



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response to Department of Education's
Consultation on Supporting Newcomer
Pupils**

September 2019

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Summary of Recommendations

The Northern Ireland Human Rights Commission (NIHRC) recommends that:

2.7 The revised newcomer policy is founded on human rights standards. The policy should acknowledge that education is both a human right in itself and a means to realising other human rights. The right to education should be clearly referenced throughout the policy, including the principles of availability, accessibility, acceptability and adaptability.

2.10 The policy makes explicit reference to the 'best interests' principle.

2.18 The policy specifically references the principle of non-discrimination and promotion of equal opportunities. This should include a commitment to consider all vulnerabilities when addressing non-discrimination and equality, for example, age, gender, race, ethnicity, language, culture and disabilities.

2.19 The Department of Education commences all provisions of the 2016 Act without further delay and the link between bullying and non-discrimination is acknowledged within the newcomer pupils policy. In particular, the NIHRC recommends that the Department of Education monitor levels of bullying in schools across all vulnerable groups and review protected categories within the 2016 Act accordingly.

2.20 The Department of Education liaises with the Department for the Economy to address the underrepresentation of racial and ethnic minorities in higher education and the teaching profession. In addition, the Department of Education should ensure the inclusion of ethnic and racial minorities in the school curriculum. The NIHRC suggests that Scotland's approach could provide useful learning.

2.27 The policy aims to ensure that special educational needs of newcomer pupils are promptly identified, assessed and effectively addressed and supported.

2.28 Measures are adopted to improve newcomer parents' understanding of special educational needs and the special educational needs process.

2.36 Disaggregated data on newcomer pupils is collected, monitored, evaluated and published. The findings should inform the development and implementation of special measures targeted at under-achieving newcomer pupils.

2.39 Regarding question 5, safeguards are put in place to ensure that the Common Funding Formula funding is only used to address the educational needs of newcomer pupils. Further, enhanced resources should be allocated to meet additional complex needs where identified.

2.40 A Common Funding Formula reporting mechanism is developed whereby schools report to the Education Authority on how they have spent monies allocated through this fund. This will enable monitoring and an evaluation of the effectiveness of the various interventions.

2.41 The Department of Education makes arrangements to enable schools to disseminate good practice relating to educating newcomer pupils.

2.43 A fourth category of nursery school newcomer children is included, in addition to the proposed three categories.

2.44 Regarding question 6, the policy makes provision for different levels of funding that sufficiently accommodate each child's assessed needs.

2.45 The Department makes available an additional fund for schools to pilot innovative practices to assist newcomer pupils. This fund would be in addition to the Common Funding Formula and would encourage schools to explore new methods in supporting this group of children.

3.6 The scope of the policy includes a focus on pre-school education. Measures should be developed to increase the participation of newcomer pupils in pre-school, Sure Start and other early childhood programmes as well as to raise parents'

awareness of the value of same. The Scottish approach offers useful learning as do existing initiatives in NI such as Roma children attending Sure Start in South Belfast. Further, the Department should gather and monitor disaggregated data on pre-school enrolments.

3.13 The Department of Education and the Department for the Economy devise joint programmes to ensure that newcomer children are specifically included within any revised NEET policy/initiatives and to ensure that older newcomer pupils have access to vocational training, adult education and the labour market. Initiatives such as the Refugee Council's 'New Roots' specialist employment service could provide useful learning.

3.14 The Department of Education monitors the amount of time it takes for newcomer pupils to start school.

3.17 The policy acknowledges that a newcomer pupil's home language is an important part of their cultural identity and heritage. The policy should commit to supporting existing and additional programmes by making money available to local council or appropriate funding organisations.

3.22 The policy includes a commitment to develop, effectively implement and sufficiently resource programmes aimed at encouraging and facilitating parents of newcomer pupils' participation in education. These should include offering English language support and ensuring information (such as the curriculum, academic assessment and special educational needs) is accessible. Such programmes should be developed in consultation with stakeholders including parents and civil society organisations.

3.29 The Department of Education work with the Department of Health to ensure the newcomer pupils policy includes effective provision to assist with identifying, supporting and adequately resourcing the mental health needs of newcomer pupils, in particular those from a refugee background.

3.33 The policy includes a commitment for Free School Meals to be provided to all newcomer pupils that satisfy the means test

and all newcomer pupils whose parents are subject to the No Recourse to Public Funds rule.

3.36 The Department of Education and Education Authority ensure that there is sufficient flexibility within the school uniform and school transport policies so that the needs of asylum seeker children can be met throughout the school year, regardless of any school or house moves. Further, as an additional measure to support newcomer children's school attendance, the Department should consider providing free transport for all newcomer pupils for a specified period e.g. 12 months.

3.40 In order to support the prompt school enrolment and sustained attendance of newcomer pupils, the Department considers applying the good practice of the Syrian Vulnerable Persons Resettlement Scheme and the Education Authority's Education Welfare Officer initiative more widely.

3.41 The policy includes a commitment to gather, monitor and publish data on school attendance for all newcomer pupils, including the length of time it takes for school enrolments.

3.44 The Department seeks to raise awareness of the EU Settlement Scheme among parents of EU newcomer pupils. Information should be provided in an accessible format including in different languages.

1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (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 accordance with this function, the following statutory advice is submitted to the Department of Education in response to its consultation on developing a policy on supporting newcomer pupils.

1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights, as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems.¹ The relevant regional and international treaties in this context include:

- European Convention on Human Rights 1950 (ECHR);²
- UN Convention Relating to the Status of Refugees 1951 (Refugee Convention);³
- UN Convention on the Elimination of Racial Discrimination 1965 (CERD);⁴
- UN International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR);⁵
- UN Convention on the Rights of the Child 1989 (CRC);⁶
- CoE Framework Convention on the Protection of National Minorities 1998;⁷ and
- UN Convention on the Rights of Persons with Disabilities 2006 (CRPD).⁸

1.3 In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These

¹ The Northern Ireland Executive (NI Executive) is subject to the obligations contained within the specified regional and international treaties by virtue of the United Kingdom (UK) government's ratification. In addition, the Northern Ireland Act 1998, Section 26(1) provides that "if the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... she may by order direct that the proposed action shall be taken". The NIHRC further recalls that the Northern Ireland Act 1998, Section 24(1)(a) 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... is incompatible with any of the Convention rights".

² Ratified by the UK in 1951.

³ Ratified by the UK in 1954.

⁴ Ratified by the UK in 1969.

⁵ Ratified by the UK in 1976.

⁶ Ratified by the UK in 1991.

⁷ Ratified by the UK in 1998.

⁸ Ratified by the UK in 2009.

declarations and principles are non-binding, but provide further guidance in respect of specific areas. The relevant standards in this context include:

- CoE Committee of Ministers Recommendation on the Participation of Children and Young People Under the Age of 18;⁹
- UN Committee on Economic, Social and Cultural Rights, General Comment No 13;¹⁰
- UN Committee on Economic, Social and Cultural Rights Statement on the duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights;¹¹
- UN Committee on the Rights of the Child, General Comment No 1;¹²
- UN Committee on the Rights of the Child, General Comment No 5;¹³
- UN Committee on the Rights of the Child, General Comment No 7;¹⁴
- UN Committee on the Rights of the Child, General Comment No 9;¹⁵
- UN Committee on the Rights of the Child, General Comment No 14;¹⁶
- UN Committee on the Rights of the Child, General Comment No 20;¹⁷
- UN Committee on the Elimination of Racial Discrimination, General Recommendation No 32;¹⁸
- UN Committee on the Rights of Persons with Disabilities, General Comment No 4;¹⁹
- Concluding Observations of the UN Committee on the Rights of the Child to the UK 2016;²⁰
- Concluding Observations of the UN Committee on the Elimination of Racial Discrimination to the UK 2016;²¹
- Concluding Observations of the UN Committee on Economic, Social and Cultural Rights to the UK 2016;²² and

⁹ CM/Rec(2012)2, 'Recommendation of the Committee of Ministers to Member States on the Participation of Children and Young People Under the Age of 18', 28 March 2012.

¹⁰ E/C.12/1999/10, 'UN CESCR Committee General Comment No 13: The Right to Education', 8 December 1999.

¹¹ E/C.12/2017/1, 'Statement on the Duties of States towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights', 13 March 2017.

¹² CRC/GC/2001/1, 'UN CRC Committee General Comment No 1: The Aims of Education', 17 April 2001.

¹³ CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General measures of Implementation of the Convention on the Rights of the Child', 27 November 2003.

¹⁴ CRC/C/GC/7/Rev.1, 'UN CRC Committee General Comment No 7: Implementing Child Rights in Early Childhood', 20 September 2006.

¹⁵ CRC/C/GC/9, 'UN CRC Committee General Comment No 9: The Rights of Children with Disabilities', 27 February 2007.

¹⁶ CRC/C/GC/14, 'UN CRC Committee General Comment No 14: The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration', 29 May 2013.

¹⁷ CRC/C/GC/20, 'UN CRC Committee General Comment No 20: The Implementation of the Rights of the Child through Adolescence', 6 December 2016.

¹⁸ CERD/C/GC/32, 'UN CERD Committee General Recommendation No 32: The Meaning and Scope of Special Measures', 24 September 2009.

¹⁹ CRPD/C/GC/4, 'UN CRPD Committee General Comment No 4: The Right to Inclusive Education', 25 November 2016.

²⁰ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 3 June 2016.

²¹ CERD/C/GBR/CO/21-23, 'UN CERD Committee Concluding observations on the Twenty-first to Twenty-third Periodic Reports of United Kingdom of Great Britain and Northern Ireland', 26 August 2016.

²² E/C.12/GBR/CO/6, 'UN CESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016.

- Concluding Observations of the UN Committee on the Rights of Persons with Disabilities to the UK 2017.²³

1.4 In addition to the above, the Department should consider the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. While this Convention is not binding on the UK at present, it contains provisions that are helpful in considering good practice in the protection of rights of migrant workers and their children.²⁴

The submission

1.5 The NIHRC welcomes the Department of Education's consultation on updating the current Supporting Newcomer Pupils Policy 2009. The existing policy is now a decade old and predates significant developments such as Northern Ireland's participation in the Syrian Vulnerable Persons Relocation Scheme. The NIHRC welcomes the Department's recognition of three categories of newcomer pupil; specifically, the NIHRC welcomes the new focus of children with interrupted education.

1.6 This submission sets out the relevant human rights standards and principles that the NIHRC encourages the Department of Education to use in drafting the revised policy. With reference to question 1 of the consultation, incorporating human rights standards will provide a clear framework on which the policy can rest. Concerning question 2 of the consultation, this submission also proposes a number of additional measures, which if effectively implemented would give effect to a human rights based approach. This submission also highlights potential synergies between the proposed revised policy and other departmental strategies.

1.7 As outlined in the following section, education is an indispensable means of realising other human rights. Thus through a good education, newcomer pupils can realise other rights such as the right to work, to participate in cultural and political life, etc. Conversely, if newcomer pupils do not have access to education, their enjoyment of other rights will suffer. We know that newcomer children are more at risk of unemployment (see 'Monitoring and data collection') and we can surmise that other outcomes – e.g. mental health and wellbeing, an adequate standard of living, etc. - would

²³ CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland', 29 August 2017.

²⁴ A/RES/45/158, 'International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted by General Assembly resolution 45/158', 8 December 1990.

be likewise poor for newcomer pupils who not have access to education. Therefore, a robust and resourced newcomer pupil strategy is essential.

2.0 Rights-based Approach

Right to education

2.1 The right to education is enshrined in a number of international human treaties including:

- ECHR, Protocol No 1, Article 2;
- UN CRC, Articles 28-29;
- UN ICESCR, Article 13;
- UN CRPD, Article 24;
- UN CERD, Article 5; and
- UN Refugee Convention, Article 22.

2.2 The right to education imposes a general obligation on the Department of Education to take “deliberate, concrete and targeted steps towards the full realisation of the right to education”.²⁵ The UN Committee on Economic, Social and Cultural Rights (UN CESCR Committee) affirms that, while education can be provided in different forms, it should include four “interrelated and essential features”.²⁶ These require that education is available,²⁷ accessible,²⁸ acceptable,²⁹ and adaptable.³⁰

2.3 Adaptability is particularly relevant in the context of newcomer pupils, given the diversity of experiences and needs within this group. The UN Special Rapporteur on Education, Dr Koumbou Boly Barry, has specifically

²⁵ E/C.12/1999/10, ‘UN CESCR Committee General Comment No 13: The Right to Education’, 8 December 1999, at para 43.

²⁶ E/C.12/1999/10, ‘UN CESCR Committee General Comment No 13: The Right to Education’, 8 December 1999, at para 6.

²⁷ **Available** requires functioning educational institutions to be available in sufficient quantity. E/C.12/1999/10, ‘UN CESCR Committee General Comment No 13: The Right to Education’, 8 December 1999, at para 6(a).

²⁸ **Accessible** means to everyone has access without discrimination, including the most vulnerable groups. This includes that education is physically accessible and is “within safe physical reach, either by attendance at some reasonably convenient geographic location (eg a neighbourhood school) or via modern technology (eg access to a “distance learning” programme”.²⁸ It also requires that education is economically accessible, meaning that education is “affordable to all”. E/C.12/1999/10, ‘UN CESCR Committee General Comment No 13: The Right to Education’, 8 December 1999, at para 6(b).

²⁹ **Acceptable** requires that “the form and substance of education, including curricula and teaching methods, have to be acceptable (eg relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents”. E/C.12/1999/10, ‘UN CESCR Committee General Comment No 13: The Right to Education’, 8 December 1999, at para 6(c).

³⁰ **Adaptable** requires education to be “flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings”. E/C.12/1999/10, ‘UN CESCR Committee General Comment No 13: The Right to Education’, 8 December 1999, at para 6.

recommended that States adopt a flexible approach to educating refugee children. The UN Special Rapporteur stated that:

flexible forms of education, such as accelerated education, non-formal education or alternative education, catch-ups, bridging programmes and intensive language support where needed, should be integrated into education plans in order to meet the specific needs of refugee students. This will facilitate their efforts to bridge the gap of missed years of schooling or to acquire the skills and knowledge needed to adapt to the host country's mainstream education system.³¹

2.4 The right to education is to be interpreted broadly.³² The concept of education is not just about academic progress; its realisation is also essential in terms of the enjoyment of other rights.³³ Indeed, the UN High Commissioner for Human Rights describes the right to education as a "well-known catalyst for the fulfilment of many other rights".³⁴ The UN ICESCR Committee highlights the multi-faceted nature of the right to education by stating that:

education is both a human right in itself and an indispensable means of realising other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognised as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.³⁵

2.5 A similar message is articulated by the UN Committee on the Rights of the Child (UN CRC Committee):

³¹ A/73/262, 'Report of the UN Special Rapporteur on the Right to Education', 27 July 2018, at para 119.

³² E/C.12/1999/10, 'UN CESCR Committee General Comment No 13: The Right to Education', 8 December 1999, at para 1; CRC/C/GC/7/Rev.1, 'UN CRC Committee General Comment No 7: Implementing Child Rights in Early Childhood', 20 September 2006, para. 30.

³³ E/C.12/1999/10, 'UN CESCR Committee General Comment No 13: The Right to Education', 8 December 1999, at para 1.

³⁴ OHCHR, 'Frequently asked questions on a human rights-based approach to development cooperation', (OHCHR, 11).

³⁵ E/C.12/1999/10, 'UN CESCR Committee General Comment No 13: The Right to Education', 8 December 1999, at para 1.

the education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence.³⁶

- 2.6 The NIHRC observes that the public consultation document makes no reference to human rights. The current Newcomer Pupils Policy makes brief reference to the Human Rights Act 1998 and the UN CRC.³⁷ This review affords the opportunity to ensure the revised policy has a human rights based approach at its core.
- 2.7 **The NIHRC recommends that the revised newcomer policy is founded on human rights standards. The policy should acknowledge that education is both a human right in itself and a means to realising other human rights. The right to education should be clearly referenced throughout the policy, including the principles of availability, accessibility, acceptability and adaptability.**

Best interests of the child

- 2.8 The UN CRC states that the best interests of the child should be a primary consideration:
- in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.³⁸
- 2.9 Specific to education, it is in the best interests of the child "to have access to quality education, including early childhood education, non-formal or informal education and related activities, free of charge".³⁹

³⁶ CRC/GC/2001/1, 'UN CRC Committee General Comment No 1: The Aims of Education', 17 April 2001, at para 2.

³⁷ Department of Education, 'Every School a Good School: Supporting Newcomer Pupils' (DoE, 2009), at 6.

³⁸ Article 3(1), Convention on the Rights of the Child 1989.

³⁹ CRC/C/GC/14, 'UN CRC Committee General Comment No 14: The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration', 29 May 2013, at para 79.

- 2.10 **The NIHRC recommends that the revised newcomer pupils policy makes explicit reference to the 'best interests' principle.**
- 2.11 The ECHR, Article 14, requires that the enjoyment of ECHR rights, including the right to education, is upheld without discrimination. This is not a stand-alone right and must be asserted in conjunction with another right that is within the ambit of the ECHR. The right to freedom from non-discrimination and right to equality is also provided for within UN ICESCR, Article 2(2); UN CERD, Article 5(i)(v); and the CoE Framework Convention on the Protection of National Minorities, Article 4(2).
- 2.12 Specific to newcomer pupils, all children, regardless of their parent's immigration status, should have access to education.⁴⁰
- 2.13 In 2017, the UK Government accepted the Human Rights Council's recommendation that efforts are stepped up "to promote racial equality and social inclusion in the education system in Northern Ireland".⁴¹ In 2019, Professor E Tendayi Achiume, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance following her visit of the UK, recommended that this requires addressing "the underrepresentation of racial and ethnic minorities in higher education and among educational personnel, and ensure that the historical and contemporary participation...of all ethnic and racial minorities are included in civic education curricula".⁴²
- 2.14 A number of UN Committees have called for the adoption of "special measures" as a means to address substantial inequalities in educational attainment.⁴³ Particular attention should be paid towards vulnerable groups of children, which includes children from migrant families and refugee and asylum-seeking children⁴⁴ It also includes newcomer pupils with disabilities (see Special Educational Needs).

⁴⁰ See *Timishev v Russia* (2005) ECHR 858; E/C.12/2017/1, 'Statement on the Duties of States towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights', 13 March 2017.

⁴¹ A/HRC/36/9, 'Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland', 14 July 2017, at Recommendation 134.174.

⁴² A/HRC/41/54/Add.2, 'Visit to the United Kingdom of Great Britain and Northern Ireland: Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance', 27 May 2019, at para 74(j)(iii).

⁴³ CRC/C/GBR/CO/5, 'UN CRC Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 3 June 2016, at para 72. See also CERD/C/GC/32, 'UN CERD Committee General Recommendation No 32: The Meaning and the Scope of Special Measures in the International Covenant on the Elimination of All Forms of Racial Discrimination', 24 September 2009, at para. 11; CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child', 27 November 2003, at para 12.

⁴⁴ CRC/C/GC/7/Rev.1, 'UN CRC Committee General Comment No 7: Implementing Child Rights in Early Childhood', 20 September 2006, at para 24.

2.15 An area that requires particular attention is tackling racist bullying and harassment in educational settings. Specific to the UK, the UN CERD Committee recommended that steps are taken to:

- a) strengthen efforts to eliminate all racist bullying and harassment in the State party's schools, including by requiring schools to collect qualitative and quantitative data on bullying and school exclusions on grounds of race, colour, descent, or national or ethnic origin, and to use the data to develop concrete strategies;
- b) ensure that schools comply with their public sector equality duty under the Equality Act 2010 and Section 75 of the Northern Ireland Act 1998 to challenge racist bullying and to promote respect for diversity, including through the training of educational personnel;
- c) ensure that the school curricula across its jurisdiction contain a balanced account of the history of the British Empire and colonialism, including slavery and other grave human rights violations.⁴⁵

2.16 It is notable that the provisions of the Addressing Bullying in Schools (NI) Act 2016 have not yet been commenced and that the revised newcomer pupils policy does not reference this legislation as a tool to promote equality in an educational setting.

2.17 The NIHRC notes that the Scottish Government has established a working group to look at increasing diversity within the teaching profession. The working group has proposed a range of measures which includes programmes to encourage young minority ethnic people to choose teaching as a career and a review of curricular materials to ensure that they better reflect racial diversity.⁴⁶

2.18 **The NIHRC recommends that the revised policy specifically references the principle of non-discrimination and promotion of equal opportunities. This should include a commitment to consider**

⁴⁵ CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland', 29 August 2017, para 35.

⁴⁶ See Scottish Government, 'A fairer Scotland for all: racial equality action plan 2017-21', December 2017; Scottish Government, 'Teaching in a diverse Scotland: increasing and retaining minority ethnic teachers', November 2018.

all vulnerabilities when addressing non-discrimination and equality, for example, age, gender, race, ethnicity, language, culture and disabilities.

- 2.19 **The NIHRC recommends that the Department of Education commences all provisions of the 2016 Act without further delay and the link between bullying and non-discrimination is acknowledged within the newcomer pupils policy. In particular, the NIHRC recommends that the Department of Education monitor levels of bullying in schools across all vulnerable groups and review protected categories within the 2016 Act accordingly.**
- 2.20 **The NIHRC recommends that the Department of Education liaises with the Department for the Economy to address the underrepresentation of racial and ethnic minorities in higher education and the teaching profession. In addition, the Department of Education should ensure the inclusion of ethnic and racial minorities in the school curriculum. The NIHRC suggests that Scotland's approach could provide useful learning.**

Special Educational Needs

- 2.21 The UN CRPD, Article 24(2)(c), requires that the relevant authorities ensure that "reasonable accommodation of individual's requirements is provided" in fulfilling, protecting and respecting a person with disabilities right to education. Article 24(2)(d) states that persons with disabilities should "receive the support required, within the general education system, to facilitate their effective education".
- 2.22 Reasonable accommodation is defined by the UN CRPD Committee as:
- necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.⁴⁷
- 2.23 The UN CRPD requires States Parties to provide the necessary health services, including "early identification and intervention, where

⁴⁷ Article 2, UN Convention on the Rights of Persons with Disabilities 2006.

appropriate”.⁴⁸ Any comprehensive habilitation and rehabilitation services and programmes should be provided at the “early possible stage” and should be “based on the individual and multidisciplinary assessment of individual needs and strengths”.⁴⁹

- 2.24 In Northern Ireland, 16.8 per cent of newcomer pupils have an un-stated special educational need and 3 per cent of newcomer pupils have a Special Educational Needs Statement.⁵⁰ The consultation document states that a number of newcomer parents expressed concerns about special educational needs. Some parents expressed concerns that special educational needs were not being promptly identified or addressed. Other parents were concerned about schools suggesting that their children had special educational needs. In both situations, parents felt that language barriers, on the part of both the parent and pupil, hindered effective communication with the school on this complex issue.⁵¹
- 2.25 Schools in Northern Ireland have raised concerns about the difficulty regarding identifying and differentiating between gaps in a child’s knowledge or skills, as a result of a language barrier, lack of previous schooling or due to a special educational need.⁵² Schools have also highlighted the wish for guidance and reassurance from the Department of Education on the issue of identifying special educational needs in newcomer pupils.⁵³
- 2.26 The NIHRC notes that the Department of Education is due to consult on the new special educational needs regulations and the Code of Practice.⁵⁴ This affords an opportunity to align the special educational needs and newcomer policies to ensure that the special educational needs of newcomer pupils are promptly identified and addressed. This in turn should improve newcomer parents’ understanding of special educational needs.
- 2.27 **The NIHRC recommends that the revised newcomer policy aims to ensure that special educational needs of newcomer pupils are promptly identified, assessed and effectively addressed and supported.**

⁴⁸ Article 25(b), UN Convention on the Rights of Persons with Disabilities 2006.

⁴⁹ Article 26(1)(a), UN Convention on the Rights of Persons with Disabilities 2006.

⁵⁰ Department of Education, ‘Newcomer Pupils in Education: Key Statistics 2018/19’ (DoE, 2019).

⁵¹ Department of Education, ‘Supporting Newcomer Pupils – Public Consultation’ (DoE, 2019), at para 73.

⁵² NI Strategic Migration Partnership, ‘The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools’, at 15.

⁵³ NI Strategic Migration Partnership, ‘The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools’, at 15.

⁵⁴ Email from Department of Education Officials to the NIHRC, 17 July 2019.

2.28 The NIHRC recommends that measures are adopted to improve newcomer parents' understanding of special educational needs and the special educational needs process.

Monitoring and data collection

2.29 Monitoring is an essential component in ensuring a policy, such as the revised newcomers policy, is achieving its purpose and identifying areas for improvement. In terms of what effective monitoring requires in this particular context, the UN CRC Committee notes that:

delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation).⁵⁵

2.30 This process should be "built into government at all levels and as early as possible in the development of policy".⁵⁶ This includes self-monitoring and independent monitoring.⁵⁷ Monitoring should be set out in legislation and implemented in practice.⁵⁸

2.31 In terms of the tools required to assist with monitoring, data collection is essential. This is affirmed by the UN CRC, which requires:

States Parties to monitor the availability of and access to quality services that contribute to young children's survival and development, including through systematic data collection, disaggregated in terms of major variables related to children's and families' background and circumstances.⁵⁹

2.32 The UN CRC highlights the need for data collection to be disaggregated as a means to "enable discrimination or potential discrimination to be

⁵⁵ CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child', 27 November 2003, at para 45.

⁵⁶ CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child', 27 November 2003, at para 45.

⁵⁷ CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child', 27 November 2003, at para 46.

⁵⁸ CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child', 27 November 2003, at para 47.

⁵⁹ CRC/C/GC/7/Rev.1, 'UN CRC Committee General Comment No 7: Implementing Child Rights in Early Childhood', 20 September 2006, at para 12.

identified”.⁶⁰ The UN CRC Committee has repeatedly called on the UK to improve its collection and publication of comprehensive and disaggregated data relating to children. In 2016, the Committee specifically recommended that Northern Ireland improves data collection by finalising a child rights indicator framework.⁶¹ The UN CRPD Committee has likewise recommended that the UK improves collection of data relating to school children with disabilities.⁶²

- 2.33 Statistics on school enrolments published by the Department of Education show that only 12 per cent of newcomer pupils attend grammar schools compared to 44 per cent of the general post primary school population.⁶³
- 2.34 Statistics also show that newcomer pupils are more likely to be unemployed on leaving school: 7 per cent of newcomers are unemployed compared to 2 per cent of general population. Newcomer pupils are less likely to attend Higher Education: 7 per cent of newcomer children attend Higher Education compared to 44 per cent of the general population. In contrast, newcomer children are *more likely* to attend further education (53 per cent) than non-newcomer pupils (33 per cent).⁶⁴
- 2.35 These statistics indicate that there is significant disparity in terms of educational outcomes with regards to newcomer pupils. Newcomer pupils are not a homogenous group and have academic attainment varying from very low to very high. Research by the NI Strategic Migration Partnership has found that Roma and Somali children are particularly likely to have lower academic attainment.⁶⁵ However, disaggregated data is lacking on the extent to which low attainment is more prevalent within certain racial or ethnic groups.

⁶⁰ CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General measures of Implementation of the Convention on the Rights of the Child', 27 November 2003, at para 12. See also E/C.12/GC/20, 'UN CESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights', 2 July 2009, at para 41.

⁶¹ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 3 June 2016, at para 14.

⁶² CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland', 29 August 2017, at para 53(b).

⁶³ In 2018, there were 62,862 pupils (44 per cent) enrolled in grammar schools of a total post primary population of 142,239 pupils. Of the 3,119 newcomer children enrolled in post primary education, only 368 (12 per cent) were enrolled in grammar schools. See Department of Education, 'Newcomer Pupils in Education 2018-19' (DoE, 2019).

⁶⁴ Newcomer children (6.6 per cent) and former newcomer children (2.9 per cent) are more likely to be unemployed on leaving school than non-newcomer children (2.0 per cent). Newcomer children (6.6 per cent) and former newcomer children (35.5 per cent) are less likely to attend Higher Education than non-newcomer pupils (43.8 per cent). However, newcomer children (53.3 per cent) and former newcomer children (44.7 per cent) are more likely to attend Further Education than non-newcomer children (33 per cent). See Department of Education, 'Newcomer Pupils in Education 2018-19' (DoE, 2019).

⁶⁵ NI Strategic Migration Partnership, 'The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools' (NISMP, 2014), at 7.

- 2.36 **The NIHRC recommends that disaggregated data on newcomer pupils is collected, monitored, evaluated and published. The findings should inform the development and implementation of special measures targeted at under-achieving newcomer pupils.**

Resourcing

- 2.37 The Common Funding Formula is a standard payment per newcomer pupil. This single payment does not reflect the fact that newcomer pupils have different support needs. The NIHRC notes that funding for newcomer pupils provided through the Common Funding Formula is not ring fenced to support the needs of newcomer pupils. Furthermore, there is no requirement for schools to report to the Education Authority on how it spends the Common Funding Formula funding allocated for newcomer pupils.
- 2.38 Introducing a requirement for schools to report on how it spends funding for newcomer pupils provides an opportunity for schools to highlight and share good practice. The Department may have a role in assisting with the dissemination of good practice e.g. by establishing a newcomer network for schools or by convening an annual conference.
- 2.39 **Regarding question 5 of the consultation, the NIHRC recommends that safeguards are put in place to ensure that the Common Funding Formula funding is only used to address the educational needs of newcomer pupils. Further, enhanced resources should be allocated to meet additional complex needs where identified.**
- 2.40 **In addition, the NIHRC recommends that a Common Funding Formula reporting mechanism is developed whereby schools report to the Education Authority on how they have spent monies allocated through this fund. This will enable monitoring and an evaluation of the effectiveness of the various interventions.**
- 2.41 **The NIHRC recommends that the Department makes arrangements to enable schools to disseminate good practice relating to educating newcomer pupils.**
- 2.42 As outlined above, the NIHRC supports the Department's proposal of including the following categories of newcomer pupil: primary school newcomers, post-primary newcomers, and newcomers with interrupted education. The three categories does not, however, capture the category

of nursery school children so we would suggest adding this as another category.

- 2.43 **In addition to the proposed three categories, the NIHRC recommends a fourth category of nursery school newcomer children.**
- 2.44 **Regarding question 6, the NIHRC recommends that the revised newcomer policy makes provision for different levels of funding that sufficiently accommodate each child's assessed needs.**
- 2.45 **Also regarding question 6, the NIHRC recommends that the Department makes available an additional fund for schools to pilot innovative practices to assist newcomer pupils. This fund would be in addition to the Common Funding Formula and would encourage schools to explore new methods in supporting this group of children.**

3.0 Additional issues

- 3.1 This section proposes a number of additional measures, which if effectively implemented would assist with giving effect to a human rights based approach. It also highlights potential synergies between the proposed revised policy and other departmental strategies.

Early childhood development

- 3.2 In its General Comment No 7, the UN CRC Committee describes early childhood as a "critical period for realising children's rights".⁶⁶ In its 2016 Concluding Observations, the UN CRC Committee specifically recommended that the UK improves access to quality early childhood development services for children "in the most vulnerable situations".⁶⁷
- 3.3 A report by Mediation NI and South Belfast Roundtable highlights that particular initiatives may be needed to encourage participation among some ethnic minority communities. For example, inviting Roma mothers to

⁶⁶ CRC/C/GC/7/Rev.1, 'UN CRC Committee General Comment No 7: Implementing Child Rights in Early Childhood', 20 September 2006, para 6.

⁶⁷ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 3 June 2016, at para 72(f).

attend playgroups and ensuring that services include representations of Roma life.⁶⁸

- 3.4 Sure Start is a targeted programme for parents and children under the age of four living in the top 25 per cent most disadvantaged wards in Northern Ireland.⁶⁹ Sure Start delivers a variety of services designed to support children's learning skills, health and well-being, and social and emotional development.⁷⁰ Evidence shows that good quality early childhood education programmes benefit disadvantaged children significantly.⁷¹ An Independent Review of Sure Start in Northern Ireland highlights:

there is evidence of individual Sure Start Projects developing and adapting services to meet the needs of specific, potentially vulnerable families in their areas. For example, through the provision of bi-lingual family workers for migrant families, or services designed to support Traveller families.⁷²

- 3.5 The NIHRC notes that the Scottish Government has agreed initiatives to help ensure families of all ethnicities have access to early learning and childcare.⁷³

- 3.6 **The NIHRC recommends that the scope of the revised newcomer policy includes a focus on pre-school education. Measures should be developed to increase the participation of newcomer pupils in pre-school, Sure Start and other early childhood programmes as well as to raise parents' awareness of the value of same. The Scottish approach offers useful learning as do existing initiatives in NI such as Roma children attending Sure Start in South Belfast. Further, the Department should gather and monitor disaggregated data on pre-school enrolments.**

Post compulsory school age

⁶⁸ Mediation NI and South Belfast Roundtable, 'Guesses at Inclusion: Collaborative Service Provision with Roma Communities' (Mediation NI and SBR, 2015), at 10. See also Deena Haydon, 'Promoting and Protecting the Rights of Roma Children and Young People in Northern Ireland: Children's Law Centre Consultation with Roma and Young People' (CLC, 2015).

⁶⁹ Sure Start was introduced in Northern Ireland during 2000/01, as part of the 'Northern Ireland Childcare Strategy: Children First'.

⁷⁰ Education and Training Inspectorate, 'Sure Start Evaluation Report', (ETI, 2018), at 1.

⁷¹ University of East London, 'Early Childhood Education, Care and Poverty', (UEL, 2014), at 22.

⁷² RSM McClure Watters Consulting, 'An Independent Review of the Sure Start Programme' (DoE, 2015), at 222.

⁷³ See Scottish Government, 'A fairer Scotland for all: racial equality action plan 2017-21', December 2017, section on education.

- 3.7 The UN CRC, Article 28(1)(b) requires States to “encourage the development of different forms of secondary education, including general and vocational education”. The UN CRC Committee urges States to:
- support out-of-school adolescents in a manner appropriate to their age to facilitate the transition to decent work, including by ensuring consistency between education and labour laws, and to adopt policies to promote their future employment.⁷⁴
- 3.8 In relation to Roma, the Fundamental Rights Agency has highlighted that across Europe, the “proportion of young Roma aged 16 between 24 years remains high and in stark contrast to the corresponding rate observed among the general population”.⁷⁵ The Fundamental Rights Agency recommends that support is needed to help young people who are Roma complete the transition from school to employment. This reflects the Council of the EU’s recommendation that States take measures to improve Roma integration including:
- widening access to second-chance education and adult learning, and providing support for the transition between educational levels and support for the acquisition of skills that are adapted to the needs of the labour market.⁷⁶
- 3.9 Data shows that on leaving school newcomer pupils in Northern Ireland are much more likely to be unemployed than non-newcomer pupils (6.6 per cent compared to 2.9 per cent).⁷⁷
- 3.10 The NI Strategic Migration Partnership notes that the Post-14 Entitlement Framework “presents a clear opportunity” for newcomer pupils in Northern Ireland, “offering as it does a wide and more balanced range of courses that are relevant to their needs, aptitudes, interests and their future job prospects”.⁷⁸
- 3.11 ‘Pathways to Success’ is the Department for Employment’s strategy for young people not in education, employment or training. Endorsed by the

⁷⁴ CRC/C/GC/20, ‘UN CRC Committee General Comment No 20: The Implementation of the Rights of the Child through Adolescence’, 6 December 2016, at para 73.

⁷⁵ EU Agency for Fundamental Rights, ‘Transition from Education to Employment of Young Roma in Nine EU Member States’ (FRA, 2018), at 16.

⁷⁶ 2013/C378/01, ‘Council of the European Union Recommendation on Effective Roma Integration Measures in the Member States’, 9 December 2014, at para 1.3(i).

⁷⁷ Department of Education, ‘Newcomer Pupils in Education 2018-19’ (DoE, 2019).

⁷⁸ NI Strategic Migration Partnership, ‘The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools’ (NISMP, 2014), at 34.

Executive in 2012, the Strategy is due to finish in 2020. The present strategy makes no reference to newcomer pupils. However, the NI Strategic Migration Partnership has identified a number of measures within the strategy that could be considered for newcomer pupils. These include the Community Family Support Programme,⁷⁹ a means tested allowance to incentivise participation at school or college post-16,⁸⁰ the Training for Success Programme⁸¹ and the Innovation Fund.⁸²

- 3.12 The need to provide assistance into vocational or adult education and the labour market is particularly acute for newcomer pupils between 14 and 15 years of age. The NI Strategic Migration Partnership research highlights that for children arriving in NI with limited academic attainment, “the older the child, the greater the disparity with the expected age related attainment”.⁸³
- 3.13 **The NIHRC recommends that the Department of Education and the Department for the Economy devise joint programmes to ensure that newcomer children are specifically included within any revised NEET policy/initiatives and to ensure that older newcomer pupils have access to vocational training, adult education and the labour market. Initiatives such as the Refugee Council’s ‘New Roots’ specialist employment service could provide useful learning.**
- 3.14 **The NIHRC further recommends that the Department of Education monitors the amount of time it takes for newcomer pupils to start school.**

Support for home languages

⁷⁹ This programme focuses on the needs of the most disadvantaged families, to enable young people to re-engage with education, training or employment. See NI Direct, ‘Community Family Support Programme’. Available at: nidirect.gov.uk/articles/community-family-support-programme

⁸⁰ An allowance of up to £30 per week to incentivise participation at school or college post 16. See NI Strategic Migration Partnership, ‘The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools’ (NISMP, 2014), at 34; House of Commons Education Committee, ‘Participation by 16-19 Year Olds in Education and Training’ (HC, 2011).

⁸¹ This programmes offers a guaranteed training place for every 16-17 year old who is in the not in education, employment or training category. Participants receive a weekly allowance plus travel, subsistence and childcare support where appropriate. See NI Direct, ‘Training for Success’. Available at: <https://www.nidirect.gov.uk/articles/training-success>

⁸² This fund is delivered through Social Investment Partnerships and seeks to generate new effective and innovative ideas and solutions focussed on disadvantaged young people aimed 14 years and above. See NI Strategic Migration Partnership, ‘The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools’ (NISMP, 2014), at 34.

⁸³ NI Strategic Migration Partnership, ‘The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools’ (NISMP, 2014), at 7.

- 3.15 The consultation document on the revised newcomer policy recognises the importance of a newcomer pupil's home language to their cultural identity and heritage.⁸⁴ This fits within the good practice set out within the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,⁸⁵ which encourages States to facilitate the teaching of mother tongue language and culture for the children of migrant workers.⁸⁶
- 3.16 The NIHRC notes that there are a number of initiatives promoting various home languages, such as the Amber Lithuanian Community in Armagh and the Polish Saturday School, which runs in towns across Northern Ireland.⁸⁷ These receive a mix of Council and charitable funding.⁸⁸
- 3.17 **The NIHRC recommends that the revised newcomer policy acknowledges that a newcomer pupil's home language is an important part of their cultural identity and heritage. The policy should commit to supporting existing and additional programmes by making money available to local council or appropriate funding organisations.**

Support for parents

- 3.18 The UN CRC, Article 18(2) requires "States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities". The UN CRC Committee continued that parents have a "key role" in this regard.⁸⁹ The UN CESCR Committee elaborated that:

the form and substance of education, including curricula and teaching methods, have to be acceptable (eg relevant, culturally appropriate and of good quality) to... in appropriate cases, parents.⁹⁰

⁸⁴ Department of Education, 'Supporting Newcomer Pupils – Public Consultation' (DoE, 2019), at para 58.

⁸⁵ A/RES/45/158, 'International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families', 8 December 1990. See Article 45 in particular.

⁸⁶ A/RES/45/158, 'International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families', 8 December 1990. See Article 45 in particular.

⁸⁷ Michael McKenna, 'Armagh groups given grants boost from National Lottery Awards for All', *Armagh I*, 18 July 2019; Consulate General of the Republic of Poland in Edinburgh, 'Learn Polish'. Available at: https://edynburg.msz.gov.pl/en/c/MOBILE/bilateral_cooperation/learn_polish/

⁸⁹ CRC/C/GC/7/Rev.1, 'UN CRC Committee General Comment No 7: Implementing Child Rights in Early Childhood', 20 September 2006, at para 30.

⁹⁰ E/C.12/1999/10, 'UN CESCR Committee General Comment No 13: The Right to Education', 8 December 1999, at para 6(c).

- 3.19 The needs of parents of newcomer children should also be addressed in this policy. The UN CESCR Committee has emphasized that states should respect the “liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions”.⁹¹ In order for parents of newcomer parents to express their views and support their children’s education, the additional support that may be required to mitigate any challenges needs to be considered.
- 3.20 The consultation document on the revised newcomer pupils policy recognises that parental engagement and involvement in newcomer pupils’ education can be hindered “due to the language barrier”.⁹² This is supported by the NI Strategic Migration Partnership’s finding that many parents of newcomer pupils find it difficult to support their children due to their “own low levels of English and, in many cases, poor literacy and numeracy skills”.⁹³ The research also highlights a number of innovative approaches adopted by schools designed to increase the participation of newcomer parents in their children’s education.⁹⁴
- 3.21 Additionally, in 2015, the NI Commissioner for Children and Young People commended a Saturday School pilot programme delivered by Malone College, in partnership with Horn of Africa People’s Aid NI.⁹⁵ The pilot was funded by the Integrated Education Fund and aimed to build parents’ confidence in using the English language to increase their involvement in school life.⁹⁶
- 3.22 **The NIHRC recommends that the revised newcomer pupils policy includes a commitment to develop, effectively implement and sufficiently resource programmes aimed at encouraging and facilitating parents of newcomer pupils’ participation in education. These should include offering English language support and ensuring information (such as the curriculum, academic assessment and special educational needs) is accessible. Such**

⁹¹ E/C.12/1999/10, ‘UN CESCR Committee General Comment No 13: The Right to Education’, 8 December 1999, at para 28.

⁹² Department of Education, ‘Supporting Newcomer Pupils – Public Consultation’ (DoE, 2019), at para 66.

⁹³ NI Strategic Migration Partnership, ‘The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools’ (NISMP, 2014), at 16.

⁹⁴ NI Strategic Migration Partnership, ‘The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools’ (NISMP, 2014), at 16.

⁹⁵ Integrated Education Fund, ‘Press Release: Children’s Commissioner meets newcomer families at Malone College Saturday School’, 23 June 2015.

⁹⁶ Integrated Education Fund, ‘Press Release: Children’s Commissioner meets newcomer families at Malone College Saturday School’, 23 June 2015.

programmes should be developed in consultation with stakeholders including parents and civil society organisations.

Specialist mental health services

3.23 The UN High Commissioner for Human Rights highlights that, due to the “possible damaging effects of trauma that refugee children may have experienced, some children will require specialised services or treatment”.⁹⁷ Medical professionals in Northern Ireland agree that “serious mental health illnesses such as Post-traumatic Stress Disorder... is more prevalent in the refugee community than the general population”.⁹⁸ According to the NI Strategic Mitigation Partnership, this view is corroborated by studies, which indicate that asylum seekers are at increased risk of developing mental illness, thus necessitating a response from mental health services planners.⁹⁹

3.24 Research conducted for the Public Health Agency highlights an association between referral for educational needs and mental health issues, such as Post-traumatic Stress Disorder and depression. The research also highlights the limited data available in Northern Ireland, stating that:

we do not have any prevalence information about mental health issues and emotional wellbeing of young asylum seekers and refugees in Northern Ireland. No research has been undertaken and monitoring data is not routinely collected relating to this.¹⁰⁰

3.25 Research by the Institute for Conflict Research reiterates the “urgent need” for further research into the experience of trauma and asylum seeker and refugee children. The research found that a better understanding of the needs of young people from black and minority ethnic backgrounds is particularly critical in the context of the high rates of mental ill health among young people in Northern Ireland.¹⁰¹

⁹⁷ UN High Commissioner for Refugees, ‘Refugee Children: Guidelines on Protection and Care’ (UNHCR 1994).

⁹⁸ NI Strategic Migration Partnership, ‘Mental Health Care Needs of Asylum Seekers and Refugees: Overview of Roundtable 1 June 2017’ (NISMP, 2017), at 3.

⁹⁹ NI Strategic Migration Partnership, ‘Mental Health Care Needs of Asylum Seekers and Refugees: Overview of Roundtable 1 June 2017’ (NISMP, 2017), at 3.

¹⁰⁰ Helga Sneddon, ‘Mental Health and Wellbeing of Asylum Seekers and Refugees: Evidence Review and Scoping’ (PHA, 2018), at 10.

¹⁰¹ Institute for Conflict Research, ‘Walking This Thin Line: Black and Minority Ethnic Experiences of Mental Health and Wellbeing in Northern Ireland’ (ICR, 2015), at 26.

- 3.26 The Refugee and Asylum Forum has highlighted that, unlike in the rest of the UK or Ireland, there is no dedicated specialist service for refugees who have suffered torture and/or trauma in Northern Ireland.¹⁰²
- 3.27 In situations where children have experienced trauma, research indicates that education itself can be understood as an “important resilience domain”, which can provide a “protective factor to promote the psychosocial well-being” for trauma-experienced children.¹⁰³ Therefore, schools play an important role in helping ensure that any specialist mental health needs are promptly identified and also in supporting children undergoing treatment.
- 3.28 The Department of Health is currently consulting on a Regional Trauma Network.¹⁰⁴ The proposals are designed to enhance the existing provision of mental health services for children, young people and adults in NI.
- 3.29 **The NIHRC recommends that the Department of Education work with the Department of Health to ensure the newcomer pupils policy includes effective provision to assist with identifying, supporting and adequately resourcing the mental health needs of newcomer pupils, in particular those from a refugee background.**

Free school meals for low-income migrant households

- 3.30 In 2016, the UN CESCR Committee recommended that the UK takes all “necessary measures to reduce educational attainment gaps particularly among children belonging to low-income families”.¹⁰⁵ Free School Meals policy is one such measure by which the government can provide support to low-income families.
- 3.31 A child’s eligibility to Free School Meals depends on their parent being in receipt of a specified means-tested benefit.¹⁰⁶ The children of parents who are subject to the No Recourse to Public Funds rule are ineligible to receive

¹⁰² Refugee and Asylum Forum, ‘Six Key Actions for Northern Ireland to Respond to the Needs of Asylum Seekers’, (RAF, 2017).

¹⁰³ Mina Fazel and Theresa Betancourt, ‘Preventative Mental Health Interventions for Refugee Children and Adolescents in High-income Settings’ (2017) 2(2) *The Lancet Child and Adolescent Health* 121.

¹⁰⁴ Health and Social Care Board, ‘Press Release: Consultation begins on Regional Trauma Network’, 14 June 2019.

¹⁰⁵ E/C.12/GBR/CO/6, ‘UN CESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 64.

¹⁰⁶ Where parents are in receipt of Universal Credit, a £14,000 per annum threshold is applied. See Education Authority, ‘Free School Meals: Eligibility’. Available at: <https://www.eani.org.uk/financial-help/free-school-meals/eligibility>

Free School Meals. An exception is made for children of asylum seekers who can apply for Free School Meals, despite not being eligible for means-tested benefits.¹⁰⁷

- 3.32 Research conducted in England and Wales has detailed cases where children of destitute migrant households cannot access Free School Meals, thus compounding their poverty.¹⁰⁸ Households that cannot access Free School Meals include households in receipt of support from local authorities under community care provisions.¹⁰⁹ In Northern Ireland, data is not readily available as to how many households are in receipt of such support from Trusts. However, the NIHRC considers that the number is likely to be relatively small. Nonetheless, such households experience significant financial hardship and will have very little disposable income, if at all.
- 3.33 **The NIHRC recommends that the revised newcomer pupils policy includes a commitment for Free School Meals to be provided to all newcomer pupils that satisfy the means test and all newcomer pupils whose parents are subject to the No Recourse to Public Funds rule.**

Support for asylum seekers

- 3.34 The UN CESCR Committee has expressed concerns about the challenges faced by asylum seekers and the likelihood of destitution.¹¹⁰ The consultation document highlights that asylum seeker families may be required to move home, which can then necessitate a school move.¹¹¹ This can cause difficulties for families in respect of school uniforms because, under the current policy, pupils can usually only get one clothing allowance for each school year.¹¹²

¹⁰⁷ Department of Education, 'Arrangements for the Provision of Milk, Meals and Related Facilities under the Provisions of Articles 58 and 59 of the Education and Libraries (NI) Order 1986 as Amended' (DoE, 2017). Children of parents supported by the Home Office Asylum Support Assessment Team are eligible to apply for Free School Meals. See Education Authority, 'Free School Meals: Eligibility'. Available at: <https://www.eani.org.uk/financial-help/free-school-meals/eligibility>

¹⁰⁸ Zoe Dexter et al, 'Making Life Impossible: How the Needs of Destitute Migrant Children are Going Unmet' (The Children's Society, 2016).

¹⁰⁹ Section 17 of the Children Act 1989 places a general duty on local authorities to safeguard and promote the welfare of all 'children in need' in their local area. The Children's Society estimates that 6,000 children in families are being supported across the UK under Section 17. See Zoe Dexter et al, 'Making Life Impossible: How the Needs of Destitute Migrant Children are Going Unmet' (The Children's Society, 2016), at 6.

¹¹⁰ E/C.12/GBR/CO/6, 'UN CESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 24.

¹¹¹ Home Office guidance states, "the overriding principle when allocating accommodation is that it is offered on a no choice basis". The guidance further states "requests for accommodation in a particular location because the person's children are attending school in the area should normally be refused, as arrangements can be made to transfer the children to a school in another area". See Home Office, 'Allocation of Asylum Accommodation Policy' (HO, 2017), at 4.

¹¹² NI Direct, 'School Uniform and Uniform Grants'. Available at: <https://www.nidirect.gov.uk/articles/school-uniform-and-uniform-grants>

3.35 Research by Queen’s University Belfast also found that the cost of school transport may be an issue, where children do not qualify for school transport provided by the Education Authority. There is an additional specific element in Northern Ireland, where an inability to access transport can cause a newcomer pupil to have to walk through neighbourhoods associated with sectarianism/hate crime.¹¹³ This is supported by Jim Shannon MP, who stated that:

another example of a situation that is particularly acute in Northern Ireland is when [asylum seeker] children are moved to a new area away from their school. Parents must make a difficult decision, either to transfer their children to a new school, assuming school places are available, which is disruptive to the children’s education, or to make arrangements for their children to continue at their old school. That is not an option, because £37.50 per person means that people cannot put their child on the bus to school. Difficulties also arise when a child walks through a neighbourhood wearing a school uniform associated with the ‘other’ community.¹¹⁴

3.36 **The NIHRC recommends that the Department of Education and Education Authority ensure that there is sufficient flexibility within the school uniform and school transport policies so that the needs of asylum seeker children can be met throughout the school year, regardless of any school or house moves. Further, as an additional measure to support newcomer children’s school attendance, the Department should consider providing free transport for all newcomer pupils for a specified period e.g. 12 months.**

School enrolment and attendance

3.37 The UN CRC, Article 28 (1)(e), requires States to “take measures to encourage regular attendance at schools and the reduction of drop-out rates”. The UN CRC Committee has highlighted concerns about some groups of children “having problems being enrolled in school or continuing or re-entering education”.¹¹⁵

¹¹³ Ulrike Vieten and Fiona Murphy, ‘The Imagination of the Other in a (Post-) Sectarian Society: Asylum Seekers and Refugees in the Divided City of Belfast’ (2019) 7(2) *Social Inclusion* 176.

¹¹⁴ Hansard, ‘House of Commons Debate - Jim Shannon: c121WH’, 10 October 2018.

¹¹⁵ CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 3 June 2016, at para 66.

- 3.38 Research conducted by Barnardo's shows that newcomer pupils may experience an extended time out of school, due to school enrolment procedures.¹¹⁶ For asylum seeker children, a compounding issue is the initial temporary asylum policy, which can result in house moves and therefore delays in school enrolment. Some examples of good practice in mitigating these problems include the Syrian Vulnerable Persons Relocation Scheme, which allocates a keyworker to assist with school enrolment. The Education Authority also appointed an Education Welfare Officer to work specifically with the Roma community, which has assisted with promptly registering Roma children in school and encouraging regular attendance.¹¹⁷
- 3.39 **In order to support the prompt school enrolment and sustained attendance of newcomer pupils, the Department should consider applying the good practice of the Syrian Vulnerable Persons Resettlement Scheme and the Education Authority's Education Welfare Officer initiative more widely.**
- 3.40 **The NIHRC recommends that the revised newcomer pupils policy includes a commitment to gather, monitor and publish data on school attendance for all newcomer pupils, including the length of time it takes for school enrolments.**

Role in raising awareness of EU Settlement Scheme

- 3.41 In the context of Brexit, particular consideration should be given to the European Union (EU) Settlement Scheme. This online scheme went live on 30 March 2019. It requires all European citizens living in the UK to register with the Scheme, to enable them to continue to do so.¹¹⁸
- 3.42 In 2019, the Joint Committee on Human Rights raised concerns that the Scheme "could leave individuals and families in a situation of precarity as to their futures, including housing, social security and property rights".¹¹⁹

¹¹⁶ Barnardos, 'Feels Like Home: Exploring the Experiences of Newcomer Pupils in Northern Ireland' (Barnardos, 2015), at 33.

¹¹⁷ NI Strategic Migration Partnership, 'The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools' (NISMP, 2014), at 3.

¹¹⁸ Gov UK, 'Apply to the EU Settlement Scheme (Settled and Pre-settled Status). Available at: <https://www.gov.uk/settled-status-eu-citizens-families>

¹¹⁹ House of Commons and House of Lords Joint Committee on Human Rights, 'Legislative Scrutiny: Immigration and Social Security Co-ordination (EU Withdrawal) Bill, Eighteenth Report of Session 2017-19' (JCHR, 2019), at para 7.

3.43 The majority of newcomer pupils are European Economic Area citizens.¹²⁰ Free assistance is available in Northern Ireland to European Economic Area citizens required to register with the EU Settlement Scheme.¹²¹ Ensuring that European Economic Area citizens are aware of this scheme and its requirements is essential. The schools census provides accurate data as to which schools newcomer pupils are enrolled. This presents an opportunity for the Department to work with schools to ensure that the parents of newcomer pupils covered by the scheme are aware of it and of sources of assistance in advance of the deadline for registration.¹²²

3.44 **The NIHRC recommends that the Department seeks to raise awareness of the EU Settlement Scheme among parents of EU newcomer pupils. Information should be provided in an accessible format including in different languages.**

¹²⁰ Polish, Lithuanian, Romanian and Portuguese are the most spoken languages among newcomer pupils. See Department of Education, 'Newcomer Pupils in Education 2018-19' (DoE, 2019).

¹²¹ Community NI, 'Press Release: EU Settlement Scheme - Free Advice across NI', 23 July 2019.

¹²² The deadline for applying to the scheme is either 30 June 2021, if the UK leaves the EU with a deal, and 31 December 2020, if it leaves the EU without a deal.

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