



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Response to the draft Childcare Strategy

Introduction

1. The Northern Ireland Human Rights Commission ('the Commission') pursuant to Section 69(3) of the Northern Ireland Act 1998, is required to advise the NI Executive on "measures which ought to be taken to protect human rights". In accordance with this function the following statutory advice is submitted to the Office of the First Minister and Deputy First Minister ('the Department') on its consultation document 'Delivering Social Change through Childcare: A Ten Year Strategy for Affordable and Integrated Childcare 2015-2025' ('the draft strategy').
2. The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights ('ECHR') as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe ('CoE') and United Nations ('UN') systems. The relevant international treaties in this context include:
 - The International Covenant on Economic, Social and Cultural Rights ('ICESCR');¹
 - The UN Convention on the Rights of the Child ('CRC');²
 - The UN Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW');³ and,
 - The CoE European Social Charter 1961 ('ESC').⁴

¹ Ratified by the UK in 1976.

² Ratified by the UK in 1991.

³ Ratified by the UK in 1986.

⁴ Ratified by the UK in 1962.

3. The NI Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom Government's ratification and the provisions of the Northern Ireland Act 1998.⁵
4. The NI Executive is obliged to ensure that the economic, social and cultural rights outlined in the treaties are progressively realised.⁶ Among other things, this means that they should be achieved using the maximum available resources. The prohibition on discrimination is an immediate obligation.⁷
5. In addition to the treaties, there exists a body of 'soft law' developed by the human rights bodies of the UN and CoE. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:
 - ILO Recommendation concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities 1981 (No. 165) ('Workers with Family Responsibilities Recommendation');⁸
 - CoE Recommendation No. R(96)5 of the Committee of Ministers to Member States on reconciling work and family life;⁹
 - CoE Recommendation No. R(94)14 of the Committee of Ministers to Member States on coherent and integrated family policies;¹⁰ and,
 - The Beijing Declaration and Platform for Action 1995.¹¹
6. The Commission is aware that the Department has received responses to its consultation from organisations with operational expertise in the area of childcare. At this stage therefore, to assist the Department in finalising the strategy, the Commission is confining its advice to setting out the overarching international human rights laws and

⁵ In addition, Section 26 (1) of the Northern Ireland Act 1998 provides that 'if the Secretary of State considers that any action proposed be taken by a Minister or Northern Ireland department would be incompatible with any international obligations...he may by order direct that the proposed action shall not be taken.' Section 24(1) states that 'a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights'.

⁶ See, ICESCR, Article 2(1); CRC, Article 4; ESC, Part 1 (the ESC uses the term 'effectively realised'). See also ICESCR, Article 2(1) and CommESCR, General Comment 3: The nature of States Parties obligations (1 January 1991).

⁷ Ibid, General Comment 3.

⁸ Adopted on 23 June 1981.

⁹ Adopted on 19 June 1996.

¹⁰ Adopted on 22 November 1994.

¹¹ Adopted at Fourth World Conference on Women, Beijing (4-15 September 1995).

standards which underpin the need for adequate childcare provision in Northern Ireland.

7. The Commission also notes that in Northern Ireland there have been both greater rates of informal childcare and a disproportionately higher cost of childcare than in Great Britain.¹² Taking into account family ties and the rural demographic in Northern Ireland, this also reflects in relative terms a less developed publicly funded provision. A childcare strategy matched with appropriate investment would be a welcome response to the issues raised by international treaty bodies.

The compelling reasons

8. International human rights law places an obligation on the NI Executive to provide childcare for three primary reasons, namely to: assist the family; realise the right to work; and achieve equality, particularly gender equality.

(i) To assist the family

9. While the primary responsibility for the upbringing and development of the child rests with parents and legal guardians, international human rights law makes clear that States are to assist parents in the fulfilment of their child-rearing responsibilities (CRC, Article 18; ICESCR, Article 10;¹³ ESC, Article 16¹⁴). The CRC, Article 18 directs the fulfilment of this duty through the taking of:

all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

(ii) To realise the right to work

10. ICESCR, Article 6 requires the recognition of the right to work¹⁵ and in General Comment 18, the Committee on Economic, Social and Cultural Rights (CommESCR) emphasises the significance this right can play to a person's well-being and survival:

¹² See, NICVA, Centre for Economic Empowerment, *Universal Childcare in Northern Ireland: A Cost-benefit analysis (Report prepared by PwC)*, (February 2015), p 3; and, Employers for Childcare's *Northern Ireland Childcare Cost Survey 2014* (December 2014), p 18 (table 4).

¹³ CommESCR, 'Concluding observations on New Zealand' (2012), para 20, UN Doc. E/C.12/NZL/CO/3.

¹⁴ ECSR, Conclusions XVII-1: Turkey (2004).

¹⁵ See also, CEDAW, Article 11 and CRPD, Article 27.

The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community.¹⁶

11. ICESCR, Article 6 therefore progresses to oblige States to “take appropriate steps to safeguard [the right to work]”.¹⁷ The CommESCR’s General Comment 16 as well as a number of CoE recommendations direct States to promote childcare as one such safeguard. General Comment 16 states:

[T]he State party should reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members.¹⁸

(iii) To prohibit discrimination, in particular discrimination against women

12. The ICCPR, Article 26 states that ‘all persons are equal before the law and are entitled without any discrimination to the equal protection of the law’. This is an autonomous human right that,

prohibits discrimination in law or in fact in any field regulated and protected by public authorities [and] is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof.¹⁹

¹⁶ CommESCR, General Comment 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights (6 February 2006), para 1.

¹⁷ ICESCR, Article 6(1).

¹⁸ CommESCR, General Comment 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights) (11 August 2005), para 24. See also, CoE Recommendation No. R(96)5 of the Committee of Ministers to Member States on reconciling work and family life, Principles 4 and 5, and, CoE Recommendation No. R(94)14 of the Committee of Ministers to Member States on coherent and integrated family policies, Principle 4.

¹⁹ UN Human Rights Committee, General Comment 18: Non-discrimination, para 12.

13. Discrimination is also prohibited by ICESCR Article 2(2) in the enjoyment of the ICESCR rights, for example, the right to work.²⁰ Discrimination has been defined by the Human Rights Committee as,

any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.²¹

14. As such, the concept of discrimination considers the 'effects' of provisions and will include policies or practices which appear neutral at face value but have a disproportionate impact on the exercise of a right or freedom, sometimes referred to as indirect discrimination.²²

15. A number of human rights laws and standards explicitly recognise the link between childcare provision and women's equal enjoyment of their human rights. CEDAW, Article 11 states:

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

...

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.

16. In a concluding observation on Germany, the CommESCR stated its concern that "insufficient childcare facilities, women's and men's career choices and stereotypical gender roles continue to impede women's equal enjoyment of the right to work".²³

17. The Beijing Platform for Action also identifies restrictions on the equal access of women to education, employment, economic and

²⁰ See also CEDAW, Article 2; CRC, Article 2.

²¹ UN Human Rights Committee, General Comment 18: Non-discrimination, para 7.

²² For additional reference, see CommESCR, General Comment 20: Non-discrimination in economic, social and cultural rights, para 10(b).

²³ CommESCR, 'Concluding observations on Germany' (2011), UN Doc. E/C.12/DEU/CO/5.

professional opportunities, and participation in public and political life²⁴ due, in part, to a lack of, or insufficient childcare provision,²⁵ and states that:

Maternity, motherhood, parenting and the role of women in procreation must not be a basis for discrimination nor restrict the full participation of women in society.²⁶

18. The Committee on the Elimination of Discrimination Against Women (CommEDAW)'s General Recommendation 27 further highlights the particular care giving responsibilities of older women:

It is a known fact that many older women care for, and are sometimes the sole caregivers of, dependent young children spouses/partners or elderly parents or relatives. The financial and emotional cost of this unpaid care is rarely recognised.²⁷

19. Beyond the implications for gender equality, it is important to acknowledge that a lack of adequate childcare provision can also disproportionately affect other protected groups, not least children. The Committee on the Rights of the Child (CommRC) states in General Comment 7 that discrimination against children,

may take the form of reduced levels of nutrition; inadequate care and attention; restricted opportunities for play, learning and education; or inhibition of free expression of feelings and views.²⁸

20. The ICESCR Committee requires the NI Executive to maintain an "active approach" to tackling discrimination through a "comprehensive approach with a range of laws, policies and programmes".²⁹ This can include "temporary special measures"³⁰ or what the UN Human Rights Committee refers to as "affirmative action", defined as,

²⁴ The right to participate in public and political life is protected by ICCPR, Article 25, and CEDAW, Article 7.

²⁵ Beijing Platform for Action, paras 80, 88, 152, 156 and 182.

²⁶ Beijing Platform for Action, para 29.

²⁷ CommEDAW, General Recommendation 27: on older women and protection of their human rights (10 December 2010), para 20.

²⁸ CommRC, General Comment 7: Implementing child rights in early childhood (20 September 2006), para 11(b).

²⁹ CommESCR, General Comment 20: Non-discrimination in economic, social and cultural rights, para 39.

³⁰ CommESCR, General Comment 20: Non-discrimination in economic, social and cultural rights, para 39. See also paras 38 and 36.

granting for a time to a part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. ... [A]s long as such action is needed to correct discrimination in fact...³¹

21. Further specific measures to tackle discrimination against women are required within the laws and standards. The CRC, Article 18 obliges the NI Executive to “use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child”. While this applies to all parents, irrespective of their sex, a number of other standards identify a particular need to ensure that women and men share responsibility for looking after children. For example, the CoE Recommendation on coherent and integrated family policies, states in Principle 4 that,

the family must be a place where equality, including legal equality, between women and men is especially promoted by sharing responsibility for running the home and looking after children, and, more specifically, by ensuring that mother and father take turns and complement each other in carrying out their respective roles.³²

Identifying the baseline need

22. With a view to determining the scope and character of the child-care facilities and services needed, the ILO Workers with Family Responsibilities Recommendation directs that States should,

(a) ...collect and publish adequate statistics on the number of workers with family responsibilities engaged in or seeking employment and on the number and age of their children and of other dependants requiring care....³³

Participatory process, including the views of children

³¹ UN Human Rights Committee, General Comment 18: Non-discrimination, para 10; See also, CommESCR, General Comment 20: Non-discrimination in economic, social and cultural rights, para 38. For a general discussion on the different terminology, see the Committee on the Elimination of Discrimination against Women, General Recommendation 25: on temporary special measures, para 17.

³² CoE Recommendation No. R(94)14 of the Committee of Ministers to Member States on coherent and integrated family policies, Principle 4. See also, Beijing Platform for Action, paras 107 and 158.

³³ ILO Recommendation concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities 1981 (No. 165), para 24(a).

23. The ILO Workers with Family Responsibilities Recommendation directs that States should,

(b) ... ascertain, through systematic surveys conducted more particularly in local communities, the needs and preferences for child-care and family services and facilities.³⁴

24. Similarly, the CommESCR makes clear that where the provision of childcare is designed in part to address discrimination against a protected group, persons belonging to the protected group, "should be ensured the right to participate in decision-making processes".³⁵

25. It is also essential under the CRC, Article 12 that children are given the opportunity to express their views in the development of childcare policies and programmes, for example through research and consultations.³⁶ The CRC, Article 12 requires States to,

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.

Quality and accessible (including available and affordable) provision

26. In a variety of concluding observations, the CommESCR has stated the need for "high quality", "affordable", "available", and "accessible" childcare facilities.³⁷

Quality

27. The CommRC stresses the need for "quality childcare services"³⁸ in light of the significant role a care giver plays in the life of a child. For example, the CommRC's General Comment 7, states that,

³⁴ Ibid., para 24(b).

³⁵ CommESCR, General Comment 20: Non-discrimination in economic, social and cultural rights, para 36.

³⁶ See also CommRC, General Comment 5: General measures of implementation on the Convention on the Rights of the Child (27 November 2003) and CommRC, General Comment 7: Implementing child rights in early childhood (20 September 2006).

³⁷ See for example, CommESCR, 'Concluding observations on Italy' (2004), UN Doc. E/C.12/1/ADD.103; 'Concluding observations on Austria' (2013), UN Doc. E/C.12/AUT/CO/4; 'Concluding observations on Malta' (2004) UN Doc. E/C.12/1/ADD.101.

³⁸ CommRC, General Comment 7: Implementing child rights in early childhood (20 September 2006), para 15.

[y]oung children form strong emotional attachments to their parents or other caregivers, from whom they seek and require nurturance, care, guidance and protection, in ways that are respectful of their individuality and growing capacities.

...

The Committee notes the growing body of theory and research which confirms that young children are best understood as social actors whose survival, well-being and development are dependent on and built around close relationships. These relationships are normally with a small number of key people, most often parents, members of the extended family and peers, as well as caregivers and other early childhood professionals.³⁹

28. In addition, the Committee comments on how different factors will affect the growth and development of a child:

Young children's experiences of growth and development vary according to their individual nature, as well as their gender, living conditions, family organization, care arrangements and education systems.⁴⁰

29. In helping to understand what a quality service means and achieve this goal, the ILO Workers with Family Responsibilities Recommendation states that childcare services should "meet the needs of children of different ages" and that certain standards should be laid down and monitored. These standards should prescribe, "in particular the equipment and hygienic and technical requirements of the services and facilities provided and the number and qualifications of the staff".⁴¹ Further,

(3) The competent authorities should provide or help to ensure the provision of adequate training at various levels for the personnel needed to staff child-care and family services and facilities.⁴²

Accessible

³⁹ Ibid., paras 6(b) and 8.

⁴⁰ Ibid., paras 6 (f).

⁴¹ ILO Recommendation concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities 1981 (No. 165), paras 25 and 26.

⁴² Ibid., para 26(3).

30. The number of childcare places for children between 0-3 years within Member States has been a particular area of concern for the CommESCR.⁴³ In 2013, it welcomed the measures implemented by Norway resulting in the “full coverage of childcare needs for children from 1 year old”.⁴⁴ The European Committee on Social Rights (ECSR) has found that Article 16 on the right of the family to social, legal and economic protection is also concerned with the availability of childcare facilities. In its conclusions on Turkey, the Committee found that childcare places amounting to tens of thousands were “manifestly inadequate” for 3.2 million children aged 0-4 years.⁴⁵

31. It is further important that States ensure the financial accessibility of childcare facilities. The ILO Workers with Family Responsibilities Recommendation asks the State, along with public and private organisations concerned, to:

themselves organise or encourage and facilitate the provision of adequate and appropriate child-care and family services and facilities free of charge or at a reasonable charge in accordance with the workers’ ability to pay, developed along flexible lines and meeting the needs of children of different ages, of other dependants requiring care and of workers with family responsibilities.⁴⁶

32. Concerning particular groups, CEDAW General Recommendation 27 provides on older women that:

States parties should ensure that older women, including those who have the responsibility for the care of children, have access to appropriate social and economic benefits, such as childcare benefits, as well as access to all necessary support when caring for elderly parents or relatives.⁴⁷

33. The CRC, Article 23 requires States to recognise,

⁴³ CommESCR ‘Concluding observations on Austria’ (2006) UN Doc. E/C.12/AUT/CO/3; ‘Concluding observations on Spain’ (2004), UN Doc. E/C.12/1/ADD.99; ‘Concluding observations on Switzerland’ (2010), UN Doc. E/C.12/CHE/CO/2-3.

⁴⁴ CommESCR, ‘Concluding observations on Norway’ (2013), UN Doc. E/C.12/Nor/CO/5.

⁴⁵ ECSR, Conclusions XVII-1: Turkey (2004).

⁴⁶ ILO Recommendation concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities 1981 (No. 165), para 25(b).

⁴⁷ CommEDAW, General Recommendation 27: on older women and protection of their human rights (10 December 2010), para 43.

the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

Monitoring

34. The CommESCR directs that States must monitor measures implemented to eradicate discrimination. This should involve monitoring of both "the steps taken and the results achieved in the elimination of discrimination."⁴⁸ Furthermore,
- [n]ational strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination.⁴⁹
35. **The Commission acknowledges the work undertaken in preparing and developing the proposed childcare strategy for Northern Ireland. The Commission advises that the Department should consider amending the draft strategy to include explicit references to the key international human rights obligations outlined above, where appropriate. The Commission would be pleased to offer further advice on this aspect as required.**
36. **The Commission looks forward to the final strategy being published as soon as possible. The Commission welcomes that a departmental policy lead is being identified as responsible for the childcare strategy,⁵⁰ and recommends that the final strategy clarifies the availability of necessary resources.**

⁴⁸ CommESCR, General Comment 20: Non-discrimination in economic, social and cultural rights, para 36.

⁴⁹ Ibid.

⁵⁰ A Fresh Start: The Stormont Agreement and Implementation Plan, p58.