



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**NIHRC Submission to Department of Justice and
Department for Communities' Consultation on
Proposals to Amend the Legislation to Help
Tackle Anti-Social Behaviour**

March 2024

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Summary of Recommendations

- 2.9** The NIHRC recommends that the Department of Justice and Department for Communities, along with relevant partner agencies, review the current effectiveness of Anti-Social Behaviour Orders and on the potential benefits and detriments which could arise from any proposed amendments. This review should consider the specific effect of these proposed changes to Anti-Social Behaviour Orders on already marginalised groups.
- 2.28** The NIHRC recommends that the Department of Justice and the Department for Communities conduct a full human rights impact assessment before proceeding any further.
- 3.9** The NIHRC recommends that the Department of Justice and Department for Communities raises the minimum age for the imposition of an Anti-Social Behaviour Order to at least 14 years of age.
- 3.10** The NIHRC recommends that Anti-Social Behaviour Orders are only used on children under 18 years of age as a last resort and are not used to police criminal activity. This includes ensuring that decisions are informed and age appropriate.
- 3.11** The NIHRC recommends that the Department of Justice and Department for Communities continue to develop early intervention programmes as an alternative to the imposition of an Anti-Social Behaviour Order for children under 18 years of age.
- 4.10** The NIHRC recommends that the Department for Communities identifies how it intends to ensure accessible, alternative accommodation for individuals who will be made homeless, if proposals for absolute grounds of possession are introduced in NI.
- 4.12** The NIHRC recommends that the Department for Communities, along with relevant partner agencies, considers carefully how it intends to ensure that the introduction of powers of absolute possession will not disproportionately affect groups at particular risk, including children and young people. Any proposed mitigation measures should be drafted in consultation with individuals or groups affected and their representative organisations.

- 5.7 The NIHRC recommends that the Department of Justice and Department for Communities work with relevant bodies to ensure effective steps are taken to improve the collection and dissemination of disaggregated data on the use of Anti-Social Behaviour Orders. This includes data is collected and disaggregated in a way which reflects society in NI. This also includes ensuring that the data includes the nature, details of behaviour and is disaggregated by location.**
- 6.4 The NIHRC recommends that any agency which is made a relevant authority in relation to Anti-Social Behaviour Orders are made fully aware of their obligations under the ECHR and act in compliance with these obligations.**

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC is also mandated, under section 78A(1) of the Northern Ireland Act 1998, to monitor the implementation of Article 2 of the Windsor Framework, to ensure there is no diminution of rights protected in the “Rights, Safeguards and Equality of Opportunity” chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK’s withdrawal from the EU.¹ In accordance with these functions, the following statutory advice is submitted to the Department of Justice and Department for Communities in response to the consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour.
- 1.2 The NIHRC bases its advice on the European Convention on Human Rights, which is incorporated into UK law by the Human Rights Act 1998. Other relevant treaty obligations of the Council of Europe (CoE) and United Nations (UN) are also considered. The relevant regional and international treaties in this context include:
- European Convention on Human Rights 1950 (ECHR);²
 - UN Convention on Civil and Political Rights 1966 (UN ICCPR);³
 - UN Convention on Economic, Social and Cultural Rights (UN ICESCR);⁴
 - UN Convention on the Elimination of Racial Discrimination 1965 (UN CERD);⁵
 - UN Convention on Elimination of Discrimination against Women 1981 (UN CEDAW);⁶
 - UN Convention on the Rights of the Child 1989 (UN CRC);⁷ and

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

² Ratified by the UK 1951.

³ Ratified by the UK 1966.

⁴ Ratified by the UK in 1976.

⁵ Ratified by the UK in 1969.

⁶ Ratified by the UK 1986.

⁷ Ratified by the UK 1991.

- UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD).⁸

1.3 In addition to these treaty standards, the following declarations and principles provide further guidance in respect of specific areas:

- UN ICESCR Committee General Comment 4;⁹
- UN Human Rights Committee General Comment No 32;¹⁰
- UN Human Rights Committee General Comment No 35;¹¹
- UN CRC Committee General Comment No 10;¹²
- UN CRC Committee Concluding Observations 2008;¹³
- UN ICESCR Committee General Comment No 20;¹⁴
- UN CRPD Committee General Comment No 5;¹⁵
- UN CRPD Committee General Comment No 7;¹⁶
- UN CRC Committee General Comment No 24;¹⁷
- UN Human Rights Committee General Comment No 37;¹⁸ and
- UN CRC Committee Concluding Observations 2023.¹⁹

1.4 The NIHRC welcomes the opportunity to respond to the Department of Justice and Department for Communities' consultation on proposals to amend the legislation to help tackle anti-social behaviour.

⁸ Ratified by the UK 2009.

⁹ 'UN ICESCR Committee General Comment 4: Right to Adequate Housing', 1991.

¹⁰ CCPR/C/GC/32, 'UN Human Rights Committee General Comment No 32: Right to Equality Before Courts and Tribunals and to a Fair Trial', 23 August 2007.

¹¹ CCPR/C/GC/35, 'UN Human Rights Committee General Comment No 35: Liberty and Security of Person', 16 December 2014.

¹² CRC/C/GC/10, 'UN CRC Committee General Comment No 10: Children's Rights in Juvenile Justice', 25 April 2007.

¹³ CRC/C/GBR/CO/4, 'UN CRC Committee Concluding Observations on the Fourth Periodic Report of the UK of Great Britain and NI', 20 October 2008.

¹⁴ E/C.12/GC/20, 'UN ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights', 2 July 2009.

¹⁵ CRPD/C/GC/5, 'UN CRPD Committee General Comment No 5: Living Independently and Being Included in the Community', 27 October 2017.

¹⁶ CRPD//GC/7, 'UN CRPD Committee General Comment No 7: Participation of Persons with Disabilities, Including Children with Disabilities, Through their Representative Organisations, in the Implementation and Monitoring of the Convention', 9 November 2018, at para 33.

¹⁷ CRC/C/GC/24, 'UN CRC Committee General Comment No 24: Children's Rights in the Child Justice System', 18 September 2019.

¹⁸ CCPR/C/GC/37, 'UN Human Rights Committee General Comment No 37: The Right of Peaceful Assembly', 17 September 2020.

¹⁹ CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023.

2.0 Human Rights Impact Assessment

- 2.1 The Department of Justice and Department for Communities' consultation document proposes several significant changes to the law relating to anti-social behaviour and to Anti-Social Behaviour Orders (ASBOs) in particular. ASBOs are currently obtained either by application to a court or further to a criminal conviction.²⁰
- 2.2 The consultation document identifies the intention to expand the definition of anti-social behaviour from conduct that "caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself",²¹ to mirror the provision in England and Wales, which defines anti-social behaviour as:
- conduct that has caused, or is likely to cause, harassment, alarm or distress to any person;
- conduct capable of causing nuisance or annoyance to a person in relation to that persons occupation of residential premises; or
- conduct capable of causing housing-related nuisance or annoyance to any person.²²
- 2.3 This represents a broadening of an already broad definition. Simultaneously, consideration is being given to lowering the threshold for granting an ASBO on Application or Conviction. Currently, a court in NI can only make an ASBO if satisfied that it is necessary to protect relevant persons from further anti-social acts.²³ This is a low threshold.
- 2.4 It is proposed that the threshold be lowered further to require simply that an ASBO is "just and convenient" or "helpful" in preventing an individual from engaging in anti-social behaviour.²⁴
- 2.5 Additionally, the consultation document raises the prospect of the standard of proof necessary for the imposition of an ASBO on Application to be

²⁰ Explained further below.

²¹ Article 3(1)(a), Anti-Social Behaviour (NI) Order 2004.

²² Department of Justice and Department for Communities, 'A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour' (DoJ and DfC, 2023), at para 4.16.

²³ Article 3(1)(b) and Article 6(2)(b), Anti-Social Behaviour (NI) Order 2004.

²⁴ Department of Justice and Department for Communities, 'A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour' (DoJ and DfC, 2023), at para 4.13.

changed from the criminal standard of “beyond reasonable doubt” to the civil standard of the “balance of probabilities”.²⁵ The consultation document does note that the criminal standard would remain in place for evidence of a breach of an ASBO, recognising that any punishment for breach of an ASBO is liable to result in a criminal sanction.²⁶ In addition, it is proposed to permit the attachment to an ASBO of a power of arrest without warrant. In other words, a person alleged to have breached an ASBO is immediately brought into contact with the police and criminal justice system following an ASBO justified on the strength of the civil standard of proof.²⁷

2.6 Together, the effect of the proposed amendments is to expand the behaviour which may justify the making of an ASBO, lower the threshold for application and the evidential standard required to justify the application. Also, there is to be a greater range of conditions and restrictions that can be attached to an ASBO. The type of conditions and restrictions that can be attached are already very broad. A study on the imposition of ASBOs in England and Wales found that the majority of criticisms in relation to conditions placed on an individual referred to conditions that could not be complied with for reasons beyond the recipient’s control.²⁸ It is noted with concern that the Department of Justice and Department for Communities do not consider that a full Equality Impact Assessment is required.²⁹ The consultation document does not provide any information relating to the section 75 groups despite the apparent likelihood for differential effect on some groups, including individuals at high risk.³⁰

2.7 The NIHRC recalls that international human rights bodies, including the Council of Europe Commissioner for Human Rights has raised concern regarding ASBOs under the current legislation. The NIHRC believes the proposed amendments are likely to increase concern rather than abate

²⁵ Department of Justice and Department for Communities, ‘A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour’ (DoJ and DfC, 2023), at para 4.20.

²⁶ Department of Justice and Department for Communities, ‘A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour’ (DoJ and DfC, 2023), at para 4.20.

²⁷ Department of Justice and Department for Communities, ‘A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour’ (DoJ and DfC, 2023), at para 5.12.

²⁸ Justice, ‘Lowering the Standard: A Review of Behavioural Control Orders in England and Wales’ (Justice, 2023), at para 4.48.

²⁹ Department of Justice and Department for Communities, ‘A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour’ (DoJ and DfC, 2023), at para 7.2.

³⁰ Justice, ‘Lowering the Standard: A Review of Behavioural Control Orders in England and Wales’ (Justice, 2023), at para 3.30; Equality Commission NI, ‘Section 75 Duties for Public Authorities’. Available at: [ECNI - Section 75 duties for Public Authorities - Equality Commission NI \(equalityni.org\)](https://www.equalityni.org/ECNI-Section-75-duties-for-Public-Authorities)

concern. The UN Commissioner for Human Rights noted that “proper evidential requirements and a sensible control of what actually constitutes anti-social behaviour are essential as Anti-Social Behaviour Orders can bring their subjects, literally, a mis-placed step away from the criminal justice system”.³¹

2.8 The NIHRC suggests further information and analysis should be undertaken on the current effectiveness of ASBOs and on the potential benefits and detriments that could arise from the proposed amendments. In particular, it is imperative that the human rights impact of ASBOs are understood and addressed. To assist in these considerations the NIHRC sets out in this section the most relevant human rights standards.

2.9 **The NIHRC recommends that the Department of Justice and Department for Communities, along with relevant partner agencies, review the current effectiveness of Anti-Social Behaviour Orders and on the potential benefits and detriments which could arise from any proposed amendments. This review should consider the specific effect of these proposed changes to Anti-Social Behaviour Orders on already marginalised groups.**

Right to Liberty and Security

2.10 The NIHRC recalls that breach of an ASBO is a criminal offence, which may attract a criminal sanction including loss of liberty. Article 5 of the ECHR protects the right to liberty and security. In *Gatt v Malta* (2010), the European Court of Human Rights (ECtHR) noted that domestic authorities must “strike a fair balance between the importance in a democratic society of securing compliance with a lawful order of the court, and the importance of the right to liberty”.³² Furthermore, the ECtHR noted that:

issues such as the purpose of the order, the feasibility of compliance with the order, and the duration of the detention are matters to be taken into consideration. The issue of proportionality assumes particular significance in the overall scheme of things.³³

³¹ CommDH(2005)6, ‘Office of the Commission for Human Rights on his Visit to the United Kingdom’, 8 June 2005, at para 116.

³² *Gatt v Malta*, Application No 46466/16, 27 July 2010, at para 40.

³³ *Gatt v Malta*, Application No 46466/16, 27 July 2010, at para 40.

2.11 Additionally, Article 9 of the ICCPR,³⁴ Article 37 of the UN CRC and Article 14 of the UN CRPD require that the needs of specific groups, particularly children and persons with disabilities must be considered regarding the right to liberty and security.

Freedom of expression

2.12 It is noted that the Departments are considering extending the range of conditions which may be included in an ASBO, to include “positive requirements”. No further information has been provided as to what may be included but the NIHRC suggests great caution should be exercised in respect of positive requirements. The NIHRC would welcome further elaboration on the types of activities which might be included.

2.13 Article 3(3) of the Anti-Social Behaviour (NI) Order 2004 allows magistrates’ courts to “make an order which prohibits the defendant from doing anything prescribed by the order”. Article 3(5) of the 2004 Order states that “prohibitions that may be imposed by an order under this Article are those necessary for the purpose of protecting persons ... from further anti-social acts by the defendant”. Prohibitions can vary from refraining from acts which cause or are likely to cause harassment, alarm or distress, to more specific measures such as prohibiting the use of “foul, offensive or racial language or playing music loudly”.³⁵ Clearly, Article 10 of the ECHR on the right to freedom of expression is engaged.

2.14 Article 10 of the ECHR is a qualified right, meaning it can be limited in certain circumstances in accordance with Article 10(2), which states:

the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for the prevention of disorder or crime.

2.15 Freedom of expression is also protected under Article 19 of the ICCPR, Article 13 of the UN CRC and Article 21 of the UN CRPD.

³⁴ CCPR/C/GC/35, ‘UN Human Rights Committee General Comment No 35: Liberty and Security of Person’, 16 December 2014, at paras 3, 18 and 19.

³⁵ Criminal Justice Inspection NI, ‘Anti-Social Behaviour Orders: An Inspection of the Operation and Effectiveness of ASBOs’ (CJINI, 2008), at para 1.4.

2.16 In *Hashman and Harrup v UK* (1999), the ECtHR identified that freedom of expression must “call for the most careful scrutiny on its (the State’s) part”.³⁶ The ECtHR further noted that one of the requirements of a limitation on freedom of expression is that it must be “prescribed by law”, which must be:

formulated with sufficient precision to enable the citizen to regulate his conduct. At the same time, whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances.³⁷

Freedom of assembly and association

2.17 The current conditions that may be included in an ASBO include a prohibition on entering geographical areas and/or from associating with named individuals.³⁸ Such conditions clearly engage Article 11 of the ECHR (freedom of assembly and association). Article 11 of the ECHR is a qualified right and therefore may be limited in certain circumstances as set out in Article 11(2). Article 11 of the ECHR creates positive obligations on the State. The ECtHR has identified that the positive obligation to secure the effective enjoyment of Article 11 is of particular importance for persons belonging to minorities given their increased vulnerability to victimisation.³⁹

2.18 Freedom of assembly and association is also protected under Article 21 of the ICCPR and Article 15 of UN CRC. The UN Human Rights Committee has stated that:

particular efforts must be made to ensure the equal and effective facilitation and protection of the right of peaceful assembly of individuals who are members of groups that are or have been subjected to discrimination, or that may face particular challenges in participating in assemblies.⁴⁰

³⁶ *Hashman and Harrup v UK* (1999) ECHR 133, at para 32.

³⁷ *Hashman and Harrup v UK* (1999) ECHR 133, at para 31.

³⁸ Criminal Justice Inspection NI, ‘Anti-Social Behaviour Orders: An Inspection of the Operation and Effectiveness of ASBOs’ (CJINI, 2008), at para 1.4.

³⁹ *Baczowski and Others v Poland* (2007) ECHR 370.

⁴⁰ CCPR/C/GC/37, ‘UN Human Rights Committee General Comment No 37: The Right of Peaceful Assembly’, 17 September 2020, at para 25.

Right to a Fair Hearing

- 2.19 As noted above at paragraphs 2.3 and 2.4, consideration is being given to lowering the threshold for granting an ASBO and lowering the standard of evidential proof for the imposition of an Order. This is highly likely to result in an increase in the number of ASBOs made but also a decrease in the safeguards attached to the granting of each ASBO. Given the criminal sanction that is attached to breach, the number of individuals entering the criminal justice system and the number of individuals with convictions will likely increase.
- 2.20 Article 6(1) of the ECHR states that “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”. The right to a fair hearing includes the ‘principle of equality of arms’, which “requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent”.⁴¹
- 2.21 The right to a fair hearing is further protected by Article 14 of the UN ICCPR, which states:
- all persons shall be equal before the courts and tribunals. In the determination of (...) his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- 2.22 The UN Human Rights Committee has recognised that “access to administration of justice must be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice”.⁴²
- 2.23 Additionally, the right to a fair hearing is protected under Article 40 of the UN CRC. The UN CRC Committee has noted that the training of professionals within the juvenile justice system “should take place in a

⁴¹ *Hudakova and Others v Slovakia* (2010) ECHR 637.

⁴² CCPR/C/GC/32, ‘UN Human Rights Committee General Comment No 32: Right to Equality Before Courts and Tribunals and to a Fair Trial’, 23 August 2007, at para 9.

systematic and ongoing manner”.⁴³ The UN CRC Committee further notes that, within juvenile justice systems:

particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists).⁴⁴

2.24 Article 12 of the UN CRC provides that:

- 1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- 2) For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

2.25 Effective participation is also protected under Article 19 of the UN CRPD, which requires States to take “effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community”. The UN CRPD Committee further note that States “should ensure the full and effective participation of persons with disabilities, through their representative organisations, as a measure to achieve their inclusion in society and combat discrimination against them”.⁴⁵

2.26 Anti-Social Behaviour Order applications are often undefended, meaning that Orders with disproportionate, punitive or vague prohibitions can be

⁴³ CRC/C/GC/10, ‘UN CRC Committee General Comment No 10: Children’s Rights in Juvenile Justice’, 25 April 2007, at para 40.

⁴⁴ CRC/C/GC/10, ‘UN CRC Committee General Comment No 10: Children’s Rights in Juvenile Justice’, 25 April 2007, at para 6.

⁴⁵ CRPD//GC/7, ‘UN CRPD Committee General Comment No 7: Participation of Persons with Disabilities, Including Children with Disabilities, Through Their Representative Organisations, in the Implementation and Monitoring of the Convention’, 9 November 2018, at para 33.

imposed without representation from a legal professional.⁴⁶ The NI Policing Board notes that interim orders without notice have a particular negative impact on a child's right to participate in proceedings.⁴⁷

2.27 The NIHRC acknowledges and respects the role of the Departments in protecting the rights of others to be free from anti-social behaviour. There is a clear positive obligation on the State to take reasonable measures to protect individuals from harm caused by others.⁴⁸ This requires the State to undertake a balancing exercise. The conduct of such a balancing exercise will be informed only if a human rights impact assessment is conducted.

2.28 The NIHRC recommends that the Department of Justice and the Department for Communities conduct a full human rights impact assessment before proceeding any further.

3.0 Minimum Age of Eligibility

3.1 The consultation document considers the possibility of raising the minimum age for the imposition of an anti-social behaviour order from ten years old, which is the current statutory age of criminal responsibility in NI.⁴⁹ The consultation document notes that, currently, anti-social behaviour orders are "rarely, if ever, issued to under-18s".⁵⁰ While an ASBO is a civil injunction, failure to comply with an order is a criminal offence and may be punished accordingly. The age of responsibility is therefore very relevant.

3.2 The consultation document identifies a preference for a preventative approach to tackling anti-social behaviour for children under 18 years of age, where early intervention and support is preferred.⁵¹ The NIHRC welcomes this approach, and further notes the importance of providing support to children and young people, and their families, who may be further along in the process, having either been issued or are about to be issued with an Anti-Social Behaviour Order.

⁴⁶ NI Policing Board, 'Human Rights Thematic Review: Children and Young People', (NIPB, 2011), at 42.

⁴⁷ NI Policing Board, 'Human Rights Thematic Review: Children and Young People', (NIPB, 2011), at 42.

⁴⁸ *Opuz v Turkey* (2009) ECHR 870.

⁴⁹ Department of Justice and Department for Communities, 'A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour' (DoJ and DfC, 2023), at para 4.18.

⁵⁰ Department of Justice and Department for Communities, 'A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour' (DoJ and DfC, 2023), at para 4.18.

⁵¹ Department of Justice and Department for Communities, 'A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour' (DoJ and DfC, 2023), at para 4.4.

- 3.3 Article 40 of the UN CRC requires States to recognise “the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth”. The UN CRC Committee has identified that “evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of systems in line with these principles”.⁵²
- 3.4 In 2023, the UN CRC Committee recommended that the UK Government and NI Executive should “raise the minimum age of criminal responsibility to at least 14 years of age”.⁵³ The UN CRC Committee further recommended that the UK Government and NI Executive should:
- develop early intervention for children and actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences, and, wherever possible, the use of non-custodial measures for children, such as probation or community service”.⁵⁴
- 3.5 The UN CRC Committee has identified that “children differ from adults in their physical and psychological development” and that “such differences constitute the basis for the recognition of lesser culpability”.⁵⁵ The UN CRC Committee further notes that “exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults”.⁵⁶
- 3.6 The UN CRC Committee has identified concerns with the ease with which Anti-Social Behaviour Order can be issued to children and young people, identifying that, instead of being a measure of best interests of the child, they “may in practice contribute to their entry into the criminal Justice system”. The UN CRC Committee recommended that the UK Government

⁵² CRC/C/GC/24, 'UN CRC Committee General Comment No 24: Children's Rights in the Child Justice System', 18 September 2019, at para 3.

⁵³ CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at paras 54(a)-54(c).

⁵⁴ CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at paras 54(a)-54(c).

⁵⁵ CRC/C/GC/24, 'UN CRC Committee General Comment No 24: Children's Rights in the Child Justice System', 18 September 2019, at para 2.

⁵⁶ CRC/C/GC/24, 'UN CRC Committee General Comment No 24: Children's Rights in the Child Justice System', 18 September 2019, at para 2.

and NI Executive “conduct an independent review of Anti-Social Behaviour Orders, with a view to abolishing their application to children”.⁵⁷

- 3.7 Article 37 of the UN CRC states that the “arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. The NI Policing Board have recommended that a breach of an Anti-Social Behaviour Order, where no severe criminality has occurred, should not result in the detention of a child.⁵⁸ In Scotland, legislation prohibits the detention of a child under 16 years of age for breach of an Anti-Social Behaviour Order, where no other offences are involved.⁵⁹
- 3.8 The UN CRC Committee has indicated that intensive family and community-based treatment programmes designed to make positive changes in aspects of various social systems, including the home, school, community and peer relations, reduces the risk of children coming into contact with the criminal justice system.⁶⁰
- 3.9 **The NIHRC recommends that the Department of Justice and Department for Communities raises the minimum age for the imposition of an Anti-Social Behaviour Order to at least 14 years of age.**
- 3.10 **The NIHRC recommends that Anti-Social Behaviour Orders are only used on children under 18 years of age as a last resort and are not used to police criminal activity. This includes ensuring that decisions are informed and age appropriate.**
- 3.11 **The NIHRC recommends that the Department of Justice and Department for Communities continue to develop early intervention programmes as an alternative to the imposition of an Anti-Social Behaviour Order for children under 18 years of age.**

⁵⁷ CRC/C/GBR/CO/4, ‘UN CRC Committee Concluding Observations on the Fourth Periodic Report of the UK of Great Britain and NI’, 20 October 2008, at para 8.

⁵⁸ NI Policing Board, ‘Human Rights Thematic Review: Children and Young People’, (NIPB, 2011), at 42.

⁵⁹ Section 10, Antisocial Behaviour etc. (Scotland) Act 2004.

⁶⁰ CRC/C/GC/24, ‘UN CRC Committee General Comment No 24: Children’s Rights in the Child Justice System’, 18 September 2019, at para 9.

4.0 Housing and Anti-Social Behaviour

- 4.1 The consultation document proposes the inclusion of a power of exclusion from the home.⁶¹ This has been recognised as the “most extreme form of interference with Article 8 of the ECHR (right to respect for privacy and family life)”.⁶² In addition, it is proposed that an absolute ground for possession is included, in Part I of Schedule 3 to the Housing (NI) Order 1983.⁶³ This means that tenancies can be more easily ended, where a tenant meets the conditions set out in Section 84A of the Housing Act 1985.⁶⁴
- 4.2 The consultation document refers to the views of social landlords. However, there is a lack of substantive discussion on the case for reform. Furthermore, there is an absence of discussion of the rights engaged by the proposal.
- 4.3 Article 8 of the ECHR protects the right to respect for private and family life, which has been interpreted as including the right to be provide with a home.⁶⁵ In relation to evictions, the ECtHR has confirmed that:
- the loss of one’s home is the most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8 of the Convention.⁶⁶
- 4.4 Consequently, the UK Supreme Court has identified that in all cases in which a public authority requests possession of a property, the applicant must be able to challenge such an order and the relevant court must be able to consider the proportionality of the measure.⁶⁷

⁶¹ Department of Justice and Department for Communities, ‘A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour’ (DoJ and DfC, 2023), at paras 5.18 and 6.10.

⁶² *Kay and Others v UK* (2010) ECHR 1322, at para 68.

⁶³ Department of Justice and Department for Communities, ‘A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour’ (DoJ and DfC, 2023), at para 6.13.

⁶⁴ Department of Justice and Department for Communities, ‘A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour’ (DoJ and DfC, 2023), at para 6.13.

⁶⁵ *Chapman v UK* (2001) ECHR 43.

⁶⁶ *Buckland v UK* (2012) ECHR 1710.

⁶⁷ *Manchester City Council v Pinnock* [2011] 2 AC 104.

- 4.5 The ECtHR has stated that in eviction cases involving anti-social behaviour by the applicant or a member of their household, the State must balance the individuals' right to private life against the public interest in protecting the rights of others and preventing anti-social behaviour, as well as adequately managing housing stock and housing provision for other beneficiaries.⁶⁸
- 4.6 Article 11 of UN ICESCR also guarantees that everyone has a right to adequate housing. This includes an obligation on the State to ensure legal security of tenure, availability, accessibility, affordability and habitability of housing, as well as cultural adequacy and appropriate location of the home.⁶⁹ The UN ICESCR Committee has clarified that legal security of tenure refers to guarantees of "legal protections against forced eviction, harassment and other threats".⁷⁰
- 4.7 The right to housing is also protected under Article 27 of UN CRC, Article 28 of UN CRPD, Article 5(e)(iii) of UN CERD and Article 14(2)(h) of UN CEDAW.
- 4.8 It is unclear from the consultation document as to what alternative living arrangements will be put in place for individuals who are evicted from their home due to anti-social behaviour. The NIHRC is aware that tenants who have been evicted due to nuisance or anti-social behaviour are likely to be treated as intentionally homeless and receive no housing assistance from the State. Destitution as a result of eviction leading to homelessness has been confirmed to engage Article 3 of the ECHR (freedom from cruel, inhumane or degrading treatment).⁷¹ Article 3 of the ECHR is an absolute right, meaning there can be no derogations, even as a result of an individual's behaviour.⁷² In *Moldovan and Others v Romania* (2005), the ECtHR found that, where members of the Roma community had been evicted and made homeless, the living conditions that stemmed from these evictions amounted to a violation of Article 3 of the ECHR.⁷³

⁶⁸ *Pinnock and Walter v UK*, Application No 31673/11, 24 September 2013, at paras 30 and 33.

⁶⁹ 'UN ICESCR Committee General Comment 4: Right to Adequate Housing', 1991, at para 8.

⁷⁰ 'UN ICESCR Committee General Comment 4: Right to Adequate Housing', 1991, at para 8.

⁷¹ *Moldovan and Others v Romania (No 2)* (2005) ECHR 473.

⁷² *Moldovan and Others v Romania (No 2)* (2005) ECHR 473, at para 99.

⁷³ *Moldovan and Others v Romania (No 2)* (2005) ECHR 473.

- 4.9 Ensuring an effective, alternate form of accommodation for individuals who may be affected by the proposals in this consultation is particularly pertinent given the current lack of sufficient social housing stock in NI.⁷⁴
- 4.10 **The NIHRC recommends that the Department for Communities identifies how it intends to ensure accessible, alternative accommodation for individuals who will be made homeless, if proposals for absolute grounds of possession are introduced in NI.**
- 4.11 Introducing powers of absolute possession affects more than just the individual perpetrating anti-social behaviour. It has an immediate impact upon those living with that person. For example, Article 2 of the UN CRC requires States to ensure that “the child is protected against all forms of discrimination or punishment on the basis of the... activities... of the child’s parents, legal guardians, or family members”. Similarly, these measures may have a disproportionate effect on other groups. The consultation document does not set out how this will be mitigated should these measures be introduced.
- 4.12 **The NIHRC recommends that the Department for Communities, along with relevant partner agencies, considers carefully how it intends to ensure that the introduction of powers of absolute possession will not disproportionately affect groups at particular risk, including children and young people. Any proposed mitigation measures should be drafted in consultation with individuals or groups affected and their representative organisations.**

5.0 Data Collection

- 5.1 The NIHRC advises that given the likelihood of infringement and the increased number of individuals at risk of infringement from these amendments it is more important than ever that issue of the powers is effectively monitored, not least by the collection, analysis and publication of disaggregated data.

⁷⁴ Niamh Campbell, ‘Housing shortages in NI: The causes, effects and potential solutions’, *Belfast Telegraph*, 5 October 2023.

- 5.2 Currently data on anti-social behaviour is collated by the Police Service NI, the NI Court and Tribunals Service and the NI Housing Executive.⁷⁵ The Police Service NI data is published annually, but is not disaggregated.⁷⁶
- 5.3 The UN ICESCR Committee has identified that “national strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination”.⁷⁷ The UN CRC Committee has recommended that the UK Government and NI Executive should:
- strengthen its data-collection system with regard to both qualitative and quantitative indicators to encompass all areas of the Convention (UN CRC) and ensure that the data are disaggregated by age, sex, disability, geographical location, ethnic origin, nationality and socioeconomic background.⁷⁸
- 5.4 The UN CRPD Committee has found that to fulfil the right to independent living it is necessary to “collect consistent quantitative and qualitative data on people with disabilities, including those still living in institutions”.⁷⁹
- 5.5 The NI Policing Board has recommended that the Police Service NI collect data on the nature of behaviour which has led to an Anti-Social Behaviour Order, details of the location of where the behaviour occurred.⁸⁰
- 5.6 Using regularly available and updated, disaggregated data to monitor the implementation of Anti-Social Behaviour Orders is an important aspect of ensuring that certain protected characteristics are not disproportionately burdened by them, particularly if the proposals suggested by this consultation are introduced.
- 5.7 **The NIHRC recommends that the Department of Justice and Department for Communities work with relevant bodies to ensure effective steps are taken to improve the collection and**

⁷⁵ Criminal Justice Inspection NI, ‘Anti-Social Behaviour: A Follow-Up Review’ (CJINI, 2016); Department of Justice, ‘Equality Screening Form: Anti-Social Behaviour’ (DoJ, 2023).

⁷⁶ Police Service NI, ‘Anti-Social Behaviour Statistics’. Available at: [Anti-Social Behaviour Statistics | PSNI](#)

⁷⁷ E/C.12/GC/20, ‘UN ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights’, 2 July 2009, at para 41.

⁷⁸ CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 12(a).

⁷⁹ CRPD/C/GC/5, ‘UN CRPD Committee General Comment No 5: Living Independently and Being Included in the Community’, 27 October 2017, at para 38(g).

⁸⁰ NI Policing Board, ‘Human Rights Thematic Review: Children and Young People’, (NIPB, 2011), at 27.

dissemination of disaggregated data on the use of Anti-Social Behaviour Orders. This includes data is collected and disaggregated in a way which reflects society in NI. This also includes ensuring that the data includes the nature, details of behaviour and is disaggregated by location.

6.0 Defining Relevant Authorities

- 6.1 The consultation document proposes to allocate registered Housing Associations as “relevant authorities” for the purposes of Anti-Social Behaviour Orders.⁸¹
- 6.2 Section 6(1) of the Human Rights Act 1998 states that “it is unlawful for a public authority to act in a way which is incompatible with a... [ECHR] right”.⁸² Section 6(3)(b) of the Human Rights Act 1998 identifies that, for the purposes of the Act, a public authority includes “any person certain of whose functions are functions of a public nature”.⁸³
- 6.3 The case *Weaver v London and Quadrant Housing Trust* (2009) confirmed that a private authority that exercises both public and private functions is a public authority for the purposes of the 1998 Act, with respect to its public functions.⁸⁴ Consequently, regarding its public functions, such an authority must at all times act in accordance with ECHR rights. The scope of this requirement is determined by whether the function under question is of a private or public nature.⁸⁵
- 6.4 **The NIHRC recommends that any agency which is made a relevant authority in relation to Anti-Social Behaviour Orders are made fully aware of their obligations under the ECHR and act in compliance with these obligations.**

⁸¹ Department of Justice and Department for Communities, ‘A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour’ (DoJ and DfC, 2023).

⁸² Section 6(1), Human Rights Act 1998.

⁸³ Section 6(3)(b), Human Rights Act 1998.

⁸⁴ *Weaver v London and Quadrant Housing Trust* [2009] EWCA Civ 587, at paras 27-29.

⁸⁵ *Weaver v London and Quadrant Housing Trust* [2009] EWCA Civ 587, at paras 94.

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