the Attorney General and the Advocate General for Scotland UN CRC and European Charter of Local Self-Government (Incorporation) (Scotland)* [2021] UKSC 42; Scottish Government, 'Press Statement: European Charter of Local Self-Government Bill and the UNCRC Bill – Next Steps: Statement by Deputy First Minister', 24 May 2022.

Bill of Rights for NI

- 4.3 The Committee previously recommended that the UK Government expedited the Bill of Rights for NI process.¹⁴ A Bill of Rights for NI is the “missing piece in the jigsaw” of the implementation of the Belfast (Good Friday) Agreement 1998,¹⁵ and the UK’s withdrawal from the EU strengthens the case for a Bill of Rights for NI. Article 2 of the Ireland/NI Protocol is no substitute for a Bill of Rights for NI, as it is limited in scope and precludes only a diminution of rights ‘as a result of Brexit’. A wide range of NI legislation relevant to rights may fall outside the scope of the non-diminution commitment, but could be protected by a Bill of Rights for NI. Additionally, “the impact of the Troubles is still felt heavily” on children in NI,¹⁶ including segregation, community division, criminal coercion, exploitation and assault by paramilitary-style gangs.¹⁷ In addition, persistent child poverty and inequalities in health and education remain significant issues. A Bill of Rights for NI could establish a rights-based framework for addressing these issues.
- 4.4 A NI Assembly Ad Hoc Committee on a Bill of Rights was established to consider the creation of a Bill of Rights for NI.¹⁸ A panel of five experts was to be appointed by the First Minister and Deputy First Minister to support the work of the Ad Hoc Committee on a Bill of Rights.¹⁹ However, these appointments have not been made.²⁰
- 4.5 In February 2022, the Ad Hoc Committee on a Bill of Rights in concluding its work reaffirmed that “human rights of many individuals and groups in NI are not sufficiently protected” and that a majority supports a Bill of Rights for NI.²¹ The Ad Hoc Committee “supported the creation of a Bill of Rights [for NI] in principle”, but it was unable to advise as to what form this should take due to the absence of the expert panel and the Democratic Unionist Party's

¹⁴ CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at 7(b).

¹⁵ Colin Murray *et al*, ‘Discussion Paper on Brexit’ (IHREC and NIHRC, 2018), at vii and xii.

¹⁶ NI Assembly Ad Hoc Committee on a Bill of Rights, ‘Children’s Rights in NI: NI Commissioner for Children and Young People’ (NIA, 2020).

¹⁷ *Ibid* at 2.

¹⁸ NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 5.26.

¹⁹ *Ibid*.

²⁰ NI Assembly, ‘Report of the Ad Hoc Committee on Bill of Rights’ (NIA, 2022), at 13.

²¹ *Ibid* at 9 and 11.

disagreement with the majority position.²² There has been no further progress.

4.6 The Committee may wish to recommend that the State Party actively engages with and expeditiously implements its commitment to legislate for a Bill of Rights for NI, as set out in the Belfast (Good Friday) Agreement.

UK's withdrawal from the EU

4.7 In Article 2 of the Ireland/NI Protocol (Protocol Article 2) to the UK-EU Withdrawal Agreement 2020, the UK Government committed to ensuring no diminution of rights, safeguards and equality of opportunity set out in the relevant chapter of the Belfast (Good Friday) Agreement 1998, as a result of the UK's withdrawal from the EU.²³ In addition to the non-diminution commitment, there is an obligation to "keep pace" with six EU equality Directives listed in Annex 1 to the Protocol.²⁴ NI law must keep pace with changes made to improve the minimum standards of protection under these Directives on or after 1 January 2021. This includes changes deriving from caselaw.²⁵

4.8 In June 2022, the UK Government introduced the NI Protocol Bill. The Bill provides that certain provisions of the Protocol will no longer have domestic effect in the UK, and provides that domestic courts are not bound by principles or decisions made by the CJEU after the Bill comes into force,²⁶ contrary to the 'keeping pace' obligation.²⁷ While the Bill provides some protection for Protocol

²² Ibid at 13.

²³ Agreement on the Withdrawal of the United Kingdom of Great Britain and NI from the European Union and the European Atomic Energy Community 2020.

²⁴ Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 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.

²⁵ Article 13(2) of the Protocol on Ireland/NI to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020.

²⁶ Clause 20, NI Protocol Bill.

²⁷ Article 13(2) of the Protocol on Ireland/NI to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020.

Article 2, this protection is incomplete and risks weakening the non-diminution commitment.

- 4.9 The EU (Withdrawal) Act 2018 repealed legislation which gave effect to EU law in the UK, however, retained EU law continues to be recognised and available in UK law on and after 1 January 2021.²⁸ The Retained EU Law (Revocation and Reform) Bill, introduced in the House of Commons in September 2022, will result in automatic repeal or revocation of much retained EU law by the end of December 2023 unless it is preserved and/or restated under delegated powers given to Ministers.²⁹ This may include retained EU law affecting children's rights.³⁰ The Commission has advised that care should be taken when repealing or amending retained EU law to ensure it does not result in a diminution of rights contrary to Protocol Article 2.
- 4.10 The loss of EU funding streams due to the UK's withdrawal from the EU may adversely affect children's rights. The European Social Fund, PEACE funding and INTERREG funds have come to an end as a result, and there is a lack of clarity on the extent of replacement funding available, which is likely to impact on children who are already experiencing socio-economic disadvantage.³¹
- 4.11 **The Committee may wish to recommend that, consistent with a no regression approach to rights, the State Party ensures that there is no weakening of the Protocol Article 2 'no diminution' commitment or the rights, safeguards and oversight mechanisms relating to this commitment.**

²⁸ The EU (Withdrawal) Act 2018 repealed the European Communities Act 1972, however, sections 2-4 carry over EU-derived law and direct EU Obligations into the domestic legal framework on or after the 31 December 2020 to ensure that rights, obligations and remedies available before the UK exited the EU would continue to be recognised and available after exit day. Section 5 of the 2018 Act identifies a number of exclusions from retained EU law. The EU Charter of Fundamental Rights was not carried over into domestic law, references to the Charter are to be read as if they were references to any corresponding retained fundamental rights or principles. General Principles of EU law are recognised but are given a much more limited scope. Section 6(5A) of the 2018 Act permits a Minister to amend, by regulation, the Act and change the extent to which the Courts can diverge from retained EU case law.

²⁹ See Clause 1 on sunset of EU-derived domestic subordinate legislation and retained direct EU legislation; Clause 1(5) provides for an exclusion of certain Northern Ireland legislation. See Clause 2 on extension of sunset; see Clauses 12-15 on powers to restate, revoke and replace retained EU law.

³⁰ EU Regulations fall within the definition of 'direct retained EU law' to be automatically repealed by the end of December 2023 unless preserved or restated by Ministers. The Commissions have identified a range of Regulations affecting rights, including children's rights e.g., Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

³¹ NI Union of Supported Employment, 'Future Funding for Disability Employment Services', (NIUSE, 2019); NI Council for Voluntary Action, 'ESF User Group Briefing Paper', (NICVA, 2021), at page 3; NI Council for Voluntary Action, 'Press Release: Latest on the UK Shared Prosperity NI Programme', 3 August 2022; John Campbell, 'Brexit: Jobs "at risk" over failure to replace EU funds', *BBC News*, 12 October 2022.

- 4.12 **The Committee may wish to recommend that the State Party, when making changes to retained EU law impacting children’s rights in NI, should progress changes by primary legislation, rather than secondary legislation or other ‘accelerated process’ and an assessment for compliance with Protocol Article 2 is undertaken.**
- 4.13 **The Committee may wish to recommend that the State Party takes effective measures to ensure cumulative funding provided for children should not decrease in NI as a result of the UK leaving the EU, including ensuring access to and funding of beneficial support services.**

Common Travel Area

- 4.14 In 2019, the UK Government and the Government of Ireland signed a non-binding Memorandum of Understanding on the Common Travel Area to facilitate free movement and associated rights and privileges for UK and Irish citizens across the island of Ireland and between Ireland and Great Britain. Therefore, free movement and rights to reside and to work, the rights to social housing, social protection, healthcare and education are based on reciprocal protections in the domestic law in the UK and Ireland. However, this framework only extends to Irish and UK citizens.
- 4.15 In 2021, new Home Office guidance on the Common Travel Area took effect, stating that while travellers, including children, 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.³² 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. The Commission has raised concerns about the risk of racial profiling and inquired of the Home Office what training, guidance and procedures are in place to prevent and address such occurrences.³³

³² Home Office, ‘Common Travel Area - Version 11.0’ (HO, 2021), at 44-47.

³³ 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; Letter from NI Human Rights Commission to Home Office, 20 December 2021.

- 4.16 Children in NI and in border areas regularly cross the border with Ireland including for education, health, family and social reasons.³⁴ The Nationality and Borders Act 2022 provides that all non-British citizens who require leave to enter the UK when travelling from Ireland to the UK will be obligated to obtain Electronic Travel Authorisations. Irish citizens are excluded.³⁵ However, a significant number of individuals, including children, who do not, or whose parents 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.
- 4.17 **The Committee may wish to recommend that the State Party takes effective steps to address the risk of racial profiling in NI. This includes ensuring there is appropriate training and monitoring, in the implementation of the revised guidance on the Common Travel Area and Electronic Travel Authorisation requirements, including at entry to NI at ports and airports and in the context of travel between Ireland and NI.**
- 4.18 **The Committee may wish to recommend that the UK Government ensures that all journeys into NI, originating from Ireland, are exempt from Electronic Travel Authorisation requirements.**
- 4.19 **The Committee may wish to recommend that Common Travel Area and rights associated with it are enshrined in law by a comprehensive bilateral treaty by the UK and Ireland which 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 and that any such treaty should be incorporated into domestic legislation.**

Human Rights Act Reform

- 4.20 In June 2022, the UK Government introduced the Bill of Rights Bill to the House of Commons. The Bill is to replace the Human Rights Act 1998. If enacted, the provisions are likely to breach

³⁴ NI Commissioner for Children and Young People, 'Statement on Children's Rights in NI' (NICCY, 2018), at 67.

³⁵ Section 3ZA, Immigration Act 1971.

commitments made in the Belfast Good Friday Agreement, undermine protection for young people and restrict access to domestic courts. The NIHRC has a number of specific concerns about the Bill, not least of which is the failure to consider adequately the Belfast (Good Friday) Agreement, Article 2 of the Ireland/NI Protocol and the integral role of ECHR in NI.³⁶ This is of particular concern given that NI remains without its own Bill of Rights. Moreover, the protections in Protocol 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.

4.21 In November 2022, the Bill of Rights Bill was awaiting its second reading at the House of Commons, with no date for progression. While there were initial reports that the UK Government would not be proceeding with the Bill of Rights Bill in its current form,³⁷ more recent reports suggest that the that the Bill of Rights Bill will be progressing through the UK Parliament in its 2022-2023 session.³⁸

4.22 The Committee may wish to recommend that the State Party ensures that the fundamental principles of human rights are adhered to and any reform to the UK’s human rights framework does not weaken human rights protections, but builds on the Human Rights Act 1998, as part of further progress in strengthening the promotion and protection of human rights for all in the UK. This includes ensuring that the Belfast (Good Friday) Agreement and Article 2 of the Ireland/NI Protocol is adhered to.

Children and Young People’s Strategy

4.23 In 2016, the Committee made a series of recommendations regarding the development, delivery, and monitoring of a strategic framework to support the domestic implementation of the UN

³⁶ NI Human Rights Commission, ‘Evidence to Joint Committee on Human Rights Legislative Scrutiny of the Bill of Rights Bill’ (NIHRC, 2022).

³⁷ ‘Bill of Rights: Liz Truss shelves plans to reform human rights law’, *BBC News*, 7 September 2022.

³⁸ Michael Cross, ‘Bill of Rights Bill will be back ‘in weeks’’, *The Law Society Gazette*, 7 November 2022.

CRC.³⁹ This included that the NI Executive expedite the finalisation of a child rights indicator framework.⁴⁰

- 4.24 In December 2020, pursuant to the Children's Services Co-operation Act (NI) 2015 Act, the NI Executive approved the Children and Young People's Strategy.⁴¹ However, several steps need to be taken before it becomes fully operational, requiring the agreement of actions and resource allocation by a functioning NI Executive.⁴²
- 4.25 Work is ongoing to finalise the Delivery Plan 2021–2024, however "data does not currently exist or is not available in an appropriate format" to enable the Department of Education to develop appropriate indicators.⁴³ The Department of Education advises it is taking steps to address this.⁴⁴
- 4.26 As there is currently no statutory requirement to do so, the NI Executive and other relevant public authorities do not routinely undertake children's budgeting or Child Rights Impact Assessments.
- 4.27 The Committee may wish to recommend that the State Party ensures that child-related policies and strategies in NI, such as the Children and Young People's Strategy 2020-2030, are fully and effectively implemented. This includes allocating sufficient resources and collecting disaggregated child-specific data through undertaking children's budgeting and Child Rights Impact Assessments where relevant.**

NI Commissioner for Children and Young People

- 4.28 The NI Commissioner for Children and Young People was established as an executive Non-Departmental Public Body in

³⁹ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 8-14.

⁴⁰ Ibid at 14.

⁴¹ Department of Education, 'Children and Young People's Strategy 2020-2030' (DoE, 2020).

⁴² Department of Education, 'Executive Children and Young People's Strategy 2020-2030: Delivery Plan April 2021-March 2024' (DoE, 2022), at 1.5 and 5.9.

⁴³ Department of Education, 'Children and Young People's Strategy 2020-2030' (DoE, 2020), at 7.12; and Meeting between NI Human Rights Commission and Department of Education, 20 July 2022.

⁴⁴ Meeting between NI Human Rights Commission and Department of Education, 20 July 2022.

2003.⁴⁵ The Commissioner has highlighted the need for legislative reform to increase its powers and duties, including making the Commissioner an institution of the NI Assembly and strengthening its investigatory powers.⁴⁶

4.29 The Committee may wish to recommend that the State Party takes steps to ensure the NI Commissioner for Children and Young People is able to fulfil its mandate effectively.

5.0 Article 6 – Right to Life

Infant mortality

- 5.1 The Committee previously recommended automatic, independent and public reviews of unexpected death or serious injury involving children were introduced.⁴⁷
- 5.2 NI has the highest rate of infant mortality in the UK. In 2021, there were 89 stillbirths and 100 infant deaths registered in NI, an increase from 69 stillbirths and 93 infant deaths in 2020.⁴⁸ This represents a ratio of 4.5 infant deaths per 1,000 live births in 2021, comparing to a ratio of 4.4 per 1,000 live births in 2020.⁴⁹
- 5.3 The Safeguarding Board NI is required to establish processes to review child deaths in NI, to understand and learn from what happened.⁵⁰ However, unlike in the rest of the UK,⁵¹ the Department of Health has not commenced Regulations to enable implementation of this requirement. There is strong support for

⁴⁵ Commissioner for Children and Young People (NI) Order 2003.

⁴⁶ NI Commissioner for Children and Young People, 'Report to the Office of the First Minister and Deputy First Minister under Article 24 of the Commissioner for Children and Young People (NI) Order (2003)' (NICCY, 2013).

⁴⁷ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 28(b).

⁴⁸ NI Statistics and Research Agency, 'Registrar General NI Annual Report 2021' (NISRA, 2022), at 13.

⁴⁹ For 2020 in England and Wales the ratio was 3.6 per 1,000 live births and in Scotland it was 3.1. See Office for National Statistics, 'Child and Infant Mortality in England and Wales: 2020' (ONS, 2022); National Records of Scotland, 'Vital Events Reference Tables 2020'. Available at: <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2020/list-of-data-tables#section4>.

⁵⁰ Sections 3(5) and 7(1)(b), Safeguarding Board (NI) Act 2011.

⁵¹ Child Death Overview Panel in England; Child Death Review Programme in Wales; National Hub for Reviewing and Learning from the Deaths of Children and Young People in Scotland.

establishing child death reviews in NI.⁵² This is unable to progress without the reinstatement of the NI Executive and NI Assembly.

5.4 The Committee may wish to recommend that the State Party takes effective measures to establish comprehensive processes to review child deaths in NI and that these are implemented without further delay.

6.0 Articles 7 and 8 – Nationality

Birth right

6.1 The Belfast (Good Friday) Agreement 1998 recognises the “birthright of all the people of NI to identify themselves and be accepted as Irish or British, or both”. In accordance with Section 1 of the British Nationality Act 1981, anyone born in the UK to a British, Irish, or settled parent, is deemed British. This issue has attracted renewed focus in the context of the UK Withdrawal from the EU.⁵³ In 2020, the Joint Committee of the Commission and the Irish Human Rights and Equality Commission published a legal analysis and proposals for reform to enshrine the commitment in domestic law.⁵⁴ In 2021, the House of Commons NI Affairs Committee called for the UK Government to clarify the meaning of the phrase “be accepted as” in the Belfast (Good Friday) Agreement and called on the UK Government and Government of Ireland to agree a shared approach to the birth right provisions, to remove any remaining ambiguity.⁵⁵

6.2 The Committee may wish to recommend that the State Party ensures that nationality and immigration law in NI is

⁵² Alexis Jay, ‘Independent Review of the Safeguarding Board for NI’ (DoH, 2016); Justice O’Hara, ‘The Inquiry into Hyponatraemia-related Deaths’ (DoF, 2018); Royal College of Paediatrics and Child Health, ‘State of Child Health 2020’ (RCPCH, 2020), at 12; ‘Child death panel: Lack of progress criticised by children’s commissioner’, *BBC News*, 17 December 2019.

⁵³ In *De Souza (Good Friday Agreement: Nationality)* [2019] UKUT 355 (IAC), the Upper Immigration and Asylum Tribunal decided that the system requiring a person to renounce their British citizenship in order to be considered Irish only was a proportionate means of achieving the legitimate aim of avoiding statelessness and maintaining a coherent system of nationality law. In *the Matter of Ní Chuinneagain* [2021] NIQB 79, the NI High Court refused a challenge by an Irish identifying applicant to the same legal provision, stating that “she is an Irish citizen; and her additional British citizenship takes nothing away from this in terms of the rights, benefits and privileges which she enjoys as an Irish citizen”.

⁵⁴ Alison Harvey, ‘A Legal Analysis of Incorporating into UK Law the Birthright Commitment under the Belfast (Good Friday) Agreement 1998’ (NIHRC and IHREC, 2020).

⁵⁵ House of Commons NI Affairs Committee, ‘First Report of Session 2021/2022 on Citizenship and Passport Processes relating to NI’ (HoC, 2021), at 14.

amended to reflect the Belfast (Good Friday) Agreement 1998 acknowledgement that it is the birth right of all the people of NI to identify, and be accepted, as Irish or British or both, without any loss of entitlements.

7.0 Article 12 – Right to Express Views

Participation of children

- 7.1 The Committee previously recommended the establishment of structures for the active and meaningful participation of children in policy making.⁵⁶
- 7.2 In 2020, a survey of 1,065 children in NI found that 772 (72.5 per cent) of respondents felt that their voice has not been considered as important and 937 (88 per cent) felt that it is important that young people are part of the decision-making process.⁵⁷
- 7.3 Section 3(4) of the Children Services Cooperation Act (NI) 2015 introduced a statutory duty on the NI Executive to consult with children and their representatives. This duty was imposed regarding the development of the Children and Young Person’s Strategy. In 2017, the required consultation was conducted by the Department of Education.
- 7.4 Civil society representatives have highlighted that engagement with children is limited to consultation and is not embedded within all stages of the policy making process.⁵⁸ In the context of the Children and Young People’s Strategy 2020-2030, it has been raised that views expressed by children during the consultation process were not fully reflected in the published strategy and the Department of Education has not engaged further with the children’s sector to provide the reasons why this is the case.⁵⁹

⁵⁶ CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at 31.

⁵⁷ NI Youth Forum, ‘Our Voices Aren’t in Lockdown’ (PHF, 2020), at 6.

⁵⁸ NI Human Rights Commission roundtable meetings with civil society organisations on UN CRC, 9 and 11 August 2022.

⁵⁹ Ibid.

- 7.5 Research shows that children with disabilities face particular barriers in accessing services and supports that are age appropriate and accessible. Consequently, children with disabilities face additional barriers that inhibit their involvement in decision-making processes.⁶⁰
- 7.6 In July 2021, the NI Youth Assembly held its first sitting.⁶¹ Members agreed four priorities for the period 2021 to 2023, including education, environment, health, and rights and equality.⁶² Members raised concerns about the lack of a functioning NI Executive and its impact on a child's right to be heard.⁶³
- 7.7 The Committee may wish to recommend that the State Party takes effective measures to ensure children in NI can meaningfully participate at each stage of the policy making process, including in the implementation and monitoring of legislative developments that affect them. This includes the provision of appropriate support to empower children with disabilities and their representative organisations.**

8.0 Article 16 – Right to Privacy

Stop and search

- 8.1 The Committee previously made detailed recommendations on the stop and search of children, including that any data collected should be disaggregated.⁶⁴
- 8.2 In 2021/2022, 2,477 children in NI, including 61 aged 12 and under, were stopped and searched.⁶⁵ Of the 2,477 children stopped and searched, only 71 were subsequently arrested.

⁶⁰ Department for Communities, 'Disability Strategy Expert Advisory Panel: Report and Recommendations' (DfC, 2021), at 111.

⁶¹ The youth assembly has 90 members, 54 of whom are drawn from the NI Assembly constituencies and 36 from specific sections of the community. The core age range of the members is 13 to 17 years old, but there will be an upper age limit of 21 years of age. It is expected to have two plenary sittings a year and has four committees, which will meet more regularly at Parliament Buildings and other locations.

⁶² NI Assembly Hansard, 'SO 01/22/23: Youth Assembly – Making a Difference One Year On', 1 July 2022.

⁶³ NI Youth Assembly, 'Official Report: 3rd sitting of the Youth Assembly – 5 March 2022' (NIA, 2022).

⁶⁴ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 38.

⁶⁵ Police Service NI, 'Use of Stop and Search Powers by the Police in NI: 1 April 2021 to 31 March 2022' (PSNI, 2022), at 4.2.

Published data is not further disaggregated by sex, disability, geographic location, ethnic origin, and socioeconomic background.

- 8.3 Between April and July 2021, the Police Service of NI conducted a survey seeking views of stop and search from 11 to 18 year olds.⁶⁶ Of 870 respondents who had been stopped and searched, 77 per cent said it was a negative experience, 72 per cent felt their search was unjustified and 65 per cent had decreased confidence in local police as a result of their encounter.⁶⁷
- 8.4 In 2022, the Independent Reviewer of the Justice and Security (NI) Act 2007 highlighted a lack of progress on the provision of safeguards for the use of 'no-suspicion' powers against children.⁶⁸ This includes the introduction of independent youth scrutiny panels, community impact assessments, and child specific guidance in the Code of Practice. There has also been a lack of progress regarding the lack of community background recording of persons stopped and searched under the Justice and Security (NI) Act 2007.⁶⁹
- 8.5 The Committee may wish to recommend that the State Party takes steps to ensure that all use of stop and search in NI is lawful, necessary and proportionate. In particular, that it is not used disproportionately so as to discriminate against any group, including children. Measures should include, at least, that comprehensive data on the use of stop and search on children is collected, disaggregated and published.**

Anonymity

- 8.6 The Youth Justice and Criminal Evidence Act 1999 includes a provision prohibiting the naming of a child suspected of committing an offence in the media.⁷⁰ However, this provision has not been

⁶⁶ Police Service of NI, 'Stop and search survey for young people'. Available at: <https://www.psnri.police.uk/latest-news/stop-and-search-survey-young-people>

⁶⁷ Professor Marie Breen-Smyth, 'Report of the Independent Reviewer Justice and Security (NI) Act 2007: Fourteenth Report - 1 August 2020-31 July 2021' (NIO, 2022), at 6.8 – 6.10.

⁶⁸ Ibid.

⁶⁹ *In the Matter of an application by Stephen Ramsey (No 2)* [2020] NICA 14, at 55-58; Professor Marie Breen-Smyth, 'Report of the Independent Reviewer Justice and Security (NI) Act 2007: Fourteenth Report - 1 August 2020-31 July 2021' (NIO, 2022).

⁷⁰ Section 44, Youth Justice and Criminal Evidence Act 1999. This provision applies in England, Wales and NI.

enacted. Article 22 of the Criminal Justice (Children) (NI) Order 1998 places reporting restrictions for minors in post-charge and court scenarios, but not for minors who are pre-charge.

8.7 The Committee may wish to recommend that the State Party ensures all children in NI allegedly involved in an offence are granted anonymity at every stage of the criminal justice process, including the pre-charge stages. This includes implementing the necessary amendments to the Criminal Justice (Children) (NI) Order.

9.0 Article 18 – Childcare Services

Childcare provision

- 9.1 In 2021, the average cost of a full-time childcare place in NI was £170 per week. The average cost for a day nursery per week is £186, and £166 per week for a childminder.⁷¹ 54 per cent of families report challenges in accessing the formal childcare they need and raise issues of cost, flexibility and accessibility.⁷²
- 9.2 In 2020, the NI Executive committed to giving “immediate priority to developing arrangements to deliver extended, affordable, responsive, high quality provision of early education and care initiatives for families with children aged 3-4”.⁷³ Yet there remains no statutory duty in NI akin to that on local and public authorities in England, Scotland and Wales to provide adequate childcare provision.⁷⁴ The scheme implemented in England whereby all working parents of 3 and 4 year olds have access to up to 570 hours free childcare per year has not been implemented in NI.⁷⁵ A separate scheme providing up to 30 hours free childcare for 3 to 4 year olds per week is available in England for working parents that earn a certain amount.⁷⁶ This scheme is not available in NI.

⁷¹ Employers for Childcare, 'NI Childcare Survey 2021' (EfC, 2021).

⁷² Ibid.

⁷³ NI Office, 'New Decade, New Approach' (NIO, 2020), at 40.

⁷⁴ Childcare Act 2006; Children and Young People (Scotland) Act 2014.

⁷⁵ UK Government, 'Help with childcare costs: 15 hours free childcare for 3 and 4-year-olds'. Available at: <https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds>

⁷⁶ UK Government, 'Help with childcare costs: 15 hours free childcare for 3 and 4-year-olds'. Available at: <https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds>

9.3 While there is no free childcare scheme in NI, there is provision of funded pre-school education for 3 to 4 year olds one year before they start primary school. Parents and carers in NI can also apply to the UK-wide Tax-Free Childcare scheme.⁷⁷ In 2021/2022, there were 11,050 accounts in NI using this scheme, an increase from 7,425 in 2020/2021. This is the highest growth of childcare account usage across the UK.⁷⁸

9.4 The Committee may wish to recommend that the State Party ensures early education and childcare provision is affordable, responsive and high-quality in NI. This includes introducing statutory arrangements in NI to extend and enhance early education and childcare initiatives, using the provision available in other parts of the UK as a starting point.

Childcare strategy

9.5 The last and only childcare strategy for NI expired in 1992.⁷⁹ In 2020, the NI Executive committed to developing a new Childcare Strategy.⁸⁰ However, progress has been significantly delayed.⁸¹ Independent research reviewing childcare services in NI is underway and expected to be completed by end of the 2022.⁸²

9.6 The Committee may wish to recommend that the State Party ensures that childcare-related policies and strategies are fully and effectively implemented with ring-fenced sufficient resources in NI. This includes promptly publishing and funding a new childcare strategy for NI.

⁷⁷ UK Government, 'Tax-Free Childcare'. Available at: <https://www.gov.uk/tax-free-childcare>.

⁷⁸ UK Government, 'Tax-Free Childcare Statistics Commentary March 2022'. Available at: <https://www.gov.uk/government/statistics/tax-free-childcare-statistics-march-2022/tax-free-childcare-statistics-commentary-march-2022>.

⁷⁹ NI remains significantly outdated when compared to policy frameworks within the other UK jurisdictions. See Scottish Government, 'Best Start – Strategic Early Learning and School Age Childcare Plan 2022-2026' (Scottish Government, 2022); Welsh Government, 'Childcare, Play and Early Years Workforce Plan' (Welsh Government, 2017); UK Government, 'Early Education and Childcare Statutory Guidance for Local Authorities' (UK Gov, 2018); UK Government, 'Unlocking Talent, Fulfilling Potential: A Plan for Improving Social Mobility Through Education' (DfE, 2017).

⁸⁰ NI Assembly Hansard, 'Written Answers: Update on Childcare Strategy – Peter Weir MLA - AQO 507/17-22', 24 July 2020.

⁸¹ NI Assembly Hansard, 'Written Question: Review of Childcare Services - Nicola Brogan MLA - AQW 2465/22-27', 30 June 2022.

⁸² Ibid.

10.0 Articles 19 and 37 – Torture, Abuse and Exploitation

Spit and bite guards

- 10.1 In 2020, spit and bite guards were introduced as a temporary measure by the Police Service NI to protect officers working in specialist functions, such as the COVID-19 Response Teams, custody suites, cell vans and armed response, during the COVID-19 pandemic.⁸³ In 2022, spit and bite guards were introduced as a permanent tactic in policing by the Police Service NI.⁸⁴ Spit and bite guards can be used on children aged ten years old and upwards, in line with the current age of criminal responsibility in NI.
- 10.2 Police guidance requires that the best interests of the child are considered.⁸⁵ The presumption is that spit and bite guards will not be used where officers are aware a person is under 18 years old.⁸⁶ A review by the Police Ombudsman for NI found that “it could no longer be said that the deployments have been at the upper definition of a ‘child’”.⁸⁷ Also the NI Policing Board's Human Rights Advisor noted that “it is difficult to see how the use of a spit and bite guard will ever be in the interests of a child and therefore the guidance should be amended to set out the circumstances where this might, possibly, be true”.⁸⁸ Between April 2021 and March 2022, the Police Service NI applied spit and bite guards 123 times, seven per cent of these instances involved children between 13 and 17 years old.⁸⁹
- 10.3 The Police Service NI has advised that, in instances where a spit and bite guard is used on a child, the video footage must be

⁸³ Rebecca Black, ‘Police Service NI to deploy spit and bite guards in custody suites’, *Belfast Telegraph*, 27 March 2020.

⁸⁴ ‘Spit and bite guards: Police Service NI to use equipment as “permanent tactic”’, *BBC News*, 6 June 2022.

⁸⁵ Police Service of NI, ‘Police Service NI Manual of Policy, Procedure and Guidance on Conflict Management - Chapter 16: Spit and Bite Guards’ (PSNI, 2022), at 16.11.

⁸⁶ Letter from Police Service NI to NI Human Rights Commission, 23 November 2020.

⁸⁷ Police Ombudsman for NI, ‘The Police Ombudsman’s Review of the Deployment of Spit and Bite Guards by the Police Service of NI’ (PONI, 2021), at 37.

⁸⁸ NI Policing Board, ‘A Review of Police Service NI’s Use of Spit and Bite Guards by the NI Policing Board’s Human Rights Advisor’ (NIPB, 2022), at 41.

⁸⁹ Police Service NI, ‘Use of Force by the Police in NI’, (PSNI, 2022), at 15.

reviewed by the deploying officer's supervisor and an officer of at least the rank of Chief Inspector.⁹⁰

10.4 The Committee may wish to recommend that the State Party ensures that comprehensive data is collected on the use of spit and bite guards on children in NI that is disaggregated by other characteristics including race, community background, disability, or mental health conditions.

10.5 The Committee may wish to recommend that the State Party ensures that policies on the use of spit and bite guards in NI advise in what circumstances it would be appropriate for a police officer to use a spit and bite guard on a child, including ensuring that the best interests of the child is a primary consideration.

Strip searches

10.6 In 2021, children between the ages of 12 and 17 years old were strip searched by the Police Service NI on 34 occasions.⁹¹ Strip searches involve the removal of clothing and can include exposure of intimate body parts. On only three occasions was anything found. In the other 31 occasions, no drugs, weapons or anything harmful were uncovered. Police officers are obligated to record the reason for conducting a strip search, but in 14 of the 34 cases the Police Service NI was unable to provide any justification for why strip searches were conducted.⁹²

10.7 The Committee may wish to recommend that the State Party takes effective measures to ensure that strip searches of children in NI are only used as a last resort. All incidents should be recorded, including the proposed justification for the search, and disaggregated data should be published and monitored.

⁹⁰ Letter from Police Service NI Assistant Chief Constable to NI Human Rights Commission, 15 June 2022.

⁹¹ Strip searches involve the removal of clothing and can include exposure of intimate body parts.

⁹² Rory Winters, 'Police Service NI strip searching of under-18s is "deeply shocking"', *The Detail*, 20 May 2022.

Physical punishment of children

10.8 The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable punishment of a child in NI and provides that this is a defence to a charge of common assault tried summarily. This differs from Scotland and Wales, where legislation was passed to prohibit physical punishment of children by parents and carers.⁹³ Any legislative progress in NI is hindered by suspension of the NI Assembly and NI Executive.⁹⁴

10.9 There are no statistics on the number of cases where the defence of reasonable chastisement has been used in NI.

10.10 The Committee may wish to recommend that the State Party ensures that the defence of reasonable chastisement of a child to a charge of common assault is abolished in NI, which includes amending the Law Reform (Miscellaneous Provisions) (NI) Order 2006. As an alternative, positive non-violent forms of discipline should be further promoted via public campaigns in NI.

Domestic abuse

10.11 The Domestic Abuse and Civil Proceedings Act 2021 creates a new domestic abuse offence which captures patterns of psychological and emotional abuse. In its advice on the then Bill, the NIHRC had recommended that this legislation should expressly ensure the best interests of the child are a primary consideration regarding a child's involvement in any related court proceedings and evidence gathering, for example by making specific reference to the Barnahus approach.⁹⁵ This is not reflected in the 2021 Act.

10.12 From April 2021 to March 2022, there were nine homicides in NI with a domestic motivation, with two victims under 18 years old.⁹⁶

⁹³ Children (Equal Protection from Assault) (Scotland) Act 2019; Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020.

⁹⁴ Email correspondence from the Department of Justice to the NI Human Rights Commission, 22 June 2022.

⁹⁵ NI Human Rights Commission, 'Advice to the Department of Justice: Domestic Abuse and Family Proceedings Bill' (NIHRC 2020); Oral Evidence of NI Human Rights Commission to the Committee for Justice, 2 July 2020.

⁹⁶ Police Service NI, 'Domestic Abuse Incidents and Crimes Recorded by the Police in NI' (PSNI, 2022), at 6.

State-provided statistics on domestic abuse do not disaggregate data by age.⁹⁷

10.13 The Committee may wish to recommend that the State Party takes effective measures to ensure data on domestic abuse is comprehensive and disaggregated in a way that is comparable and reflects society in NI, for example, that it includes the age of victims.

10.14 The Committee may wish to recommend that the State Party ensures that the best interests of the child is a primary consideration in tackling domestic abuse in NI, for example, by including a requirement to adopt the Barnahus approach where relevant.

Female genital mutilation

10.15 Female genital mutilation is an offence in NI.⁹⁸ In 2022, the NI Department of Health confirmed that multi-agency practice guidelines are being revised and updated to account for Female Genital Mutilation Protection Orders, new care pathways and a risk assessment tool.⁹⁹ Female Genital Mutilation Protection Orders can stop a child being taken out of NI or stop family members bringing a child to NI to carry out a female genital mutilation procedure.¹⁰⁰

10.16 The Adoption and Children Act (NI) 2022 will, once commenced, enable Female Genital Mutilation Protection Orders to be classified as family proceedings to empower courts to make other orders at the same time to protect a child, such as a care order or supervision order.¹⁰¹ This provision is due to commence in 2023/2024, subject to a functioning NI Executive. However, specialised psychosocial therapeutic interventions, such as the Guardian Project in Greater Manchester, are lacking in NI.¹⁰²

⁹⁷ Police Service NI, 'Domestic Abuse Incidents and Crimes Recorded by the Police in NI: Update to 20 June 2022' (PSNI, 2022).

⁹⁸ Female Genital Mutilation Act 2003; Serious Crimes Act 2015.

⁹⁹ Email correspondence from Department of Health to NI Human Rights Commission, 5 October 2022.

¹⁰⁰ NI Direct, 'Female Genital Mutilation'. Available at: <https://www.nidirect.gov.uk/articles/female-genital-mutilation>

¹⁰¹ Email correspondence from Department of Health to NI Human Rights Commission, 5 October 2022.

¹⁰² New Step for African Community, 'The Guardian Project'. Available at: <https://nestac.org.uk/programmes/vawg/the-guardian-project/>

10.17 The Committee may wish to recommend that the State Party ensures specialised and accessible support is available for children at risk or victim of female genital mutilation in NI, such as the Guardian Project established in Greater Manchester.

Intersex genital mutilation

10.18 The law in NI does not provide for the recognition of intersex persons. Civil society representatives have raised concerns about the issue of non-consensual medical intervention for intersex children.¹⁰³

10.19 In 2020, the Expert Panel for the Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex + Strategy for NI highlighted several issues facing intersex persons in NI that the strategy should address, including healthcare needs of intersex persons, informed consent of intersex children and commitment to ending intersex genital mutilation in NI.¹⁰⁴ The Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex + Strategy has not yet been published.

10.20 Between four and five individuals are referred to the 'Endocrine Disorders of Sexual Differentiation Service' in NI per year, however surgical services are mainly referred on to England.¹⁰⁵ Concerns have been raised about the availability of specialist support in NI for those who have undergone non-consensual medical intervention in early childhood.¹⁰⁶

10.21 The Committee may wish to recommend that the State Party takes effective measures to legally recognise intersex children and to ensure children in NI are not subject to non-consensual medical intervention. This includes undertaking the necessary legislative change and introducing specialist support.

¹⁰³ Department for Communities, 'Lesbian, Gay, Bisexual, Transgender, Queer (Or Questioning), Intersex + Strategy Expert Advisory Panel – Themes and Recommendations' (DfC, 2021).

¹⁰⁴ Ibid.

¹⁰⁵ Email correspondence from Department of Health to NI Human Rights Commission, 5 October 2022.

¹⁰⁶ NI Human Rights Commission roundtable meeting with civil society organisations on UN CRC, 11 August 2022.

Bullying

10.22 In 2021, the Addressing Bullying in Schools (NI) Act 2016 came into force.¹⁰⁷ The 2016 Act places statutory duties on schools to take steps to prevent bullying and to record bullying incidents. This includes addressing the motivation, method and how of each incident. However, 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.

10.23 There is evidence that specific groups of children in NI feel particularly affected by bullying. For example, of 532 lesbian, gay, bisexual and transgender post-primary pupils surveyed in 2016, 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 be.¹⁰⁸ 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.¹⁰⁹

10.24 The Committee may wish to recommend that the State Party examines the effectiveness of measures in NI, such as the Addressing Bullying in Schools (NI) Act 2016, which are aimed at addressing the impact and prevalence of bullying in schools. Immediate steps should be taken to address and monitor any findings. This includes specific steps to address bullying experienced by particular groups of children, such as lesbian, gay, bisexual, transgender, queer (or questioning) and intersex+ pupils and children from ethnic minorities. It also 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.

¹⁰⁷ Department of Education, 'Press Release: Schools to implement Addressing Bullying Act', 21 April 2021.

¹⁰⁸ Public and Corporate Economic Consultants, 'Department of Education: Post Primary School Experiences of 16-21 Year Olds' (PACEC, 2016), at 3.

¹⁰⁹ NI Statistics and Research Agency, 'NI Racial Equality Indicators Report: 2014-2019' (TEO, 2021), at 18.

Paramilitary activities

10.25 In 2020/2021, there were 43 casualties of paramilitary style assaults, with one child casualty.¹¹⁰ In 2021/2022 there were 33 casualties of paramilitary style assaults, none of these involved children.¹¹¹

10.26 The New Decade New Approach Agreement 2020 includes a commitment to “ending paramilitarism”.¹¹² This includes a continued commitment by the UK Government to ensure the Police Service NI is “appropriately resourced to deal with” paramilitarism.¹¹³

10.27 In 2020, the NI Executive agreed to extend a programme for ending paramilitarism, established under the Fresh Start Agreement, for an additional 3 years. In 2021/2022, the Department of Justice announced that £13 million will be provided to community groups and other organisations to tackle paramilitarism in NI.¹¹⁴ A further £10 million has been allocated by the Department of Justice to help communities in transition within NI until 2024.¹¹⁵

10.28 In 2021, the Independent Reporting Commission concluded that “paramilitarism remains a clear and present danger” in NI.¹¹⁶ NI’s current political uncertainty places children at an increased risk of intimidation and exploitation by paramilitary and/or criminal groups, which can lead to the increased criminalisation of young people in NI.¹¹⁷

10.29 The Committee may wish to recommend that the State Party ensures the provision of ring-fenced funding in NI for

¹¹⁰ Police Service NI, ‘Police Recorded Security Situation Statistics: 1 March 2020 to 28 February 2021’ (PSNI, 2021).

¹¹¹ Police Service NI, ‘Police Recorded Security Situation Statistics - 1 April 2021 to 31 March 2022’ (PSNI, 2022).

¹¹² NI Office, ‘New Decade, New Approach’ (NI Office, 2020), at 9.

¹¹³ Ibid at 48 and 53.

¹¹⁴ NI Assembly Hansard, ‘Briefing from the Tackling Paramilitary Activity, Criminality and Organised Crime Programme Team’, 1 July 2021.

¹¹⁵ Ibid.

¹¹⁶ Independent Reporting Commission, ‘Press Release: Fourth Report of the Independent Reporting Commission’ (IRC, 2021).

¹¹⁷ NI Human Rights Commission roundtable meeting with civil society organisations on UN CRC, 11 August 2022.

the purpose of ensuring children are fully protected from violence and exploitation by paramilitary or criminal gangs.

11.0 Articles 20, 21 and 25 – Children in Care

Adoption and social care reform

- 11.1 In April 2022, the Adoption and Children (NI) Act 2022 was enacted which modernises the legal framework for adoption in NI and improves support for children in care. It is estimated that 25 sets of regulations and guidance will be required to give full effect to the wide-ranging reforms.¹¹⁸ The 2022 Act will be implemented on a phased basis over five years, subject to securing additional funding from an incoming NI Executive. Sustainable resourcing will be essential for the full implementation of the 2022 Act.¹¹⁹
- 11.2 In 2021/2022, within NI there were 24,545 children in need, 34,969 children in need of referrals, 2,346 children on the Child Protection Register and 3,624 children in care.¹²⁰
- 11.3 In 2021, the A Life Deserved Strategy for care experienced children in NI was launched.¹²¹ However, its impact remains unclear as many issues it seeks to address continue to persist, including educational underachievement and increased likelihood of interfacing with the youth justice system.¹²²
- 11.4 The Department of Health has commissioned an Independent Review of Children’s Social Care Services in NI, which is due to complete in 2023.¹²³ The Lead Reviewer has highlighted the “endemic and systemic serious crisis in children’s social care”, with rising demand for accessing services and workforce vacancies of 30 to 40 per cent across children’s social care teams.¹²⁴

¹¹⁸ Email correspondence from Department of Health to NI Human Rights Commission, 5 October 2022.

¹¹⁹ NI Human Rights Commission roundtable meetings with civil society organisations on UN CRC, 9 August 2022 and 11 August 2022.

¹²⁰ NI Statistics and Research Agency, ‘Children’s Social Care Statistics for NI 2021/2022’ (NISRA, 2022), at 7.

¹²¹ Department of Health and Department of Education, ‘A Life Deserved: “Caring” for Children and Young People in NI’ (DoH and DoE, 2021).

¹²² NI Human Rights Commission roundtable meetings with civil society organisations on UN CRC, 11 August 2022.

¹²³ Department of Health, ‘Independent Review of Children’s Social Care Services’. Available at: <https://www.health-ni.gov.uk/publications/independent-review-childrens-social-care-services>.

¹²⁴ Department of Health, ‘October Newsletter: Children’s Social Care Services Northern Ireland’ (DoH, 2022).

11.5 The Committee may wish to recommend that the State Party takes urgent steps to ensure that children’s social care services in NI meet demand and address the full range of complex needs, as they arise. This includes ensuring that opportunities for strategic collaboration across adoption and social care services in NI are identified and maximised, including in the provision of long-term funding arrangements, particularly in the implementation of the Adoption and Children (NI) Act 2022.

Kinship care and EU withdrawal

11.6 Before 1 January 2021, cross-border disputes within the EU relating to children were regulated under the Brussels IIa Regulation (‘Brussels IIa’).¹²⁵ This provided rules for establishing jurisdiction and ensured that orders relating to parental responsibility issued in one EU Member State could be recognised and enforced in another. However, no replacement of the Brussels IIa system has been put in place following the UK’s withdrawal from the EU. This is a particular issue in NI given the fluidity of the border with Ireland.

11.7 The Adoption and Children (NI) Act 2022 introduces a Special Guardianship Order as an option for those who do not wish to go through the adoption process, but who want to provide greater security for a child by placing him or her with a kinship carer. In NI, it is foreseeable that such cases may involve an extended family member who lives in Ireland. However, the 2022 Act does not contain a clear framework for managing the assessment and placement of children from NI in Ireland.

11.8 In the context of NI, beyond the challenge of cross-border assessments of potential special guardians, there are queries as to how the child will be supported in such a placement, how that placement will be monitored and what will happen if the placement breaks down.¹²⁶

¹²⁵ Regulation 2201/2003/EU, ‘Council Regulation Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility (Brussels IIa)’, 27 November 2003.

¹²⁶ Letter from the NI Human Rights Commission to the Committee for Health, 17 January 2022.

11.9 The Committee may wish to recommend that the State Party ensures that kinship placements, particularly across the NI/Ireland border, are not adversely affected following the UK's withdrawal from the EU. This includes ensuring that there is clarity on how disputes or placement breakdowns will be resolved. It also includes ensuring that the necessary support is in place to facilitate cross-border assessments, to support the children involved and to ensure a placement is effectively monitored.

Foster care

11.10 Since 2012, Minimum Kinship Care Standards have been in place and are subject to regular review.¹²⁷ However, in 2013, the Department of Health stated that it would update fostering standards in NI.¹²⁸ The Foster Placement (Children) Regulations (NI) 1996 have not been updated since their introduction. These regulations do not include minimum standards for foster care or a statutory requirement for foster care to be inspected, unlike arrangements seen across the rest of the UK.¹²⁹

11.11 The Committee may wish to recommend that the State Party ensures that there are minimum standards for foster care and a statutory requirement for foster care to be inspected in NI.

EU Settlement Scheme

11.12 The EU Settlement Scheme was designed to protect the rights of EU and EEA citizens and their family members already living in the UK prior to 1 January 2021, following the UK's withdrawal from the EU.¹³⁰ The deadline for applications to the EU Settlement Scheme

¹²⁷ Department of Health, 'Minimum Care Standards: NI' (DoH, 2019).

¹²⁸ Regulation and Quality Improvement Authority, 'Review of Statutory Fostering Services Overview Report' (RQIA, 2013), at 1.1.

¹²⁹ Fostering Services (England) Regulations 2011; UK Government, 'Fostering services: national minimum standards', (UK Gov, 2011); Looked After Children (Scotland) Regulations 2009; Scottish Government, 'National Care Standards: Foster Care and Family Placement Services' (Scottish Government, 2005); Regulated Fostering Services (Services Providers and Responsible Individuals) (Wales) Regulations 2019; Welsh Government, 'National Minimum Standards for Fostering Services' (Welsh Government, 2003).

¹³⁰ Part 2, UK-EU Withdrawal Agreement 2020.

was 30 June 2021.¹³¹ This was also the end of the grace period in which existing EU law rights were protected pending the outcome of an application to the scheme made by the deadline. Applicants, and their families, can be granted either settled status or pre-settled status. For EU and EEA nationals with five years' continuous residency in the UK, they will ordinarily be granted settled status, which is indefinite leave to remain, while those with less than five years' continuous residency will be granted pre-settled status, which is a temporary right to reside for five years. Pre-settled status allows the applicant to remain in the UK, subject to conditions, in order to fulfil the residency requirements to apply for settled status.

- 11.13 In 2021, the Independent Monitoring Authority, the body that oversees the implementation of the EU Settlement Scheme issued judicial review proceedings against the Home Office, challenging the Home Office's position that EU citizens who failed to apply for settled status before the expiry of their Pre-Settled Status automatically lose their rights.¹³²
- 11.14 The UK Government confirmed that late applications will be accepted where there are reasonable grounds for failing to meet the deadline. Guidance indicated that a "flexible and pragmatic approach" should be taken; that rights would be protected pending consideration of applications; and that those without status, encountered by Immigration Enforcement, who may be eligible, should be afforded the opportunity to make a late application.¹³³
- 11.15 Civil society organisations have warned that children, particularly children in and leaving care, may be falling through the gaps as they are less likely to be identified or supported to apply.¹³⁴ Therefore, many EU national children or children of EU nationals

¹³¹ The UK Government confirmed that late applications will be accepted where there are reasonable grounds for failing to meet the deadline.

¹³² Independent Monitoring Authority, 'Press Release: Judicial Review Claim by Independent Monitoring Authority', 14 December 2021. This case was heard in the England and Wales High Court in November 2022 and a judgment is awaited.

¹³³ Home Office, 'EU Settlement Scheme: EU, Other EEA and Swiss Citizens and Their Family Members' (HO, 2021), at 31-34.

¹³⁴ Children's Law Centre, 'Briefing on the Implications for EU families with Children Who Fail to Apply to the EU Settlement Scheme' (CLC, 2021); The Children's Society, 'Looked After Children and the EU Settlement Scheme: An Update for Local Authorities' (The Children's Society, 2021); Coram Children's Legal Centre, 'Uncertain Futures: The EU Settlement Scheme and Children and Young People's Right to Remain in the UK' (CCLC, 2019).

may be unknowingly living in the UK illegally. This impacts their ability to access essential services, including employment, benefits, housing, healthcare, and the ability to drive, to open a bank account, or access post-secondary education. It is understood that all outstanding applications were resolved before the deadline for applications. However, continued monitoring is required to ensure that any child or care leaver with pre-settled status is supported to make the application for EU Settled Status.

11.16 In September 2022, the Independent Monitoring Authority for the Citizens' Rights Agreements launched a review to find out what measures local government across the UK is taking to ensure all eligible looked after children and care leavers have their rights protected.¹³⁵ The review is being undertaken in stages across all local government in England, Northern Ireland, Scotland and Wales.

11.17 The Committee may wish to recommend that the State Party ensures all eligible EU and EEA children in NI, particularly looked after children and care leavers with pre-settled status, are automatically transitioned to the EU Settlement Scheme within the appropriate timescales without any loss of rights or entitlements.

Children reported missing from care

11.18 In 2020/2021, the Police Service NI received 4,732 reports of children going missing from care in NI, which involved 1,213 individual children.¹³⁶ Of these, 2,321 missing persons reports (49 per cent) were from Residential Children's Homes, relating to 182 individuals. Local police officers in NI have expressed concerns regarding a 'revolving door' effect where a young person is returned to residential care, after which they subsequently abscond again.¹³⁷

¹³⁵ Independent Monitoring Authority, 'Press Release: EU citizens watchdog takes steps to secure rights of looked after children and care leavers', 24 October 2022.

¹³⁶ Email correspondence from Police Service NI to NI Human Rights Commission, 16 June 2021.

¹³⁷ NI Human Rights Commission, 'The 2020 Annual Statement: Human Rights in NI' (NIHRC, 2020), at 81.

11.19 Children and young people who are missing from care are particularly vulnerable to exploitation,¹³⁸ and it has been noted that there is a “particular link” between children going missing from care and child sexual exploitation.¹³⁹

11.20 The Committee may wish to recommend that the State Party ensures that effective measures are being taken to address cases of children reported as having gone missing from care in NI. This includes identifying and addressing possible links with exploitation and trafficking.

12.0 Article 22 – Refugee Status

Reform of UK refugee and asylum law

12.1 In 2021, the UK published its New Plan for Immigration.¹⁴⁰ These proposals failed to engage with human rights and refugee law.¹⁴¹

12.2 The Nationality and Borders Act 2022 creates a new process for conducting age assessments of anyone seeking asylum in the UK that removes key safeguards and risks children seeking asylum being wrongly classified as adults.¹⁴² It does not reference the UN CRC or the best interests of the child.¹⁴³

12.3 The Committee may wish to recommend that the State Party, following the enactment of the Nationality and Borders Act 2022, takes effective measures to ensure that children seeking asylum and refugee children in NI are protected in compliance with human rights standards.

¹³⁸ NI Human Rights Commission, 'Submission to the UN CRC Committee 88th Session on the Sixth Periodic Report of the UK of Great Britain and NI on Compliance with the UN CRC (List of Issues)' (NIHRC, 2020).

¹³⁹ Safeguarding Board for NI, 'Getting Focused and Staying Focused, Looked After Children, Going Missing, and Child Sexual Exploitation: A Thematic Review' (QUB, 2015), at 25.

¹⁴⁰ Home Office, 'New Plan for Immigration' (HO May 2017).

¹⁴¹ NI Human Rights Commission, 'Response to Public Consultation on the Home Office's New Plan for Immigration' (NIHRC, 2021).

¹⁴² NI Human Rights Commission, 'Response to Call for Evidence by the Joint Committee on Human Rights on the Nationality and Borders Bill' (NIHRC, 2021), at 7.1–7.12.

¹⁴³ Ibid at paras 8.10-8.13.

Refugee resettlement

- 12.4 Between December 2015 and February 2020, 1,815 Syrian refugees were welcomed to NI under the Syrian Vulnerable Persons Relocation Scheme.¹⁴⁴ Independent research indicates that the majority of children had a positive experience of resettlement in NI under this scheme.¹⁴⁵ The consortium model adopted by the NI Executive enabled effective joint working between the public and voluntary sectors.¹⁴⁶
- 12.5 In 2022, the Afghan Relocations and Assistance Policy,¹⁴⁷ the Afghan Citizens Resettlement Scheme,¹⁴⁸ the Ukraine Family Scheme¹⁴⁹ and the Homes for Ukraine Scheme¹⁵⁰ were available in NI. As of 31 March 2022, no arrivals were reported in NI under these schemes.¹⁵¹ However, since March 2022, the Commission 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.¹⁵²
- 12.6 Civil society organisations have raised concerns about the demand on the civil society to provide support to refugees and persons seeking asylum, including unaccompanied children seeking asylum, despite the lack of available funding sources.¹⁵³ The strategic and collaborative approach taken in relation to the Syrian scheme,

¹⁴⁴ Department for Communities, 'Syrian Vulnerable Persons Relocation Scheme: Briefing Document – February 2020' (DfC, 2020).

¹⁴⁵ Arlene Robertson, 'A New Life for Me: Integration Experiences of Syrian Refugee Children and Their Families' (Barnardo's, 2020).

¹⁴⁶ House of Commons NI Affairs Committee, 'The Experiences of Minority Ethnic and Migrant People in NI' (HoC, 2022), at 26.

¹⁴⁷ Executive Office, 'Press Release: Executive agrees to support Afghan refugees', 7 September 2021.

¹⁴⁸ Ibid.

¹⁴⁹ Home Office, 'Guidance: Apply for a Ukraine Family Scheme visa'. Available at: <https://www.gov.uk/guidance/apply-for-a-ukraine-family-scheme-visa>.

¹⁵⁰ 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>.

¹⁵¹ Email correspondence from the Executive Office to the NI Human Rights Commission, 22 August 2022.

¹⁵² NI Direct, 'Ukraine assistance centres'. Available at: <https://www.nidirect.gov.uk/articles/ukraine-assistance-centres>

¹⁵³ NI Human Rights Commission roundtable meetings with civil society organisations on UN CRC, 11 August 2022.

does not appear to have been taken forward in the schemes intended to assist Afghans and Ukrainians.¹⁵⁴

12.7 In 2021/2022, 66 unaccompanied children seeking asylum arrived in NI and were referred to the Health and Social Care Trusts.¹⁵⁵ In March 2022, the Trusts in NI were supporting a total of 136 unaccompanied children and young people seeking asylum (61 children aged under 18 and 75 young people aged over 18 in receipt of leaving and after care support services).¹⁵⁶

12.8 In 2021, the Department of Health consulted on proposals for a regional model of service for separated and unaccompanied children seeking asylum in NI, however its outcome is awaited.

12.9 The Committee may wish to recommend that the State Party reviews urgently the support provided to refugee children, children seeking asylum, and unaccompanied children seeking asylum in NI. For example, consideration should be given to extending the consortium model adopted in the Syrian Vulnerable Persons Relocation Scheme.

Use of hotels as 'contingency accommodation'

12.10 In 2019, the UK Home Office sub-contracted the Mears Group PLC to provide accommodation and support for people seeking asylum in NI.¹⁵⁷ 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. The use of hotels as 'contingency accommodation' increased significantly.¹⁵⁸ The continued pressure on the system means families, including children, are being kept in hotels for long periods with no set timeframe for moving onto dispersal accommodation. On 14 November 2022, 174 school aged children seeking asylum under 16 years old were accommodated in hotels in NI.¹⁵⁹

¹⁵⁴ NI Human Rights Commission roundtable meetings with civil society organisations on UN CRC, 11 August 2022.

¹⁵⁵ Email correspondence from the Executive Office to the NI Human Rights Commission, 22 August 2022.

¹⁵⁶ Ibid.

¹⁵⁷ 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>

¹⁵⁸ Independent Chief Inspector of Borders and Immigration, 'An Inspection of Contingency Asylum Accommodation May 2021-November 2021' (UK Gov, 2022).

¹⁵⁹ Email correspondence from the Home Office to the NI Human Rights Commission, 14 November 2022.

12.11 In May 2022, the Independent Chief Inspector of Borders and Immigration reported several issues regarding the use of hotels for people seeking asylum in the UK, including a lack of choice and quality of food, a lack of play and leisure activities for children and families, and mental health concerns for those affected by the long stays.¹⁶⁰

12.12 In NI, civil society organisations have reported grave concerns regarding children living at hotel accommodation, including inadequate access to good quality and culturally appropriate food.¹⁶¹ In addition, civil society organisations have raised concerns regarding restrictions on private and family life, and insufficient access to basic services such as education and health, which is particularly challenging for children with disabilities.¹⁶²

12.13 The Committee may wish to recommend that the State Party urgently develops and ensures sufficient resources for a realistic, long-term strategy aimed at ending the use of hotels for contingency asylum accommodation in NI, particularly for families with children.

Refugee Integration Strategy

12.14 In 2005, the NI Executive first committed to developing a refugee integration strategy.¹⁶³ However, NI remains the only part of the UK to not have a refugee integration strategy. In 2021, the NI Executive consulted on a draft Refugee Integration Strategy,¹⁶⁴ which sought to address the pressure “exerted on the voluntary sector to backfill, what should be, essential services”.¹⁶⁵ Due to the suspension of the NI Executive, this strategy has not progressed.

¹⁶⁰ Independent Chief Inspector of Borders and Immigration, 'An Inspection of Contingency Asylum Accommodation May 2021-November 2021' (UK Gov, 2022), at 9.7 and 9.41.

¹⁶¹ 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).

¹⁶² Ibid.

¹⁶³ Office of the First Minister and Deputy First Minister, 'A Racial Equality Strategy for NI: 2005 – 2010' (OFMDFM, 2005), at 4.48; Office of the First Minister and Deputy First Minister, 'A Racial Equality Strategy for NI: 2015-2025' (OFMDFM, 2015), at 6.19.

¹⁶⁴ The Executive Office, 'Refugee Integration Strategy Consultation Document' (TEO, 2021).

¹⁶⁵ Fiona Murphy and Ulrike Vieten, 'Asylum Seekers and Refugees' Experiences of Life in NI' (QUB, 2017).

12.15 In March 2022, the House of Commons NI Affairs Committee highlighted issues relating to the experiences of refugees, including housing provision, access to healthcare services and the Belfast-centred provision of services.¹⁶⁶

12.16 The Committee may wish to recommend that the State Party ensures that up-to-date, comprehensive, human rights based refugee integration strategies are implemented in NI.

13.0 Article 23 – Children with Disabilities

Autism Strategy

13.1 In 2021/2022, the estimated prevalence of autism within the school aged population in NI was 4.7 per cent (14,019 children), this continues the increasing trend observed since 2008/2009.¹⁶⁷

13.2 In 2021, the NI Commissioner for Children and Young People reported that, between 2016 and 2021, the number of children waiting for an autism assessment increased by 148 percent (from 2,079 to 5,155), with a 687 per cent increase in the number waiting more than 52 weeks for an assessment (from 279 to 2,195).¹⁶⁸ In 2021/2022, the number of children waiting for an assessment increased by a further 33 per cent (from 5,155 to 6,845).¹⁶⁹

13.3 The Autism Act (NI) 2011 places a statutory responsibility on the Department of Health to publish an autism strategy every seven years. In 2021, following delays caused by the COVID-19 pandemic, the Department of Health published an interim Autism Strategy, which includes key priorities underpinned by outcome-based, cross-departmental actions with set timelines.¹⁷⁰ The

¹⁶⁶ House of Commons NI Affairs Committee, 'The Experiences of Minority Ethnic and Migrant People in NI' (HoC, 2022), at 28.

¹⁶⁷ NI Statistics and Research Agency, 'Prevalence of Autism (Including Asperger Syndrome) in School Age Children in NI: Annual Report 2022' (DoH, 2022).

¹⁶⁸ NI Commissioner for Children and Young People, 'More Than a Number: A Rights Based Review of Child Health Waiting Lists in NI' (NICCY, 2021).

¹⁶⁹ NI Commissioner for Children and Young People, 'One Year Post Publication Monitoring Report: More Than a Number' (NICCY, 2022).

¹⁷⁰ Department of Health, 'Autism Interim Strategy 2021-2022' (DoH, 2021).

Department of Health has consulted on key priorities for the next five-year Autism Strategy.¹⁷¹

13.4 In April 2022, the Autism (Amendment) Act (NI) 2022 received Royal Assent. It aims to address shortcomings of the Autism Act (NI) 2011,¹⁷² by including measurable targets and outcomes aimed at strengthening support services and updating the requirements placed on NI's autism strategy.

13.5 Despite calls from civil society organisations during its passage, the 2022 Act does not contain a mandatory duty for teacher training. There are concerns that teachers are not provided with adequate resources to effectively meet the needs of children with autism, particularly in mainstream schools.¹⁷³ In England, training on special educational needs has been a compulsory part of training for all new teachers since 2019.¹⁷⁴

13.6 The Committee may wish to recommend that the State Party ensures that comprehensive up-to-date strategies, guidance and actions plans focused on autism support are in place in NI, which contain specific targets for the provision of teacher training on autism for all schools in NI.

Disability Strategy

13.7 In 2020, the NI Executive committed to publish a disability strategy for NI. An expert advisory panel established to advise on a disability strategy for NI found a significant lack of data on the lived experiences children with disabilities in NI, making "appropriate planning of services, supports and provisions incredibly challenging".¹⁷⁵ As a result, intersectionality is not adequately incorporated within policy-making, meaning children with disabilities have traditionally been excluded from childhood

¹⁷¹ Department of Health, 'Autism Strategy 2023-2028 Questionnaire' (DoH, 2021).

¹⁷² The Autism Act (NI) 2011 requires the Department of Health to publish revised strategies at regular intervals. The initial autism strategy was published in 2013 and expired at the end of 2020. In 2021, following delays caused by the COVID-19 pandemic, the Department of Health published an interim autism strategy. See Department of Health, 'Autism Interim Strategy 2021-2022' (DoH, 2021).

¹⁷³ National Autistic Society NI, 'National Autistic Society NI Response to A Private Members Bill to Amend the Autism NI Act 2011' (National Autistic Society NI, 2021).

¹⁷⁴ UK Government, 'Guidance: Initial Teacher Training: Core Content Framework' (Gov.UK, 2019).

¹⁷⁵ Department for Communities, 'Disability Strategy Expert Advisory Panel: Report and Recommendations' (DfC, 2021), at 110.

strategies while disability related policies tend to focus on adults.¹⁷⁶ Public consultation on the disability strategy was due to take place in early 2022, but this process has been delayed and cannot progress until a new NI Executive is in place.¹⁷⁷

13.8 The Committee may wish to recommend that the State Party ensures an up-to-date, comprehensive disability strategy is in place and appropriately funded in NI. This strategy should build on other strategies, such as the Children and Young People’s Strategy 2020-2030, and include specific child rights indicators with a comprehensive action plan for the inclusion of children with disabilities.

Short breaks services

13.9 Significant concerns have been raised regarding the adequacy and availability of short breaks services in NI for children with disabilities and their families/carers, particularly those children with complex needs.¹⁷⁸ During the COVID-19 pandemic, several of these services were reduced and repurposed for residential services.

13.10 Many families rely on short breaks services for support in their caring role and, without it, may experience “family stress and breakdown, deteriorating health of parents/carers, increased risk of children being placed in care and deteriorating emotional and social development for disabled children and their siblings”.¹⁷⁹ Increases in the number of young carers were reported during the pandemic, as many provided a caring role for siblings to fill the gap left by the lack of family access to support services.¹⁸⁰

13.11 The Committee may wish to recommend that the State Party takes effective measures to ensure a range of short

¹⁷⁶ Ibid at 108.

¹⁷⁷ Letter from Department for Communities to NI Human Rights Commission, 18 July 2022.

¹⁷⁸ Carers NI, ‘Press Release: Coalition of Carers Organisations member’s statement on the reopening of day centres, short breaks and respite support in Northern Ireland’, 5 June 2022; Children’s Law Centre, ‘Close the Gap: Key priorities for the NI Assembly to Protect Children by Closing the Gap in Children’s Rights’ (CLC, 2022), at 10.

¹⁷⁹ Department for Communities, ‘Disability Strategy Expert Advisory Panel: Report and Recommendations’ (DfC, 2021), at 112.

¹⁸⁰ Carers NI, ‘Press Release: Coalition of Carers Organisations member’s statement on the reopening of day centres, short breaks and respite support in NI’, 5 June 2022.

break services and facilities are available on an equitable basis across NI.

14.0 Article 24 – Health

Mental health

- 14.1 The Committee previously recommended additional resourcing and investment in children and adolescent mental health services.¹⁸¹
- 14.2 Poor mental health is the largest cause of disability in NI and is estimated to be 20 to 25 per cent higher in NI than in the rest of the UK.¹⁸² The legacy of violence and socio-economic factors are cited as major contributors to the high levels of mental illness. Yet the proportion of spend on mental health in NI remains the lowest in the UK at approximately 8 per cent of the total healthcare budget.¹⁸³
- 14.3 In 2020, eighteen people under twenty-years-old died by suicide in NI,¹⁸⁴ two of whom were younger than fourteen years old.¹⁸⁵ In 2019, there were fourteen deaths by suicide in the same age bracket.¹⁸⁶
- 14.4 Following its review of children’s mental health services in 2018,¹⁸⁷ the NI Commissioner for Children and Young People published a follow-up monitoring report analysing the NI Executive’s response.¹⁸⁸ It reiterates concerns regarding a continued lack of funding and investment, inadequate data collection, and a lack of progress on addressing delays related to Child and Adolescent Mental Health Services.¹⁸⁹

¹⁸¹ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 61.

¹⁸² Jennifer Betts and Janice Thompson, 'Mental Health in NI' (RAISE, 2017).

¹⁸³ Lesley-Ann Black and Keara McKay, 'Suicide Statistics and Strategy in NI: Update' (RAISE, 2019).

¹⁸⁴ NI Statistics and Research Agency, 'Suicides in NI: 2020' (NISRA, 2022), at Table 2.

¹⁸⁵ NI Statistics and Research Agency, 'Review of Suicide Statistics in NI: 2015–2020' (NISRA, 2022), at 18.

¹⁸⁶ NI Statistics and Research Agency, 'Suicides in NI: 2020' (NISRA, 2022), at Table 2.

¹⁸⁷ NI Commissioner for Children and Young People, 'Still Waiting: A Rights Based Review of Mental Health Services and Support for Children and Young People' (NICCY, 2018).

¹⁸⁸ NI Commissioner for Children and Young People, 'Still Waiting: Monitoring Report' (NICCY, 2020).

¹⁸⁹ Ibid at 12.

- 14.5 In 2021, the Department of Health launched a mental health strategy for NI, noting that regional child and adolescent mental health units are at full capacity, with children as young as eight-years-old requiring access.¹⁹⁰
- 14.6 In 2022, concerns continue to be highlighted with the Child and Adolescent Mental Health Services in NI, including inadequate funding, long waiting lists, and a lack of specialist support meaning care needs are not always being met.¹⁹¹ The impact of COVID-19 is also a key concern, both in terms of the declining mental health of children in NI¹⁹² and further progress of this issue by the NI Executive.¹⁹³
- 14.7 In addition, the importance of perinatal mental health and early childhood support services to improve the long-term mental health outcomes of children has been emphasised.¹⁹⁴ It is estimated that 80 per cent of women in NI have no access to specialist perinatal support, and child health outcomes are amongst the poorest in Western Europe.¹⁹⁵
- 14.8 The Committee may wish to recommend that the State Party takes effective measures to ensure that ring-fenced regional mental health care budgets that effectively satisfy need are available in NI. This includes factoring in resource costs for the purpose of addressing the additional challenges of COVID-19 on mental health.**

Mental capacity

- 14.9 The Committee previously recommended that the UK review current legislation on mental health to ensure that the best

¹⁹⁰ Department of Health, 'Mental Health Strategy 2021-2031' (DoH, 2021), at v.

¹⁹¹ NI Human Rights Commission roundtable meetings with civil society organisations on UN CRC, 9 August 2022 and 11 August 2022.

¹⁹² Health and Social Care Board, 'Rapid Review: The Mental Health Impact of the COVID-19 Pandemic in NI' (HSCB, 2020), at 29.

¹⁹³ NI Human Rights Commission roundtable meetings with civil society organisations on UN CRC, 9 August 2022 and 11 August 2022.

¹⁹⁴ NI Human Rights Commission roundtable meetings with civil society organisations on UN CRC, 23 September 2020.

¹⁹⁵ Mindwise, 'Our Strategy: 2022-2027' (2022), at 14.

interests and the views of the child are taken into account in cases of mental health treatment of children below the age of 16.¹⁹⁶

14.10 The Mental Capacity (NI) Act 2016 does not apply to children under the age of 16 years old. A commitment was made to review how the legal framework in NI reflects the emerging capacity of children in a health and welfare context.¹⁹⁷ This review not yet commenced.¹⁹⁸

14.11 The Committee may wish to recommend that the State Party takes effective measures to promptly review the legal framework for protecting mental capacity in NI, including the Mental Capacity (NI) Act 2016. Based on the findings of such a review, the State Party should take the necessary steps to ensure that a comprehensive legal framework for respecting the mental capacity of children under 16 years old is implemented in NI.

Access to reproductive healthcare

14.12 Recalling the UN CRC Committee's previous recommendation,¹⁹⁹ abortion has been legalised in NI on the following grounds – on request up to 12 weeks and where there is a risk of injury to the physical or mental health of the pregnant woman up to 24 weeks.²⁰⁰ Abortion is also permitted in NI on the grounds of immediate necessity, a risk to life or grave permanent injury to physical or mental health of the pregnant woman, a diagnosis of a severe foetal impairment or fatal foetal abnormality.²⁰¹ However, the Department of Health has not commissioned the services required to implement this change. Consequently, it has been left up to the individual Health and Social Care Trusts in NI to staff, resource and fund these services with no additional support. This has created a disparity of access to reproductive healthcare across NI in terms of the type and consistency of services available.

¹⁹⁶ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 61.

¹⁹⁷ Department of Health, Social Services and Public Safety and Department of Justice, 'Draft Mental Capacity Bill: Public Consultation' (DHSSPS, DoJ, 2016), at 38.

¹⁹⁸ Meeting between Department of Health and NI Human Rights Commission, 21 January 2019.

¹⁹⁹ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 65.

²⁰⁰ Regulations 3 and 4, Abortion (NI) (No 2) Regulations 2020.

²⁰¹ Regulations 5, 6 and 7, Abortion (NI) (No 2) Regulations 2020.

- 14.13 At minimum, all Health and Social Care Trusts in NI offer termination services up to ten weeks, however due to resource constraints there can be significant periods where this service has been suspended in one or more Trust areas. For example, currently the Northern Health and Social Care Trust and the South Eastern Health and Social Care Trust have suspended termination services.²⁰² The remaining Trusts do not have the resources to take referrals from women and girls in these Trust areas. Those affected are forced to access termination services in England through the Central Booking System, pay for a service in Ireland or access unregulated services.
- 14.14 In 2020/2021, there were 1,373 notifications of early medical abortions provided in NI.²⁰³ The British Pregnancy Advisory Service estimated over 300 bookings were made for women and girls living in NI to travel to other parts of the UK for a termination.²⁰⁴
- 14.15 After a protracted process,²⁰⁵ in the absence of the Department of Health taking the necessary steps, the Secretary of State for NI, Chris Heaton-Harris MP, announced that the UK Government would commission abortion services in NI.²⁰⁶ There is no timeline in place for delivering this commitment and it remains the responsibility of the Department of Health to administer the funding provided by the UK Government.²⁰⁷
- 14.16 There is a lack of guidance on implementation of the Abortion (NI) Regulations 2020 and subsequent Abortion (NI) (No 2) Regulations 2020.

²⁰² Informing Choices, 'Press Release: Northern Trust Resumes Early Medical Abortion Service' 4 January 2021; Amnesty International NI, 'Press Release: NI: Abortion services cease at South Eastern Trust following Health Department failure', 5 January 2021; Eimear McGovern, 'NI health trust pauses abortion service referrals due to shortage of nurses', *Belfast Telegraph*, 23 April 2021.

²⁰³ Email correspondence from the Department of Health to the NI Human Rights Commission, 12 April 2021.

²⁰⁴ NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021).

²⁰⁵ *Re NI Human Rights Commission for Judicial Review* [2021] NIQB 91; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021), at 6.1; NI Office, 'Press Release: Secretary of State issues updated direction to NI's Department of Health to make abortion services available', 21 July 2021; NI Office, 'Press Release: Secretary of State issues updated direction to NI's Department of Health to make abortion services available', 26 May 2022; NI Human Rights Commission, 'Press Release: NI Human Rights Commission's Chief Commissioner Responds to UK Government Abortion Regulations', 19 May 2022.

²⁰⁶ Amy Cochrane, 'Secretary of State to commission abortion services in NI – three years after legalisation', *Belfast Telegraph*, 24 October 2022.

²⁰⁷ *Ibid.*

14.17 There are also several barriers to contraceptive use in NI.²⁰⁸ These barriers include inadequate and inconsistent sexual health education, a lack of public awareness of different methods and their effectiveness, a failure to provide postpartum contraception, a lack of provision within general practice, and a lack of provision within community clinics. This has been a long-standing issue in NI that impacts the provision of and access to safe, non-biased and scientifically accurate family planning.²⁰⁹

14.18 The Committee may wish to recommend the State Party takes prompt, effective steps to ensure that girls have equal access to reproductive healthcare across NI. This includes implementing ring-fenced, long-term funding to ensure girls have full access to safe reproductive healthcare services and age-appropriate support locally in NI. It also includes ensuring that non-biased, scientifically sound and rights-based counselling and information on all methods of contraception are available, affordable and fully accessible to all girls in NI. This includes ensuring a protocol is in place that facilitates access at pharmacies, clinics and hospitals across NI.

Relationships, sexuality and gender identity education

14.19 The Committee previously recommended that meaningful, age-appropriate sexual and reproductive health education is mandatory within the school curriculum.²¹⁰ Further, the UN CEDAW Committee has recommended 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”.²¹¹

²⁰⁸ NI Abortion and Contraception Task Group, 'Report on Sexual and Reproductive Health in NI' (NIACT, 2018); 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, at 45.

²⁰⁹ NI Abortion and Contraception Task Group, 'Report on Sexual and Reproductive Health in NI' (NIACT, 2018).

²¹⁰ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 64.

²¹¹ 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 Convention on the Elimination of All Forms of Discrimination against Women', 6 March 2018.

- 14.20 In 2019, the Gillen Review into law and procedures in serious sexual offences in NI 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.²¹²
- 14.21 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 providing for schools with significant flexibility in delivering education in line with its ethos.²¹³ A Relationships and Sexuality Hub has been developed, which contains materials for schools to choose from regarding such education. The Education Authority NI has also published its non-statutory guidance for supporting transgender pupils in schools, education other than at school centres, and youth services.²¹⁴
- 14.22 The framework for schools' delivery of relationship, sexuality and gender identity education is significantly less clear than, for example, in England and elsewhere in the UK where the public sector equality duty also applies to schools. Civil society organisations have raised concerns regarding the effectiveness of relationship and sexuality education in NI.²¹⁵
- 14.23 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.²¹⁶ There is also significant political support "to introduce standardised, comprehensive relationships and sexuality education in our schools" as part of any forthcoming strategy to prevent violence

²¹² Sir John Gillen, 'Report into the Law and Procedures in Serious Sexual Offences in NI - Part 1', (DoJ, 2019).

²¹³ NI Curriculum, 'Relationships and Sexuality Education Guidance: An Update for Post-Primary Schools' (NIC, 2019).

²¹⁴ Education Authority NI, 'Guidance for Schools, EOTAS Centres and Youth Service on Supporting Transgender Young People' (EANI, 2019).

²¹⁵ Meeting between Informing Choices and NI Human Rights Commission, 7 August 2020; NI Human Rights Commission roundtable meeting with civil society organisations on UN CRC, 2 September 2020; Meeting between Brook and NI Human Rights Commission, 30 September 2020.

²¹⁶ Robbie Meredith, 'Sex education in NI schools is insufficient, says expert panel', *BBC News*, 13 March 2021.

against women and girls.²¹⁷ A campaign by Raise Your Voice, a civil society organisation working on tackling sexual harassment and sexual violence, has also recorded wide ranging support for this approach from civil society organisations and several MLAs.²¹⁸

14.24 The NIHRC is currently undertaking an investigation into relationship and sexuality education in NI, which is due to be completed by April 2023. A report setting out the investigation's findings and recommendations is due to be published thereafter.

14.25 The Committee may wish to recommend that the State Party takes prompt and effective measures to ensure comprehensive, scientifically accurate, age-appropriate relationships, sexuality and gender identity education is delivered in all schools in NI.

Climate change

14.26 In 2021, the Belfast Climate Commission published a survey completed by 1,200 young people, which revealed that 30 per cent had been directly affected by climate change.²¹⁹ Of those that had been affected, 41 per cent experienced anxiety as a result.

14.27 In 2021, the NI Executive published a strategy outlining a roadmap to deliver a 56 per cent reduction in NI's energy-related emissions by 2030, on the pathway to deliver net zero by 2050.²²⁰ A consultation was undertaken on NI's first overarching Environment Strategy, further progress is subject to a functioning NI Executive and NI Assembly.²²¹

14.28 In 2021, it was reported that air pollutants in parts of NI were exceeding air quality objectives, including those set by the World Health Organisation.²²² Research reveals that high levels of air pollution have a harmful effect on health, increasing the risk of

²¹⁷ NI Assembly Hansard, 'Strategy to Prevent Violence Against Women and Girls – Sinead Bradley MLA', 23 March 2021.

²¹⁸ Raise your Voice, 'Press Release: Open letter call for comprehensive Relationship and Sexuality Education', 8 April 2021.

²¹⁹ Belfast Climate Commission, 'Climate Crisis Youth Survey' (BCC, 2021).

²²⁰ Department for the Economy, 'Energy Strategy - Path to Net Zero Energy' (DfE, 2021).

²²¹ Department of Agriculture, Environment and Rural Affairs, 'Environment Strategy Consultation' (DAERA, 2021).

²²² Department of Agriculture, Environment and Rural Affairs, 'Air Pollution in NI 2021' (DAERA, 2022) at 4.

heart attack or stroke and disproportionately impacting upon those most vulnerable, including children.²²³ In December 2022, health alerts were issued to residents in parts of Northwest NI to advise of persistently high air pollution from particle matter.²²⁴

14.29 In June 2022, the Climate Change Act (NI) 2022 was given Royal Assent.²²⁵ The Climate Change Committee noted that NI was needed a “major step-up in policy and rapid progress over the 2020s”.²²⁶ It found major failures in delivery programmes and that “progress has been slow in NI, largely due to agriculture being the dominant sector and emissions remaining fairly flat”.²²⁷

14.30 The Committee may wish to recommend that the State Party ensures that climate justice values are adopted in all laws and policies in NI that are aimed at tackling climate change, including ensuring there is a focus on the specific needs of and preventative measures for those most affected, including children. This includes taking steps to monitor and address poor air quality in NI.

15.0 Article 26 – Social Security

Cumulative impact assessment

15.1 The Committee recommended that the UK conduct a cumulative impact assessment of social security and tax reforms to assess their impact on children.²²⁸ The UK Government has not conducted the recommended assessment, citing modelling difficulties.²²⁹

²²³ British Heart Foundation, ‘Heart and circulatory disease pollution deaths on island of Ireland could reach 12,000 by 2030’. Available at: <https://www.bhf.org.uk/what-we-do/news-from-the-bhf/news-archive/2021/april/bhf-ni-and-ihf-air-pollution-warning>

²²⁴ Department of Agriculture, Environment and Rural Affairs, ‘Press Release: High air pollution in NI’, 11 December 2022.

²²⁵ Climate Change Act (NI) 2022. It includes a target for net zero greenhouse gas emissions by 2050; the appointment of an independent Climate Commissioner; and provisions for a Just Transition Fund to support sectors to deliver their contribution to the Climate Action Plan.

²²⁶ Letter from Lord Deben, Chairman of the Climate Change Committee, 25 March 2022.

²²⁷ Climate Change Committee, ‘Progress in reducing emissions 2022 Report to Parliament’ (CCC, 2022), at 95.

²²⁸ CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 3 June 2016, at 12.

²²⁹ House of Commons Hansard, ‘Written Answers: Social Security Benefits: Disability – Column 299W-300W’, 9 April 2014.

- 15.2 In 2019, the NIHRC published a cumulative impact assessment for NI.²³⁰ It found that the annual average cash losses are greater for households with children and the more children, the greater the loss. The average cash losses for households with three or more children (around £2,575) are almost six times the average cash losses for households with two children and over fifty times the average case losses for households with one child.²³¹
- 15.3 Lone parent households are particularly affected, losing around £2,250 a year on average, which is almost 10 per cent of their net income.²³² Additionally, households with at least one disabled child experience greater average losses than households without a disabled child amounting to £2,000 per year due to the reforms.²³³
- 15.4 The Committee may wish to recommend that the State Party conducts and publishes regular cumulative impact assessments of existing and future tax and social security reforms in NI, which include a focus on children. These assessments should be used to inform legislative changes, policy developments and decision-making where relevant.**

Mitigation package

- 15.5 Since 2016, a financial package for mitigation social security reforms has been operational in NI. In 2022, after several years of uncertainty, social security reform mitigations were extended pursuant to the Welfare Supplementary Payment (Amendment) Regulations (NI) 2022. Bedroom tax mitigations have been extended indefinitely,²³⁴ and all other existing mitigations, including benefit cap mitigations, have been extended until March 2025. The 2022 Regulations also ensure that claimants do not lose their bedroom tax if they move home and that any person who is responsible for children can get an extra payment to cover the benefit cap with the payment being the full value of the cut to their benefits.

²³⁰ Howard Reed and Jonathan Portes, 'The Cumulative Impact Assessment of Tax and Social Security Reforms in NI' (NIHRC, 2019).

²³¹ Ibid at 62.

²³² Ibid at 60.

²³³ Ibid at 76.

²³⁴ Department for Communities, 'Press Release: Hargey welcomes independent review panel's findings on welfare mitigations', 25 October 2022.

- 15.6 There are remaining issues that the mitigation package does not cover that have a particular impact upon children and their families.
- 15.7 Since April 2017, new claimants have not been able to claim Child Tax Credit for a third or subsequent child or qualifying young persons born on or after 6 April 2017, save in limited circumstances. This also applies to Universal Credit and to personal allowances under Housing Benefit claims.²³⁵
- 15.8 The average family size in NI is 2.57 children.²³⁶ In 2017/2018, it was estimated that 1,300 families in NI were affected by the two-child tax credit limit, equating to £3.6 million in foregone entitlement of ineligible children.²³⁷ In 2018/2019, it was estimated that this rose to 3,900 families in NI being affected, equating to £10.9 million in foregone entitlement of ineligible children.²³⁸
- 15.9 The NIHRC's cumulative impact assessment found that it is likely that the two-child limit will have a bigger impact in NI due to there being a greater proportion of households with three or more children in NI than elsewhere in the UK.²³⁹ It particularly impacts lone parent households or households with disabled children.²⁴⁰ It is estimated that households in NI with three or more children could lose over £1,200 per year on average due to the two-child limit.²⁴¹
- 15.10 In 2022, the Child Poverty Action Group estimates that ending the two child limit is the most cost-effective way for the government to reduce child poverty.²⁴² The Universal Credit (Removal of Two Child Limit) Bill is currently being considered by the UK Parliament.

²³⁵ Department for Communities, 'Welfare Mitigations Review: Independent Advisory Panel Report' (DfC, 2022), at 37.

²³⁶ Statista, 'Average Household Size in the UK in 2021, By Region'. Available at: <https://www.statista.com/statistics/295548/average-household-size-in-the-uk-by-region/>.

²³⁷ House of Commons Hansard, 'Response to Written Question – Two Child Tax Credit Limit – Steve Barclay MP – UIN 87710', 14 September 2020.

²³⁸ Ibid.

²³⁹ Howard Reed and Jonathan Portes, 'The Cumulative Impact Assessment of Tax and Social Security Reforms in NI' (NIHRC, 2019), at 24.

²⁴⁰ Ibid at 82.

²⁴¹ Ibid at 85.

²⁴² Child Poverty Action Group, 'Press Release: Families hit by two-child limit face additional £900-plus shortfall this year as costs spiral', 6 April 2022.

15.11 Civil society organisations have highlighted concerns regarding the transition from the Disability Living Allowance to a Personal Independence Payment for young people who turn 16 years of age, as these reassessments can result in benefit being withdrawn and the loss of significant income.²⁴³ In Scotland, the transition takes place at 18 years of age.

15.12 In 2022, an independent panel appointed by the NI Minister for Communities published a comprehensive review of existing welfare mitigation measures and identified costed options for a future mitigation package.²⁴⁴ The panel identified nine recommendations, including: offsetting of the two child limit in Universal Credit, Child Tax Credit and Housing Benefit claims; introducing a Better Start Grant payment to low income families; a young carers recognition payment for 16 to 18 year olds; introducing low-income and child disability winter assistance payments; and examining the case for allowing young people to retain entitlement to Disability Living Allowance until the age of 18.²⁴⁵

15.13 The implementation of any new mitigation schemes requires funding allocation and approval from a functioning NI Executive.²⁴⁶

15.14 The Committee may wish to recommend that the State Party takes effective measures to ensure that a comprehensive and secure mitigation package is applied where necessary and maintained as long as required in NI.

15.15 The Committee may wish to recommend that the State Party promptly repeals the two-child limit in Child Tax Credit, Universal Credit and Housing Benefit claims. In the interim, effective steps should be taken to address the specific impact of the two-child limit in NI.

²⁴³ Department for Communities, 'Welfare Mitigations Review: Independent Advisory Panel Report' (DfC, 2022), at 51.

²⁴⁴ Ibid.

²⁴⁵ Ibid at 111-134.

²⁴⁶ Ibid.

15.16 The Committee may wish to recommend that the State Party extends entitlement to the Disability Living Allowance from 16 years old to 18 years old in NI.

16.0 Article 27 –Adequate Standard of Living

Child poverty

- 16.1 In 2019/20, approximately 100,000 (22 per cent) children in NI were living in relative poverty before housing costs and 75,000 (17 per cent) were living in absolute poverty before housing costs.²⁴⁷
- 16.2 In September 2022, it was forecasted that the proportion of children in absolute poverty across the UK is set to rise from 23 per cent to 31 per cent.²⁴⁸
- 16.3 The Welfare Reform and Work Act 2016 repealed the duty to meet time-bound targets on child poverty as originally set out in the Child Poverty Act 2010 (now Life Chances Act 2010). These targets have been replaced by a statutory duty to publish an annual report on the extent and educational attainment of children in poverty. These changes extend to NI.
- 16.4 In May 2022, the current NI Executive’s Child Poverty Strategy was extended.²⁴⁹ The New Decade, New Approach Agreement 2020 committed to publishing a Child Poverty Strategy.²⁵⁰ While there has been work towards drafting a wider anti-poverty strategy for NI,²⁵¹ progress has been delayed in the absence of a functioning NI Executive and NI Assembly.

16.5 The Committee may wish to recommend that the State Party ensures that comprehensive strategies and action plans are implemented in NI for the eradication of child

²⁴⁷ The Department for Communities advises that data collection for 2020/2021 has been impacted by COVID-19, therefore there is no disaggregated data available. See Department for Communities, 'NI Poverty Bulletin: 2019/2020' (DfC, 2021), at Table 1.

²⁴⁸ Note that these forecasts were made before the UK Government’s Energy Price Guarantee announcement on 8 September 2022 or fiscal statement on 23 September 2022: UK Parliament, 'House of Commons Library Research Briefing – Poverty in the UK: Statistics' (HoC, 2022), at 16.

²⁴⁹ NI Executive, 'The Executive's Child Poverty Strategy' (NIE, 2016); Department for Communities, 'Press Release: Minister announces extension to Child Poverty Strategy', 11 September 2020.

²⁵⁰ NI Office, 'New Decade, New Approach' (NIO, 2020), at 27.

²⁵¹ Anti-Poverty Strategy Expert Advisory Panel, 'Recommendations for an Anti-Poverty Strategy' (DfC, 2021).

poverty, including by re-establishing concrete targets with a set timeframe and measurable indicators that take into account the impact on groups that are at higher risk of poverty.

Housing

16.6 The Committee previously recommended that NI enact legislation that prohibits prolonged placement of children in temporary accommodation.²⁵² This legislation has not been developed.

16.7 Between January and June 2022, 8,120 households in NI presented as homeless, with 4,802 households (including 3,495 children) accepted as statutorily homeless.²⁵³ There were 3,658 households living in temporary accommodation in NI, including 3,913 children.²⁵⁴ Of those, 2,105 households (57 per cent) had been living in temporary accommodation for less than 12 months and 173 households (five per cent) had been living in temporary accommodation for five or more years.²⁵⁵

16.8 There is a shortage of social housing in NI, and NI's housing strategy expired in 2017.²⁵⁶ On 30 June 2022, the number of applicants on the social housing waiting list was 44,229; of these applicants, 31,663 were in housing stress.²⁵⁷ In 2020/2021, the number of new dwelling completions in the social housing sector was 653, continuing the decreasing trend since 2017/2018 when 1,214 completions were reported.²⁵⁸ In the absence of a functioning NI Executive and NI Assembly, implementation of a new housing supply strategy has been delayed.²⁵⁹

16.9 The Committee may wish to recommend that the State Party ensures that legislation to prohibit the prolonged placement of children in temporary accommodation is

²⁵² CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 70(e).

²⁵³ NI Statistics and Research Agency, 'NI Homelessness Bulletin January-June 2022' (DfC and NIHE, 2022), at 1 and 8.

²⁵⁴ Ibid at 10.

²⁵⁵ Ibid.

²⁵⁶ Department for Social Development, 'Facing the Future: The Housing Strategy for NI 2012-17' (DSD, 2012).

²⁵⁷ Department for Communities, 'Northern Ireland Housing Bulletin: April-June 2022' (NISRA, 2022).

²⁵⁸ NI Statistics and Research Agency, 'NI Housing Statistics 2020-2021' (DfC, 2021).

²⁵⁹ NI Assembly Hansard, 'Written Answers: Social Housing - Minister for Communities, Deirdre Hargey MLA - AQW 259/22-27', 1 June 2022.

introduced in NI. Furthermore, that effective measures are taken to progressively guarantee all children in NI stable access to adequate housing. This includes ensuring that an adequately resourced, up-to-date housing supply strategy is implemented in NI.

Access to food

16.10 In 2013, there were 14 foodbanks in NI.²⁶⁰ In early 2020, this increased to 55 foodbanks in NI.²⁶¹ In 2021/2022, the Trussell Trust provided 26,358 food parcels to children in NI, which is a 39 per cent increase from the 18,979 parcels recorded in 2019/2020.²⁶² This is the largest percentage increase in the number of parcels distributed to children when compared to the other UK regions.²⁶³

16.11 In 2022, the continued rise in food prices is a growing concern, with foodbanks across the UK facing increased demand and reduced donations.²⁶⁴

16.12 Between April 2020 and August 2022, direct payments were provided to families in receipt of Free School Meals during COVID-19 term-time school closures and across the summer holidays.²⁶⁵ More than 100,000 children benefitted from this scheme. There is no long-term commitment to continue Free School Meals during school holidays as standard.²⁶⁶

16.13 In November 2021, the Department of Education commenced a review of free school meal eligibility in NI, which includes costed

²⁶⁰ Correspondence between Independent Food Aid Network and NI Human Rights Commission, 27 January 2020; Advice NI, 'Turning the Tide: The Growth of Foodbanks in NI' (Advice NI, 2013), at 6.

²⁶¹ Ibid.

²⁶² The Trussell Trust issued 5,286 food parcels to children in NI in 2013/2014. See The Trussell Trust, 'End of Year Stats'. Available at: <https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/#children>

²⁶³ The Trussell Trust, 'Trussell Trust data briefing on end-of-year statistics relating to use of food banks: April 2021 – March 2022', (Trussell Trust, 2022), at Table 1.6.

²⁶⁴ UK Parliament, 'House of Commons Library Research Briefing – Rising cost of living in the UK' (HoC, 2022), at 7.

²⁶⁵ Department of Education, 'Press Release: Ministers take action in relation to Free School Meals payment', 26 March 2020; Department of Finance, 'Press Release: Murphy allocates funds for Health, Childcare and Free School Meals', 30 June 2020; NI Assembly Hansard, 'Written Answers: Free School Meals – Minister of Education, Michelle McIlveen MLA – AQW 947/22-27, 20 June 2022.

²⁶⁶ NI Assembly Hansard, 'Response to Written Questions: Free School Meals – Peter Weir MLA – AQW 7681/17-22', 8 October 2020; Robbie Meredith, 'Free school meals: Meals to be funded during holidays until 2022', *BBC News*, 20 November 2020.

options for universal free school meal provision.²⁶⁷ The review is expected to be completed in early 2023.²⁶⁸

16.14 The Committee may wish to recommend that the State Party takes effective measures to tackle child food insecurity in NI, including by ensuring children in NI receive Free School Meals during school holidays as standard.

Fuel poverty

16.15 In 2011, the last fuel poverty strategy in NI was published and has not been updated. In 2022, increasing energy prices are expected to impact on those living in NI to a greater extent than other parts of the UK.²⁶⁹ Fuel poverty often affects the most marginalised groups, particularly children and people with disabilities.²⁷⁰

16.16 In 2022, in response to the current rise in the cost of living, one-off support payments to those on income related benefits, people with disabilities and pensioners have been put in place across the UK.²⁷¹ However, fuel poverty continues to be a significant concern and local authorities are actively considering the use of “warm banks” to provide free access to heated facilities, such as libraries, community centres and churches.²⁷² The expected additional £400 energy support discount has also been delayed for households in NI due to the suspension of the NI Executive.²⁷³

16.17 The Committee may wish to recommend that the State Party takes effective measures to tackle fuel poverty in NI, including adequate support payments and energy price regulation. Specific consideration should be given to

²⁶⁷ NI Assembly Hansard, 'Written Answers: Free School Meals – Minister of Education, Michelle McIlveen MLA – AQW 974/22-27, 21 June 2022.

²⁶⁸ NI Assembly Hansard, 'Written Answers: Free School Meals – Minister of Education, Michelle McIlveen MLA – AQW 30778/17-22, 24 March 2022.

²⁶⁹ Pippa Cerar, 'Two-thirds of UK families could be in fuel poverty by January, research finds', *The Guardian*, 18 Aug 2022.

²⁷⁰ Joseph Rowntree Foundation, 'UK Poverty 2022 – The essential guide to understanding poverty in the UK', (JRF, 2022), at 57.

²⁷¹ John Campbell, 'Cost of living: Home heating oil customers to get £100 payment', *BBC News*, 21 September 2022; NI Direct, 'Cost of Living support'. Available at: <https://www.nidirect.gov.uk/articles/cost-living-support>.

²⁷² 'Urgent 'warm banks' demand', *The Irish News*, 18 October 2022; Richard Vernalls, 'More councils looking at 'warm banks' for residents amid rising energy bills', *Belfast Telegraph*, 30 August 2022; Sherie Ryder and Rozina Sini, 'Cost of living: 'We started up a warm bank'', *BBC News*, 20 October 2022.

²⁷³ 'Energy Bills Support Scheme: Stormont impasse "hindering" £400 payment', *BBC News*, 10 November 2022.

addressing the disproportionate impact of fuel poverty on children and families in NI.

Asylum financial support

- 16.18 Persons seeking asylum and their dependents that do not have financial means may apply for asylum support.²⁷⁴ The standard weekly allowance is £40.85 per person within the household. A small additional amount is provided to pregnant women and young children.²⁷⁵ A one-off maternity payment of up to £300 is also available.²⁷⁶ Persons seeking asylum are not normally permitted to work and are not eligible to receive any social security benefits.
- 16.19 The UN Special Rapporteur on Extreme Poverty and Human Rights stated that “destitution appears to be a design characteristic of the asylum system [in the UK]”.²⁷⁷ In 2019, of 70 people seeking asylum surveyed in Belfast, 88 per cent could not afford child-related costs including food, clothing, transport, recreational activities and school trips.²⁷⁸
- 16.20 In 2022, the no recourse to public funds rule continues to operate, preventing persons with insecure immigration status from accessing benefits. The reliance on local authority provision as an alternative source of support is a particular problem in NI where local councils do not have responsibility for housing, social services or education.²⁷⁹

16.21 The Committee may wish to recommend that the State Party increases the level of financial support provided to children seeking asylum and their families in NI to at least reflect the rising cost of living across the UK.

²⁷⁴ Section 95, Immigration and Asylum Act 1999.

²⁷⁵ A pregnant woman may claim an extra £3 a week; a baby under 1 years old may claim an extra £5; a child aged 1–3 years old may claim an extra £5 a week. See Gov.UK, ‘Asylum Support’. Available at: <https://www.gov.uk/asylum-support/what-youll-get>

²⁷⁶ Gov.UK, ‘Asylum Support’. Available at: <https://www.gov.uk/asylum-support/what-youll-get>

²⁷⁷ A/HRC/41/39/Add.1, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights: Visit to the UK of Great Britain and NI’, 23 April 2019, at 83.

²⁷⁸ Housing 4 All, ‘A Prison Without Walls: Asylum, Migration and Human Rights’ (PPR, 2019), at 23.

²⁷⁹ NI Human Rights Commission, ‘Response to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI’ (NIHRC, 2021).

17.0 Articles 28 and 29 – Education

Educational needs of specific groups of children

- 17.1 In 2019, the UN Special Rapporteur on Racism, E Tendayi Achiume, reported on her visit to the UK that "race and ethnicity continue to have a significant impact on educational outcomes. The circumstances confronting Gypsies, Roma and Travellers are especially dire".²⁸⁰
- 17.2 In 2021, an Expert Panel appointed to examine 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.²⁸¹
- 17.3 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]".²⁸² The Expert Panel's recommendations cannot be progressed without funding, which cannot be granted while the NI Executive is suspended.²⁸³
- 17.4 Official statistics indicate that schools in NI are increasingly becoming more ethnically diverse.²⁸⁴ In 2021/2022, there were 18,356 children of migrant families enrolled in NI schools (an

²⁸⁰ A/HRC/41/54/Add.2, 'Report of the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Visit to the UK of Great Britain and NI', 27 May 2019, at 23.

²⁸¹ Expert Panel on Educational Underachievement, 'A Fair Start: Final Report and Action Plan' (DoE, 2021).

²⁸² Ibid at 65.

²⁸³ NI Assembly Hansard, 'Written Question: A Fair Start - Diane Dodds MLA - AQW 3017/22-27', 26 January 2022.

²⁸⁴ NI Statistics and Research Agency, 'Annual Enrolments at Schools and in Funded Pre-school Education in NI 2021-2022' (DoE, 2022), at 6.1.

increase of 662 from 2020/2021), equating to 5.2 per cent of all school enrolments.²⁸⁵

- 17.5 In 2019, the Department of Education consulted on the effectiveness of its 'newcomer pupils' policy. In 2022, the outcome of the consultation is still awaited.
- 17.6 Civil society organisations continue to highlight the need for increased cultural awareness within NI schools and for history lessons taught in school to be representative of the school population.²⁸⁶
- 17.7 In 2022, the Education Authority NI's Intercultural Education Service was providing support to the rising numbers of school-age children seeking asylum living in contingency accommodation in NI.²⁸⁷ 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.²⁸⁸ Support from the Department of Education and the Education Authority NI is reportedly provided on an ad-hoc and short term basis, which impacts provision, including access to language supports, uniform grants, free school meals and free school transport.²⁸⁹
- 17.8 In 2021, an Independent Review of Education in NI was commenced to consider "securing greater efficiency in delivery costs, raising standards, access to the curriculum for all pupils, and the prospects of moving towards a single education system".²⁹⁰ An interim report highlighted underfunding, a lack of data, disadvantage and underachievement as major issues to be addressed.²⁹¹ The final report is expected to be published in 2023.

²⁸⁵ NI Statistics and Research Agency, 'Newcomer Pupils 2021/2022' (DoE, 2022).

²⁸⁶ NI Human Rights Commission roundtable with civil society organisations on UN CRC, 23 September 2020; Independent Review of Education Panel roundtable with civil society organisations, 11 October 2022.

²⁸⁷ "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 staff; and making statutory assessment referrals where necessary". See NI Assembly Hansard, 'Written Question: Asylum Seeking children - Kate Nicholl MLA - AQW 516/22-27', 14 June 2022.

²⁸⁸ 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).

²⁸⁹ Ibid.

²⁹⁰ NI Office, 'New Decade, New Approach' (NIO, 2020).

²⁹¹ Independent Review of Education, 'Independent Review of Education in NI: Interim Report' (DoE, 2022).

Progress on its findings and recommendations will be subject to decisions by a functioning NI Executive.

17.9 The Committee may wish to recommend that the State Party expeditiously ensures educational underachievement in NI, particularly for Traveller and Roma children, is addressed. This includes early intervention, teacher training, implementation the bespoke approach to school curriculums in line with a child's specific needs and provision of ring-fenced funding.

17.10 The Committee may wish to recommend that the State Party ensures that an up-to-date policy for migrant children with action plan that will guide its effective implementation is in place in NI. The policy should include commitments to promote cultural awareness within schools and ensure that history lessons are representative of the school population in NI.

17.11 The Committee may wish to recommend that the State Party takes effective steps to ensure that all children seeking asylum in NI at any given time have prompt access to education and other necessary supports, particularly in NI where there are issues with language classes, uniform grants, school meals and transport.

Special educational needs

17.12 In 2021/2022, a total of 64,486 pupils had special educational needs, compared to 67,824 in 2020/2021.²⁹² Of the 64,486 pupils, 22,187 had a statement of special educational needs. In 2021/2022, there were 6,653 children enrolled in special schools in NI, compared to 6,403 in 2020/2021.²⁹³

17.13 The Special Educational Needs and Disability Act (NI) 2016 has not been fully commenced. Work is underway to develop Special

²⁹² NI Statistics and Research Agency, 'Special Educational Needs 2021/2022' (DoE, 2022).

²⁹³ Ibid.

Educational Needs Regulations and a Code of Practice,²⁹⁴ but further progress is subject to a functioning NI Executive.

17.14 Between 2017 and 2020, a series of reviews found significant shortcomings in how the Education Authority NI managed its Special Educational Needs assessment process and its provision of early intervention services.²⁹⁵ An internal audit found that 85 per cent of pupils did not complete the statementing process within the 26-week statutory period in 2019.²⁹⁶ The NI Audit Office found that neither the Department of Education nor the Education Authority NI could demonstrate value for money in the provision of special education needs support in mainstream schools.²⁹⁷ In a follow up report the NI Audit Office found that, of ten recommendations made in 2017, none had been fully addressed by 2020.²⁹⁸

17.15 Across the reports more than 150 recommendations for change were made and accepted by the NI Executive.²⁹⁹ Work is underway through the Education Authority NI's Special Educational Needs and Disability Transformation Programme.³⁰⁰

17.16 In April 2022, an independent review to assess the effectiveness of the Education Authority NI's special educational needs service provision and processes began.³⁰¹ The review is expected to be completed by the end of 2022.³⁰²

17.17 The Committee may wish to recommend that the State Party ensures that all children with special educational needs in NI are promptly and comprehensively assessed and provided with the appropriate support. This should include appropriate education support as well as transport and other measures to ensure effective educational

²⁹⁴ Department of Education, 'New Special Educational Needs Framework'. Available at: <https://www.education-ni.gov.uk/articles/review-special-educational-needs-and-inclusion>; Meeting between NI Human Rights Commission and Department of Education, 20 July 2022.

²⁹⁵ NI Assembly Hansard, 'Committee for Education: Special Educational Needs Assessment and Statementing Audit – Education Authority', 4 March 2020.

²⁹⁶ Ibid.

²⁹⁷ NI Audit Office, 'Special Educational Needs' (NIAO, 2017).

²⁹⁸ NI Audit Office, 'Impact Review of Special Educational Needs' (NIAO, 2020).

²⁹⁹ Meeting between NI Human Rights Commission and Department of Education, 20 July 2022.

³⁰⁰ Email correspondence from Education Authority to NI Human Rights Commission, 12 October 2022.

³⁰¹ Department of Education, 'Independent Review of Special Education Needs'. Available at: <https://www.education-ni.gov.uk/articles/independent-review-special-education-needs>.

³⁰² Meeting between NI Human Rights Commission and Department of Education, 20 July 2022.

engagement to improve children’s outcomes, which is a particular concern in NI. For example, prompt steps should be taken to ensure the full and effective implementation of the Special Educational Needs and Disability Act (NI) 2016 without further delay.

17.18 The Committee may wish to recommend that the State Party ensures children with special educational needs in NI that have been adversely affected by delays and other shortcomings in the assessment process are effectively remedied, particularly in NI where significant failings have been reported.

COVID-19

17.19 In 2020, concerns were raised that “the COVID-19 crisis will deepen known educational inequalities [in NI], or lead to the emergence of new inequalities, for children now and over their lifecycle”.³⁰³ The move to online education in cases of school closures emphasised the digital divide³⁰⁴ and created concerns for pupils’ mental health.³⁰⁵ Particular concerns for children from lower socio-economic backgrounds and rural children.³⁰⁶

17.20 The Department of Education set up the Continuity of Learning Project to ensure schools, parents and pupils were supported during remote learning, such as through the provision of digital devices, Wi-Fi vouchers, and remote learning resources.³⁰⁷ In 2022, work is ongoing and remains under review.

17.21 Civil society organisations highlight that the pandemic had a disproportionate impact on children with special educational needs.³⁰⁸ Legal duties to children with special educational needs

³⁰³ Equality Commission for NI, ‘Policy Position Paper: COVID-19 and Education Equality Considerations’ (ECNI, 2020), at 1.

³⁰⁴ NI Human Rights Commission roundtable meeting with civil society organisations on UN CRC, 23 September 2020.

³⁰⁵ Barnardo’s NI, ‘New Term, New Challenges, New Opportunities: Putting Children’s Mental Health at the Heart of Education’ (Barnardo’s NI, 2020).

³⁰⁶ NI Human Rights Commission roundtable meeting with civil society organisations on UN CRC, 23 September 2020.

³⁰⁷ Department of Education, ‘Press Release: Minister outlines plans to provide digital devices to disadvantaged children’, 21 May 2020; Meeting between NI Human Rights Commission and Department of Education, 20 July 2022.

³⁰⁸ NI Human Rights Commission roundtable discussion with civil society organisations on UN CRPD, 3 August 2022.

were modified which limited protections within the system.³⁰⁹ School closures due to COVID-19 affected access to physiotherapy, speech/language therapy, occupational therapy, educational psychologists, Children and Adolescent Mental Health Services and paediatricians.³¹⁰ Disrupted routines, fear of the virus and the removal of normal support systems (both learning and peer) was disproportionately difficult for children with special educational needs.³¹¹

17.22 The Committee may wish to recommend that the State Party examines the levels of learning loss in NI due to the COVID-19 pandemic and ensures that effective remedial provisions are being taken for children to ensure it does not result in longer-term impacts. This includes conducting a Learning During the Pandemic Review, as established in England.

17.23 The Committee may wish to recommend that the State Party ensures effective measures are taken to prioritise the mental health and wellbeing of children in NI during the recovery from the COVID-19 pandemic and that this is supported by adequate long-term funding.

Expulsions

17.24 In 2020/2021, 3,506 pupils were suspended from school in NI (1.2 per cent of pupils), an increase of 106 from the previous academic year.³¹² In 2020/2021, 25 pupils were expelled in NI (0.008 per cent of pupils), an increase of 14 pupils compared to the previous academic year.³¹³

³⁰⁹ The Temporary Modification of Education Duties Notice (NI) 2020 and its subsequent iterations temporarily modified assessment and statementing procedures.

³¹⁰ Family Fund, 'Impact of COVID-19: NI Findings' (Family Fund, 2020), at 23.

³¹¹ National Children's Bureau, 'Insights into the impact of COVID-19 on children and young people with Special Educational Needs and Disabilities in Northern Ireland: Final Report' (NCB, 2021); NI Commissioner for Children and Young People, 'A New and Better Normal: Children and Young People's Experiences of the Covid-19 Pandemic' (NICCY, 2021); Queen's University Belfast, 'Understanding Life in Lockdown for Autistic Young People' (QUB, 2020).

³¹² NI Statistics and Research Agency, 'Pupil Suspensions and Expulsions in NI 2020/2021: Experimental Statistics' (DE, 2022), at 1.1.

³¹³ Ibid at 2.

17.25 Of the 3,506 pupils suspended in 2020/2021, 1,254 pupils had special educational needs (36 per cent).³¹⁴ Of the 25 pupils expelled in 2020/2021, 12 had special educational needs (48 per cent).³¹⁵

17.26 The Committee may wish to recommend that the State Party takes effective measures to ensure school suspensions and expulsions are a last resort in NI.

Academic selection

17.27 The Committee previously recommended that the NI Executive abolished the practice of unregulated admission tests to post-primary education in NI.³¹⁶

17.28 Unregulated academic selection continues in NI, following cancellations during the COVID-19 pandemic.³¹⁷ The Minister of Education NI, Peter Weir MLA, has stated that there is no "viable alternative to put in its place".³¹⁸

17.29 The effects of academic selection in NI has not been thoroughly examined by the Department of Education NI since 2000.³¹⁹ Independent research indicates that unregulated post-primary academic selection is damaging children's mental health,³²⁰ "magnifies inequalities" for specific disadvantaged groups of children,³²¹ and "damag[es] the life-chances of a large proportion of the school population".³²²

17.30 In February 2022, grammar schools in NI formally established the Schools' Entrance Assessment Group, which oversees a single common entrance assessment. This group also deals with concerns

³¹⁴ Ibid at 1.6.

³¹⁵ Ibid at 2.

³¹⁶ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 73.

³¹⁷ 'Transfer tests: Exams put back until January 2021', *BBC News*, 2 September 2020.

³¹⁸ Robbie Meredith, 'Transfer tests: Education Minister rejects test suspension call', *BBC News*, 19 May 2020.

³¹⁹ Leanne Henderson et al, 'Educational Underachievement in NI' (Stranmillis University College, 2020), at 19; Tony Gallagher and Alan Smith, 'The Effects of the Selective System of Secondary Education in NI' (DoE, 2000).

³²⁰ Participation and the Practice of Rights, 'Could make or break a child: the state of human rights and academic selection in NI' (PPR, 2019).

³²¹ Leanne Henderson et al, 'Educational Underachievement in NI' (Stranmillis University College, 2020), at 6.

³²² Ulster University UNESCO Centre, 'Transforming Education in NI - Academic Selection and the Transfer Test' (IEF, 2021).

regarding the dual testing organisations in NI.³²³ It is anticipated that the new testing format will consist of two papers held on two Saturdays two weeks apart. The first tests are scheduled for November 2023.³²⁴

17.31 The Committee may wish to recommend that the State Party ensures that there is a non-selective system of post-primary school admission in NI, this includes abolishing the two tier system of education that exists in NI.

Integrated education

17.32 The Committee previously recommended the promotion of a fully integrated education system in NI.³²⁵

17.33 In 2022, there are 70 grant-aided integrated schools in NI.³²⁶ In 2021/2022, there were 25,794 pupils educated in integrated education in NI, an increase of 933 from 2020/2021.³²⁷

17.34 In April 2022, the Integrated Education Act (NI) 2022 received Royal Assent. It came into force on 26 October 2022.³²⁸ The 2022 Act broadens the statutory definition of integrated education to better reflect diversity within society.³²⁹ It requires the Department of Education to 'encourage, facilitate and support' integrated education³³⁰ and to publish a strategy within six months that aims to meet parental demand.³³¹ Amendments during the committee stage removed a duty on the Department to "actively promote an integrated education system" and removed a rebuttable presumption that all new schools would be integrated.

³²³ NI Assembly Hansard, 'Written Question: Single Post-primary Transfer Test - Claire Sugden MLA - AQW 2295/22-27', 15 July 2022.

³²⁴ Ibid.

³²⁵ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 72(e).

³²⁶ Department of Education, 'Integrated Schools'. Available at: <https://www.education-ni.gov.uk/articles/integrated-schools>.

³²⁷ NI Statistics and Research Agency, 'Annual enrolments at schools and in funded pre-school education in Northern Ireland 2021-2022' (DoE, 2022), at 6.2.

³²⁸ Meeting between NI Human Rights Commission and Department of Education, 20 July 2022.

³²⁹ Section 1, Integrated Education Act (NI) 2022. To include: a) those of different cultures and religious beliefs and of none, including reasonable numbers of both Protestant and Roman Catholic children or young persons; b) those who are experiencing socio-economic deprivation and those who are not; and c) those of different abilities.

³³⁰ Section 4, Integrated Education (NI) Act 2022.

³³¹ Section 9, Integrated Education (NI) Act 2022.

17.35 Work is underway to guide the full implementation of the 2022 Act,³³² however this will require a functioning NI Assembly and NI Executive.

17.36 The Committee may wish to recommend that the State Party ensures that sufficient integrated education is available to meet demand across NI. This includes ensuring that the Integrated Education Act (NI) 2022 is implemented in full and that prompt action is taken in NI to satisfy the growing demand for integrated education.

Shared education

17.37 The Shared Education Act (NI) 2016 places an obligation on the Department of Education to promote shared education, which is educating together those of different religious belief and those who are experiencing socio-economic deprivation and those who are not.³³³

17.38 In 2019, 48 per cent of schools in NI and 87,385 children and young people in NI (25 per cent of the NI school population) were participating in shared education.³³⁴ In 2021, 48 per cent of schools remained involved in shared education, but due to a suspension of face-to-face education as a result of COVID-19, only 17,476 children and young people (5 per cent of the NI school population) participated in shared education.³³⁵ However, reacting to COVID-19 also provided the opportunity for collaboration and to develop structures and networks through shared education partnerships.

17.39 The PEACE IV Shared Education Programme has been funded by the EU with matching funding from the NI Executive and Government of Ireland.³³⁶ Following the UK's exit from the EU, queries remain as to how these programmes will be sustained

³³² Meeting between NI Human Rights Commission and Department of Education, 20 July 2022.

³³³ Section 2, Shared Education Act (NI) 2016.

³³⁴ Department of Education, 'Advancing Shared Education: Third Report to the NI Assembly' (DoE, 2022).

³³⁵ Ibid.

³³⁶ Department of Education, 'Shared Education'. Available at: <https://www.education-ni.gov.uk/articles/what-shared-education>.

long-term.³³⁷ In 2022, discussions are ongoing in regard to a potential extension of that funding.³³⁸ The Department of Education is also engaging with the Special EU Programmes Body who is responsible for managing the forthcoming PEACEPLUS cross-border collaboration programme.³³⁹ However the programme is currently being considered by the European Commission and is not yet approved.³⁴⁰

17.40 The Committee may wish to recommend that the State Party ensures that long-term, secure funding for shared education is guaranteed across NI as required. This includes ensuring that any potential negative impact on funding of shared education due to the UK’s withdrawal from the EU is adequately mitigated.

Use of restraint

17.41 The Committee previously recommended that restraint is only used against children as a last resort to prevent harm to the child or others.³⁴¹ Additionally, that disaggregated data on the use of restraint, including in educational settings, is systematically and regularly collected, published and monitored.³⁴²

17.42 Section 4 of the Education (NI) Order 1998 allows for a school staff member to restrain any pupil at the school where such force is “reasonable in the circumstances”.³⁴³ This provision is clear that it does not allow for corporal punishment of children by teachers.³⁴⁴

³³⁷ NI Human Rights Commission roundtable meeting with civil society organisations on UN CRC, 23 September 2020; NI Human Rights Commission roundtable meetings with civil society organisations on UN ICESCR, 11 and 13 October 2022.

³³⁸ Meeting between NI Human Rights Commission and Department of Education, 20 July 2022.

³³⁹ Special EU Programmes Body, 'PEACEPLUS Programme'. Available at: <https://www.seupb.eu/PEACEPLUS>

³⁴⁰ Department of Education, 'Shared Education'. Available at: <https://www.education-ni.gov.uk/articles/what-shared-education>

³⁴¹ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 40(c).

³⁴² Ibid at 40(d).

³⁴³ For the purpose of preventing the pupil from doing or continuing to a) commit any offence, b) cause personal injury to, or damage to the property of any person (including the pupil), or c) engage in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether that behaviour occurs during a teaching session or otherwise.

³⁴⁴ Section 4(2), Education (NI) Order 1998.

- 17.43 The accompanying non-statutory guidance has not been updated since 1999.³⁴⁵ It states that any occasion when reasonable force is used must be logged in an incident book, which is to be reviewed at least annually by the Chair of the Board of Governors and Principal.³⁴⁶ Such incidents are not required to be subject to an independent review.
- 17.44 Use of restraint has been raised as a particular concern for children with special educational needs in NI, with lack of training on the use of restraint for educational professionals heightening concerns.³⁴⁷
- 17.45 In 2021, the NI Public Services Ombudsman reported several recurring issues regarding the use of such practices in schools in NI, including record-keeping, inadequate policies and procedures, and a lack of appropriate complaint investigations by Board of Governors.³⁴⁸ The NI Commissioner for Children and Young People has found that the current policy, guidance, and legislative frameworks around the use of restrictive practices in educational settings are not fit for purpose and need immediate reform.³⁴⁹
- 17.46 In 2022, the Department of Education published its own review of the use of restraint and seclusion practices in educational settings.³⁵⁰ The final report made six recommendations for change to guidance and policy.³⁵¹ Work has commenced on developing updated statutory guidance and this is due to be finalised by the 2023/2024 academic year, but further progress is subject to a functioning NI Executive.³⁵²

17.47 The Committee may wish to recommend that the State Party ensures that the use of restraint against children in

³⁴⁵ Department of Education, 'Pastoral Care: Guidance on the Use of Reasonable Force to Restrain or Control Pupils' (DoE, 1999).

³⁴⁶ Ibid at 8.

³⁴⁷ British Association of Social Workers, 'Policy Statement: Restraint and Seclusion of Children and Young People in Schools and Educational Facilities' (BASWNI, 2019); Robbie Meredith, 'School seclusion "could have damaging effects"', *BBC News*, 21 December 2019.

³⁴⁸ NI Public Services Ombudsman, 'Overview Report: The Use of Restrictive Practices in NI Schools' (NIPSO, 2021).

³⁴⁹ NI Commissioner for Children and Young People, 'Neither Seen nor Heard: Rights Based Review on the Use of Restraint and Seclusion in Educational Settings' (NICCY, 2021).

³⁵⁰ Department of Education, 'Review of the Use of Restraint and Seclusion in Educational Settings in NI' (DoE, 2022).

³⁵¹ Ibid.

³⁵² Meeting between NI Human Rights Commission and Department of Education, 20 July 2022.

educational settings in NI for disciplinary purposes is prohibited, and that restraint is exclusively used to prevent harm to the child or others and only as a last resort. This includes ensuring that there is a statutory obligation on schools in NI to systematically and regularly collect and publish disaggregated data on the use of restraint against children in educational settings. It also includes ensuring that this data is independently monitored.

18.0 Article 31 – Rest and Leisure

Travellers' accommodation

- 18.1 Safe children's play areas are lacking within Travellers' accommodation in NI.³⁵³
- 18.2 In 2021, the Department of Communities consulted on a draft housing supply strategy, which highlighted access to appropriate accommodation for Irish Travellers is limited.³⁵⁴ In 2022, publication of the housing supply strategy has been delayed by dissolution of the NI Assembly and NI Executive.
- 18.3 The Committee may wish to recommend that the State Party ensures that safe children's play areas are available and accessible in all Traveller-specific accommodation across NI.**

19.0 Article 32 – Employment

Pathway programmes

- 19.1 In July 2022, the unemployment rate in NI was 2.9 per cent.³⁵⁵ Between April to June 2022, the number of young people aged 16 to 24 years in NI who were not in education, employment or

³⁵³ NI Human Rights Commission, 'Out of Sight Out of Mind: Travellers' Accommodation in NI' (NIHRC, 2018), at 106; NI Human Rights Commission, 'Implementation of Travellers' Accommodation Recommendations' (NIHRC, 2019), at 15; NI Human Rights Commission, 'Response to Public Consultation on New Housing Supply Strategy Call for Evidence', (NIHRC, 2021).

³⁵⁴ Department for Communities, 'Consultation on the New Housing Supply Strategy Call for Evidence' (DfC, 2021), at 24.

³⁵⁵ NI Statistics and Research Agency, 'NI Market Report – September 2022' (NISRA, 2022).

training was equivalent to 7.5 per cent of all those aged 16 to 24 years in NI.³⁵⁶

- 19.2 The primary source of funding for employment support projects for young people who may face barriers to the social and labour market in NI has been the European Social Fund.³⁵⁷ While notable interim attempts have been made to secure match-funding,³⁵⁸ concerns remain in respect of future, long-term funding arrangements.³⁵⁹
- 19.3 The UK Shared Prosperity Fund was initially presented to succeed EU funded projects. However, issues have been raised regarding the level of funding available and its allocation and management in NI.³⁶⁰ For example, the investment plan for NI has not been agreed, yet applications for grants from April 2023 have opened. Many NI organisations continuing to deliver support services previously funded by the European Social Fund are concerned.³⁶¹
- 19.4 NI has the lowest employment rate for deaf and disabled people and the largest gap between the employment rates of disabled and non-disabled people within the UK.³⁶² The Expert Advisory Panel appointed to inform a new Disability Strategy for NI recommended that the Department for Communities ensure a clear, joined up transitions pathway for all young deaf and disabled children from school to adult services, further education and employment.³⁶³

19.5 The Committee may wish to recommend that the State Party ensures that the UK Shared Prosperity Fund sufficiently meets the social and labour market needs of young people in NI previously supported by the European

³⁵⁶ NI Statistics and Research Agency, 'Quarterly Labour Force Survey Tables – August 2022' (NISRA, 2022).

³⁵⁷ NI Union of Supported Employment, 'Future Funding for Disability Employment Services' (NIUSE, 2019); John Campbell, 'Brexit: Jobs "at risk" over failure to replace EU funds', *BBC News*, 12 October 2022.

³⁵⁸ In February 2022, the NI Minister for Communities secured match-funding for 2022/2023. In August 2022, around £127 million was allocated to NI from the UK Shared Prosperity Fund for the period 2022/23 to 2024/25. See Department for Communities, 'Hargey announces £1.5M funding to local employment and education projects', 17 February 2022; Department for Levelling Up, Housing and Communities, 'Press Release: UK Shared Prosperity Fund: Delivery in NI', 1 August 2022.

³⁵⁹ NI Human Rights Commission roundtable discussion with civil society organisations on UN CRC, 9 and 11 August 2022.

³⁶⁰ NI Council for Voluntary Action, 'European Social Fund User Group Briefing Paper' (NICVA, 2021), at 3.

³⁶¹ NI Council for Voluntary Action, 'Press Release: Latest on the UK Shared Prosperity NI Programme', 3 August 2022.

³⁶² University of Ulster Economic Policy Centre, 'Disability and the Labour Market' (UUEPC, 2022); Disability Strategy Expert Advisory Panel, 'Report and Recommendations' (DfC, 2021), at 82.

³⁶³ Disability Strategy Expert Advisory Panel, 'Report and Recommendations' (DfC, 2021), at 91 and 114.

Social Fund, particularly young persons with disabilities for whom the labour market is disproportionately inaccessible.

20.0 Article 40 – Criminal Justice System

Age of criminal responsibility

- 20.1 Despite the Committee’s previous recommendations,³⁶⁴ the age of criminal responsibility remains at ten years old in NI, as in England and Wales. The Age of Criminal Responsibility (Scotland) Act 2019 raised the age of criminal responsibility in Scotland to 12 years old.
- 20.2 In 2011, a Department of Justice review concluded that “the minimum age should be increased to 12 forthwith and, following a period of review and preparation, perhaps to 14, which has some historical and current significance for criminal law in NI”.³⁶⁵
- 20.3 The former Minister of Justice, Naomi Long MLA, made several attempts to progress this issue but has so far been unable to secure the necessary support from the NI Executive.³⁶⁶ In October 2022, the former Minister of Justice launched a public consultation on increasing the minimum age of criminal responsibility to 14 years old.³⁶⁷
- 20.4 In 2021, there were 328 children under 14 who were dealt with by the formal justice system.³⁶⁸ This included 99 children under 14 processed through the court system and 229 who were handed down a formal diversionary disposal.³⁶⁹

20.5 The Committee may wish to recommend that the State Party ensures prompt measures are taken to raise the

³⁶⁴ CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at 79.

³⁶⁵ Department of Justice, ‘A Review of the Youth Justice System in NI’ (DoJ, 2011), at 107.

³⁶⁶ Allan Preston, ‘Moves made to increase the age of criminality in NI’, *Belfast Telegraph*, 20 September 2020; Department of Justice, ‘Strategic Framework for Youth Justice 2022-2027’ (DoJ, 2022); NI Assembly Hansard, ‘Written Question – Review of Youth Justice System – Naomi Long MLA – AQW 27341/17-22’, 29 November 2021.

³⁶⁷ Department of Justice, ‘Public Consultation on Increasing the Minimum Age of Criminal Responsibility in Northern Ireland from 10 years to 14 years’ (DoJ, 2022).

³⁶⁸ *Ibid* at 20-21.

³⁶⁹ *Ibid* at 20-21.

minimum age of criminal responsibility to at least 14 years of age in NI.

Remand of children

- 20.6 In 2021/2022, the total number of admissions to the Juvenile Justice Centre was 207.³⁷⁰ Of these, 165 (79.7 per cent) were related to the Police and Criminal Evidence Order 1989 and 42 (20 per cent) related to remand.³⁷¹ Of the 165 Police and Criminal Evidence Order admissions, 74 children were subsequently remanded by court or sentenced to custody.³⁷² In 2021/2022, the total average daily population in the Juvenile Justice Centre was nine children. Of these, seven were children on remand.
- 20.7 Of the 207 admissions to the Juvenile Justice Centre in 2021/2022, 92 were care experienced children.³⁷³ Cases involving children in care in NI are subject to particular delays in processing and release from the custody suite due to lack of provision of an appropriate adult from social services (for example, children's home staff or an on-call social worker) and the lack of alternative accommodation (for example, bail fostering or secure care) until they could be accepted back to their original children's homes.³⁷⁴ There have been several legal challenges in NI confirming that suitable accommodation must be provided within a reasonable time, which is to be determined on a case-by-case basis.³⁷⁵
- 20.8 In 2021, legislation proposals to "strengthen the right to bail for children, and introduce specific conditions which must be met before a child can be remanded into custody, with a view to ensuring that custody is used as a last resort" were not progressed.³⁷⁶

³⁷⁰ NI Statistics and Research Agency, 'NI Youth Justice Agency Annual Workload Statistics 2021/2022' (NISRA, 2022).

³⁷¹ Ibid at Figure 9.

³⁷² Ibid at Table 30.

³⁷³ Ibid at Table 23.

³⁷⁴ Criminal Justice Inspection NI, 'Police Custody: The Detention of Persons in Police Custody in NI' (CJINI, 2020), at 31-33.

³⁷⁵ *MP's (A Minor) Application* [2014] NIQB 52; *In the Matter of an Application by OC (A Minor) and LH (A Minor)* [2018] NIQB 34.

³⁷⁶ NI Assembly Hansard, 'Written Question – Custody of Children – Naomi Long MLA – AQO 992/17-22', 2 November 2020.

- 20.9 In September 2022, the Criminal Justice Inspection NI noted high standards of care at the Juvenile Justice Centre,³⁷⁷ but reiterated concerns that the Centre is still being used too often as a place of safety due to a lack of available alternatives.³⁷⁸
- 20.10 In June 2022, the Department of Justice advised that legislative provisions aimed at reducing the number of children held on remand have been drafted and will be brought forward in the next suitable legislative vehicle.³⁷⁹ However, in absence of a functioning NI Assembly and NI Executive, this has been delayed.

20.11 The Committee may wish to recommend that the State Party takes effective measures to ensure that children in NI are only held in pre-trial detention as a measure of last resort and for the shortest possible term. This includes ensuring that a range of suitable non-custodial accommodation arrangements are available for children awaiting trial in NI who cannot return to their homes.

Secure accommodation

- 20.12 In 2018, the Departments of Health and Justice published a review of regional specialist facilities for children and young people in NI that recommended the establishment of a new Integrated Regional Care and Justice Campus for NI.³⁸⁰ In October 2020, a public consultation was conducted on the proposed plans.³⁸¹
- 20.13 However, in March 2022, the Ministers decided that the Woodlands Juvenile Justice Centre and the Lakewood Secure Care Centre will continue to operate independently with shared support services under a formal partnership agreement and supported by a jointly management Partnership Board.³⁸² Work is underway through the Regional Care and Justice Programme.³⁸³

³⁷⁷ Criminal Justice Inspection NI, 'An Announced Inspection of Woodlands Juvenile Justice Centre 22-28 January 2022' (CJINI, 2022).

³⁷⁸ Ibid at 4.

³⁷⁹ Meeting between NI Human Rights Commission and Department of Justice, 23 June 2022.

³⁸⁰ Health and Social Care Board, 'Review of Regional Facilities for Children and Young People: Review Report' (HSCB, 2019), at 100.

³⁸¹ Department of Health and Department of Justice, 'Consultation on Establishment of a Regional Care and Justice Campus' (DoH and DoJ, 2020).

³⁸² Letter from Department of Justice and Department of Health to Regional Facilities for Children and Young People Stakeholder Reference Group Members, 24 March 2022.

³⁸³ Email correspondence from Department of Health to NI Human Rights Commission, 5 August 2022.

20.14 The Criminal Justice Inspection NI is concerned that the current operating model is difficult to justify in light of ongoing uncertainty over budgets and pressures on social worker resources.³⁸⁴ The Lead Reviewer for the Independent Review of Children’s Social Care Services in NI maintains an interest in progressing plans for the establishment of a single Secure Care and Justice Centre.³⁸⁵

20.15 The Committee may wish to recommend that the State Party guarantees that secure accommodation is used as a measure of last resort and for the shortest possible period in practice in NI, requiring the development of suitably resourced and accessible alternatives. This requires ensuring that effective and cost-efficient measures are in place, for example through the Regional Care and Justice Programme, to ensure children in secure accommodation in NI are provided with consistent and appropriate support when secure accommodation is necessary as a measure of last resort.

21.0 Article 34 – Sexual Exploitation

Child sexual exploitation

21.1 The UN CRC Committee recommended to shift the burden of proof from the prosecution to the perpetrator for specific sexual offences against children between 13 and 16 years of age, noting concerns regarding the risk of re-victimisation during cross-examinations of child victims.³⁸⁶

21.2 In NI, under the Sexual Offences (NI) Order 2008, for certain offences of sexual exploitation of children aged between 13 and 16 years old, a defendant may claim that he/she believed the victim to be above 16 years old. The onus is on the prosecution to prove the defendant did not reasonably believe this.³⁸⁷

³⁸⁴ Criminal Justice Inspection NI, 'An Announced Inspection of Woodlands Juvenile Justice Centre 22-28 January 2022' (CJINI, 2022), at 27.

³⁸⁵ Department of Health, 'October Newsletter: Children’s Social Care Services NI' (DoH, 2022).

³⁸⁶ CRC/C/OPSC/GBR/CO/1, 'UN CRC Committee Concluding Observations on the Report Submitted by the UK of Great Britain and NI under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography', 8 July 2014, at 29.

³⁸⁷ Article 16, Sexual Offences (NI) Order 2008.

- 21.3 The Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022 makes improvements to NI’s legislative framework.³⁸⁸ However, it does not include provisions to reverse the burden of proof regarding the defence of reasonable belief as legal practitioners have raised concerns that it would erode the presumption of innocence and the right to a fair trial of the accused.³⁸⁹ The Department of Justice intends to explore this issue further before making legislative proposals, however this is subject to delay due to the suspension of the NI Executive.³⁹⁰
- 21.4 In 2021/2022, of 3,995 sexual offences recorded in NI, 2,274 were against children.³⁹¹ Additionally, there were 211 offences of sexual grooming in NI, of which 198 were sexual communication with a child.³⁹² Of these offences, 125 had an online element.³⁹³
- 21.5 In 2020/2021, the number of victims that were under 16 years old at the time the offence was committed more than doubled since 2007/2008.³⁹⁴ This may be influenced by ‘sexting’.³⁹⁵ In 2020/2021, 49 per cent of all victims under 18 years old were girls.³⁹⁶
- 21.6 Outcome rates are poor for sexual offence crimes in general in NI. Of 3,335 sexual offences recorded in NI in 2020/2021, only 476 resulted in a charge or summons.³⁹⁷
- 21.7 In 2020, the Criminal Justice Inspection NI found in the context of child sexual exploitation that “Public Prosecution Service NI staff instructions specific to child sexual abuse and exploitation were needed” and “where cases did progress to court, support for

³⁸⁸ Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022. Includes provisions to create new offence of adults masquerading as children online; widen the scope and strengthen the current law on abuse of position of trust of a child; and remove terms such as ‘child prostitution’ and ‘child pornography’ from the Sexual Offences (NI) Order 2008.

³⁸⁹ Department of Justice, ‘Review of the Law on Child Sexual Exploitation: Summary of Responses and Next Steps’ (DoJ, 2020), at 2.17-2.20.

³⁹⁰ NI Assembly Committee for Justice, ‘Report on the Justice (Sexual Offences and Trafficking Victims) Bill’ (2022), at 115.

³⁹¹ Police Service NI, ‘Police Recorded Crime in NI: Update to 31 March 2022’ (PSNI, 2022), at Pivot Table 2.

³⁹² PSNI, ‘Police Recorded Crime in NI: Update to 31st March 2022’ (PSNI and NISRA, 2022), at Table 14.

³⁹³ Ibid at Table 8.

³⁹⁴ Police Service NI, ‘Trends in Police Recorded Crime in NI: 1998/1999 to 2020/2021’ (PSNI, 2021), at 33.

³⁹⁵ Ibid at Figure 7.9

³⁹⁶ Ibid at Figure 7.7.

³⁹⁷ Ibid at Table 8.1.

children was required".³⁹⁸ The Barnahus (children's house) model was proposed as the preferred approach.³⁹⁹

21.8 The Committee may wish to recommend that the State Party promptly develops legislative proposals, in consultation with legal practitioners, to ensure the burden of proof in cases concerning children as victims of sexual offences is reversed in NI.

21.9 The Committee may wish to recommend that the State Party ensures effective steps are taken to improve prosecution rates for sexual offence cases involving child victims in NI. This includes ensuring that specialised training is provided for relevant professionals and that measures reflective of the Barnahus Model are adopted within the NI criminal justice system.

Modern slavery and human trafficking of children

21.10 The Nationality and Borders Act 2022 makes provision for victims of human trafficking, but does not specifically address child victims. Four UN Independent Experts jointly wrote to the UK Government expressing concerns about the compliance of the Nationality and Borders Bill with the UK's international obligations and, in particular, that:

there is no recognition of the primacy of the rights of the child, or of the State's obligation to ensure the protection of migrant child victims of trafficking and contemporary forms of slavery, including through the implementation of best interests assessments and determination procedures in migration related decisions.⁴⁰⁰

21.11 The Nationality and Borders Act 2022 also disapplies the EU Trafficking Directive where it is incompatible with a provision of the

³⁹⁸ Criminal Justice Inspection NI, 'Child Sexual Exploitation in NI: An Inspection of the Criminal Justice System's Response' (CJINI, 2020), at 80.

³⁹⁹ Ibid at 80.

⁴⁰⁰ Letter from the UN Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally; UN Special Rapporteur on the human rights of migrants, Felipe González Morales; UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata; and UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin to the UK Government, 5 November 2021.

2022 Act.⁴⁰¹ Article 13 of the EU Trafficking Directive states that the best interests of the child shall be a “primary consideration”.⁴⁰² The NIHRC considers the EU Trafficking Directive as falling within scope of Protocol Article 2⁴⁰³ and therefore, a diminution in minimum rights and equality protections set out in the EU Trafficking Directive could potentially breach the UK Government’s commitments under Article 2 of the Ireland/Ni Protocol.

21.12 The Committee may wish to recommend that the State Party promptly introduces specific statutory protections for child victims of modern slavery and human trafficking in NI, which ensure consideration of the best interests of the child and protect against a non-diminution of rights.

Child marriage

21.13 The Marriage (NI) Order 2003 permits the marriage of a child aged 16 or 17 years, with the consent of their parents or legal guardians or the courts.

21.14 In 2021, 39 girls and 15 boys were married in NI.⁴⁰⁴ In 2020, 24 girls and seven boys married in NI, which due to COVID-19 and associated lockdown restrictions was lower than previous years.⁴⁰⁵ For example in 2019, there were 54 girls and 15 boys married in NI.⁴⁰⁶

21.15 In April 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 years old.⁴⁰⁷ However, the 2022 Act contains an exemption to allow child marriages in Scotland and NI

⁴⁰¹ Section 68, Nationality and Borders Act 2022.

⁴⁰² Article 13, Directive 2011/36/EU ‘Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011. See also, Articles 14 and 15 for further protections for child victims.

⁴⁰³ The NIHRC considers the EU Trafficking Directive 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 the Trafficking Directive underpin Article 4 of the European Convention on Human Rights; and third, on the basis of the equality commitments in the relevant chapter of the Belfast (Good Friday) Agreement 1998.

⁴⁰⁴ Email correspondence from NI Statistics and Research Agency to NI Human Rights Commission, 4 August 2022.

⁴⁰⁵ Email correspondence from NI Statistics and Research Agency to NI Human Rights Commission, 2 July 2021.

⁴⁰⁶ Email correspondence from NI Statistics and Research Agency to NI Human Rights Commission, 17 August 2020.

⁴⁰⁷ Marriage and Civil Partnership (Minimum Age) Act 2022.

without risk of prosecution.⁴⁰⁸ While recognising that this provision was drafted to respect devolution, if NI retain current laws, it creates a divergence of child protection laws within the UK.

21.16 In July 2022, after a consultation process,⁴⁰⁹ the Department of Finance reported near unanimous support among respondents for increasing the minimum age for marriage and civil partnerships to 18 years.⁴¹⁰ The 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.⁴¹¹ Such legislation is subject to the reinstatement of the NI Executive and NI Assembly.

21.17 The Committee may wish to recommend that the State Party expedites the repeal of all legal provisions permitting the marriage of children in NI and increases the minimum age for marriage in NI to 18 years, for both girls and boys.

21.18 The Committee may wish to recommend that the State Party takes effective steps to strengthen efforts in NI to combat forced marriages, including by sensitising parents on the need for full and free consent of their child to marry.

22.0 Optional Protocol – Armed Conflict

22.1 The Committee recommended that the minimum age of recruitment into the armed forces is raised to 18 years.⁴¹²

22.2 The UK continues to be the only country in Europe that routinely recruits 16 and 17 year olds into the armed forces. In 2019, the British Medical Journal highlighted that such recruitment adversely affects the child’s mental and physical health.⁴¹³

⁴⁰⁸ Section 2(5), Marriage and Civil Partnership (Minimum Age) Act 2022.

⁴⁰⁹ Department of Finance, 'Belief Marriage and Minimum Age for Marriage or Civil Partnership – A Public Consultation' (DoF, 2021).

⁴¹⁰ Department of Finance, 'Marriage Law Consultation: Results and Analysis' (DoF, 2022).

⁴¹¹ Department of Finance, 'Marriage Law: Written Ministerial Statement - Conor Murphy MLA - Minister of Finance' (DoF, 2022).

⁴¹² CRC/C/GBR/CO/5, 'UN Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at 84.

⁴¹³ British Medical Journal, 'Press Release: Stop recruiting children, UK Armed Forces urged', 25 February 2019.

22.3 The Committee may wish to recommend that the State Party introduces legislation to raise the minimum age of recruitment to the Armed Forces to 18 years old in NI.

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