



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to Department of Justice
Consultation on Measures to Strengthen the
Response to Modern Slavery and Human
Trafficking**

27 May 2022

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Summary of Recommendations

The NI Human Rights Commission:

- 2.11 recommends the Department of Justice ensure that Protocol Article 2 is built into and considered actively during the development and implementation of all legislation and/or policy.**
- 3.11 The NIHRC recommends that the Department of Justice introduces Slavery and Trafficking Risk Orders and that these are promptly provided for by legislation.**
- 3.15 recommends that the Department of Justice, in partnership with the Police Service of NI, develops a comprehensive and sufficiently-resourced specialised training package on the use, management and monitoring of Slavery and Trafficking Risk Orders. This training should be mandatory for everyone involved in fulfilling these roles. The training should also be kept under review and updated as necessary.**
- 3.23 recommends that the Department of Justice develops robust statutory guidance to support the use of Slavery and Trafficking Risk Orders in NI. In line with international human rights standards and Protocol Article 2, this guidance should require individual assessments of victims to be conducted for the purposes of identifying the necessity and proportionality of a risk order.**
- 3.24 recommends that the Department of Justice ensures that any statutory guidance on Slavery and Trafficking Risk Orders explicitly incorporate the best interests of the child and take account of children's particular vulnerability to human trafficking and child sexual exploitation.**
- 3.29 recommends the Department of Justice consider how it intends to process personal data associated with Slavery and Trafficking Risk Orders and Prevention Orders and ensure that this is compliant with Protocol Article 2 and EU General Data Protection Regulations.**
- 4.14 recommends that the Department of Justice requires compulsory specialised training and guidance to all relevant staff. Relevant staff includes at least those with a duty to notify. Training should**

be trauma-informed and victim-centred, to ensure victims are accurately identified and supported.

- 4.18 advises the Department of Justice to give close consideration to relevant EU Directives and Court of Justice of the EU jurisprudence in its development and implementation of regulations relating to the Duty to Notify.**
- 4.19 advises that training for public authorities on the Duty to Notify should identify and guide the importance of anonymity for potential victims.**
- 5.3 recommends that the Department of Justice ensures any use of Slavery and Trafficking Risk Orders is recorded, monitored and thereafter evaluated by the Police Service of NI. Any steps required following evaluation must be taken immediately. This process should involve meaningful engagement with representative organisations, victims or potential victims that are protected by the risk orders, and individuals that are subject to the risk orders.**
- 5.6 recommends that the Department of Justice ensures that implementation of the duty to notify is subject to robust and frequent monitoring and evaluation. This process should consider whether victims are being identified and supported, oversee the adequacy and frequency of training delivered to public authorities and ensure remedial steps are implemented. This should be subject to annual reporting alongside commitments in the NI Modern Slavery and Human Trafficking Strategy.**
- 6.5 seeks further information from the Department of Justice on its proposal for additional search powers under section 10 of the Police and Criminal Evidence (NI) Order 1989, which should include:**
- analysis of current statutory powers and comparison with other jurisdictions;**
 - proposed safeguards to ensure the power is not used arbitrarily; and**
 - a detailed human rights impact assessment, with particular regard for Article 8 ECHR.**

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland (NI) Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. The NIHRC is also mandated, under section 78A(1) to monitor the implementation of Article 2(1) of the Protocol on Ireland/NI of the European Union (EU) Withdrawal Agreement (Protocol Article 2), to ensure there is no diminution of rights protected in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK's withdrawal from the EU. In accordance with these functions, the following statutory advice is submitted to the Department of Justice in response to its consultation on measures to strengthen the response to modern slavery and human trafficking.
- 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). The relevant regional and international treaties in this context include:
- International Labour Organisation Forced Labour Convention (No 29);¹
 - European Convention on Human Rights (ECHR);²
 - UN International Covenant on Civil and Political Rights (UN ICCPR);³
 - UN Convention on Elimination of Discrimination against Women (UN CEDAW);⁴
 - UN Convention against Torture (UN CAT);⁵
 - UN Convention on the Rights of the Child (UN CRC);⁶
 - UN Convention against Transnational Organised Crime;⁷
 - UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (UN Palermo Protocol);⁸

¹ Ratified by the UK in 1931.

² Ratified by the UK 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights (ECtHR).

³ Ratified by the UK 1966.

⁴ Ratified by the UK 1986.

⁵ Ratified by the UK 1988.

⁶ Ratified by the UK 1989.

⁷ Ratified by the UK in 2006.

⁸ Ratified by the UK in 2006.

- CoE Convention on Action against Trafficking in Human Beings;⁹
- Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (UN CRC Optional Protocol);¹⁰
- CoE Convention on the Protection of Children and Young People against Sexual Exploitation and Sexual Abuse (CoE Lanzarote Convention);¹¹
- EU Directive on Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime;¹²
- EU Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims;¹³ and
- EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography.¹⁴

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

- Office of UN High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking;¹⁵
- UN CEDAW Committee's Concluding Observations 2019;¹⁶ and
- UN CAT Committee's Concluding Observations 2019.¹⁷

1.4 The NIHRC further advises on the UK Government's commitment (in Protocol Article 2) to ensure there is no diminution of rights, safeguards and equality of opportunity in the relevant section of the Belfast (Good Friday) Agreement as a result of the UK's withdrawal from the EU. This is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. In addition, section 6 of the

⁹ Ratified by the UK in 2007.

¹⁰ Ratified by the UK in 2009.

¹¹ Ratified by the UK in 2018.

¹² EU Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

¹³ EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims.

¹⁴ EU Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

¹⁵ E/2002/68/Add.1, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council: Addendum', 20 May 2002.

¹⁶ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019.

¹⁷ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019.

NI Act 1998 prohibits the NI Assembly from making any law which is incompatible with Protocol Article 2. Section 24 of the 1998 Act also requires all acts of NI Ministers and NI Departments to be compatible with Protocol Article 2. The relevant EU measures in this context include:

- EU Victims' Directive;¹⁸
- EU Trafficking Directive;¹⁹
- EU Child Sexual Exploitation Directive;²⁰
- EU General Data Protection Regulation.²¹

2.0 Protocol Article 2

- 2.1 The UK has incorporated the Withdrawal Agreement, including the Protocol, into domestic law through the EU (Withdrawal Agreement) Act 2020.²² Section 7A EU (Withdrawal) Act 2018 provides that all rights, obligations and remedies from Withdrawal Agreement, including Protocol Article 2, are recognised and available in domestic law.
- 2.2 Protocol Article 2 requires the UK Government to ensure there is no diminution of rights, safeguards and equality of opportunity, as set out in the relevant chapter of the Belfast (Good Friday) Agreement 1998, as a result of the UK's withdrawal from the EU. That chapter includes a commitment to the "civil rights and religious liberties of everyone in the community" and a non-exhaustive list of rights. In addition to a number of rights which are "affirmed in particular", the relevant chapter specifically recognises the right of victims to remember, as well as to contribute to, a changed society.²³
- 2.3 Protocol Article 2 includes a commitment to 'keep pace' with EU law developments falling within the six EU Equality Directives listed in Annex 1

¹⁸ Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012

¹⁹ Directive 2011/36/EU, 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.

²⁰ Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, 13 December 2011.

²¹ Regulation (EU) 2016/679, 'Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data on the free movement of such data, and repealing Directive 95/46/EC', 27 April 2016.

²² Sections 6(2)(ca) and 24(1)(aa) of the NI Act 1998 limit the competence of the NI Assembly and Executive and proscribe making any law which is incompatible with Protocol Article 2.

²³ Belfast (Good Friday) Agreement 1998.

to the Protocol which improve the minimum levels of protection available after 1 January 2021, including relevant case law of the Court of Justice of the EU.²⁴ That means that if the minimum standards in the Annex 1 Equality Directives are amended or replaced, the UK Government and NI Executive, including the Department of Justice must ensure that domestic legislation in NI reflects any substantive enhancements in relevant protections.²⁵

- 2.4 In addition to the six Annex 1 Equality Directives, there is other relevant EU law that underpins rights set out in the relevant chapter of the Belfast (Good Friday) Agreement. For these standards, the commitment to ensure 'no diminution' is measured by the relevant EU standards on 31 December 2020. The UK Government has identified that this includes, but is not limited to, the EU Victims' Directive. The NIHRC has identified other pieces of EU law relevant to victims' rights, including the EU Trafficking Directive and the Child Sexual Exploitation Directive. The UK Government has committed to ensuring that there will be no diminution of protections as were contained in relevant EU law on 31 December 2020.²⁶

EU Victims' Directive

- 2.5 The EU Victims' Directive reinforces existing national laws and EU minimum standards on victims' rights. The UK Government has accepted that the EU Victims' Directive falls within the scope of Protocol Article 2.²⁷ However, the UK Government considers that it falls within the scope of Protocol Article 2 only insofar as and to the extent that it relates to victims of conflict related violence.²⁸ The UK Government's interpretation limits victims in the Belfast (Good Friday) Agreement to "victims of conflict-related violence in NI". That interpretation means that only victims of the

²⁴ Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010.; Directive 79/7/EEC, 'EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978.

²⁵ Article 13, The Ireland/NI Protocol to the EU/UK Withdrawal Agreement 2020.

²⁶ Article 13, The Ireland/NI Protocol to the EU/UK Withdrawal Agreement 2020.

²⁷ UK Government, 'Explainer: UK Government commitment to no diminution of rights, safeguards and equality of opportunity in NI', (NIO, 2020) at 13.

²⁸ Letter from the Home Office to the House of Lords sub-Committee on the Ireland/NI Protocol, 1 April 2022.

conflict in Northern Ireland will be included. The NIHRC disagrees with that interpretation and also rejects as a matter of principle any distinction being drawn between victims. Rather, the NIHRC believes the EU Victims' Directive applies to all victims in NI within the scope of Protocol Article 2. In addition, the NIHRC has identified other ways in which victims' rights are within scope, for example these Directives underpin ECHR Article 4 and relate to the equality commitments in the relevant chapter of the Belfast (Good Friday) Agreement.

Trafficked persons and the scope of Protocol Article 2

- 2.6 The EU Trafficking Directive contains a number of provisions which are aimed at criminalisation of trafficking offences,²⁹ non-prosecution and non-application of penalties to victims,³⁰ investigation and prosecution of offences³¹ and supporting victims, including child victims, of trafficking.³² The relevant chapter of the Belfast (Good Friday) Agreement 1998 protects the rights of victims "to remember as well as to contribute to a changed society". The EU Trafficking Directive protects a subset of 'victims' in NI, therefore the EU Trafficking Directive also falls within the scope of Protocol Article 2.
- 2.7 The Belfast (Good Friday) Agreement provides that the "British Government will complete incorporation into NI law of the ECHR, with direct access to the courts and remedies for breach of the convention, including the power for the courts to overrule Assembly legislation on grounds of inconsistency".³³ This incorporation happened under the Human Rights Act 1998. The UK Government has recognised that key rights and equality provisions within the Belfast (Good Friday) Agreement are supported by the ECHR and repeats its commitment to the ECHR and to protecting and championing human rights.³⁴ Therefore, the NIHRC has adopted the working assumption that the non-diminution commitment in

²⁹ Articles 2-7, Directive 2011/36/EU, 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.

³⁰ Article 8, Directive 2011/36/EU, 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.

³¹ Articles 9-10, Directive 2011/36/EU, 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.

³² Articles 11-17, Directive 2011/36/EU, 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.

³³ Belfast (Good Friday) Agreement 1998, at Rights, Safeguards and Equality of Opportunity.

³⁴ NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in NI- What does it Mean and How will it be Implemented?' (UKGov, 2020), at para 3.

Protocol Article 2 encompasses the full range of rights set out in the ECHR, to the extent that they are underpinned by EU law. Article 4 of the ECHR on the right to be free from slavery, servitude, forced or compulsory labour, is relevant to trafficked persons. Should the UK Government or NI Executive seek to depart from the standards of Article 4 ECHR, Protocol Article 2 is relevant insofar as that right is also protected by the EU Trafficking Directive.

- 2.8 Additionally, the Belfast (Good Friday) Agreement chapter on rights, safeguards and equality of opportunity affirms a commitment to “civil rights and religious liberties of everyone in the community”, affirming in particular a list of rights; “affirm in particular” suggests that this is not an exhaustive list of rights.³⁵ This list of rights includes the right to equality of opportunity. Article 1 of the EU Trafficking Directive notes that the Directive “introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof”, with Recital 3 identifying that men and women are often trafficked for different reasons, and therefore “assistance and support measures should be gender specific where appropriate”.³⁶ The EU Trafficking Directive arguably comes under the scope of Protocol Article 2 under the right to equality of opportunity.
- 2.9 The NIHRC has published research, on the EU Trafficking Directive and Protocol Article 2, which identifies and further explains the reasoning for the Directive falling within scope of Protocol Article 2.³⁷

EU Child Sexual Exploitation Directive

- 2.10 The rights of child victims of crime fall under the rights of victims to remember and contribute to a changed society under the Belfast (Good Friday) Agreement.³⁸ The EU Child Sexual Exploitation Directive contains a number of protections for child victims of sexual abuse and sexual

³⁵ Belfast (Good Friday) Agreement 1998 – Rights, Safeguards and Equality of Opportunity.

³⁶ Recital 3 and Article 1, Directive 2011/36/EU, ‘Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

³⁷ Alison Harvey, ‘Human Trafficking and Article 2 of the Ireland/NI Protocol’ (NIHRC, 2022).

³⁸ Belfast (Good Friday) Agreement 1998, Rights Safeguards and Equality of Opportunity.

exploitation,³⁹ as well as placing positive obligations on States to prevent and investigate such crimes.⁴⁰ The NIHRC considers the EU Child Sexual Exploitation Directive as falling within scope of Protocol Article 2 and, therefore, is engaged by the potential provisions contained in this consultation.

- 2.11 **The NIHRC recommends the Department of Justice ensure that Protocol Article 2 is built into and considered actively during the development and implementation of all legislation and/or policy.**

3.0 Slavery and Trafficking Risk Orders

- 3.1 The Department proposes amending the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 to make provision for Slavery Trafficking Risk Orders. It proposes that risk orders are an option available to the Police Service of NI, the Public Prosecution Service or the NI Courts and Tribunals Service for use against people who have not been convicted, but are posing a continuing risk of committing modern slavery and human trafficking in NI. A risk order entitles the NI Magistrates Court to prohibit the defendant from doing anything described in it for a specified period.
- 3.2 The right to freedom from slavery, human trafficking and other forms of labour and from sexual exploitation is protected in domestic and international human rights law.⁴¹ The European Court of Human Rights (ECtHR) has held that trafficking in human beings falls within the scope of Article 4 of the ECHR (prohibition of slavery and forced labour),⁴² as it threatens the human dignity and fundamental freedoms of its victims and, as such, cannot be considered compatible with a democratic society and the values expounded in the ECHR.⁴³ The right to be protected against slavery and servitude, as provided for by Article 4(1) of the ECHR is absolute and cannot be interfered with under any circumstances.

³⁹ Articles 18-20, Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, 13 December 2011.

⁴⁰ Articles 1-17, Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, 13 December 2011.

⁴¹ Article 8, UN ICCPR; Article 4, ECHR.

⁴² *Siliadin v France* (2005) ECHR 545,; *Rantsev v Cyprus and Russia* (2010) ECHR 22; *SM v Croatia* (2008) ECHR 633.

⁴³ *Rantsev v Cyprus and Russia* (2010) ECHR 22, at para 284.

- 3.3 Article 4 requires that States effectively penalise and prosecute any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour. Accordingly, provisions of the EU Trafficking Directive, which underpin Article 4 of the ECHR, create specific provisions to prosecute offences of human trafficking (Articles 2-10), while providing provisions to prevent human trafficking (Articles 18-20).⁴⁴ In addition the EU Trafficking Directive includes specific provisions which protect the rights of victims and potential victims. Therefore, to the extent that the obligations falling within Article 4, ECHR are underpinned by the EU Trafficking Directive, they fall within scope of Protocol Article 2.
- 3.4 In *Rantsev v Cyprus and Russia* (2010) the ECtHR underlined that the UN Palermo Protocol and the CoE Convention on Action against Trafficking in Human Beings require a comprehensive approach to combat trafficking, which includes measures to prevent trafficking and to protect victims. Therefore, in addition to criminal law measures to deter and punish traffickers, there must be a spectrum of adequate safeguards in domestic legislation. They must be practical and effective.⁴⁵
- 3.5 These positive obligations under Article 4 include the duty to put in place a legislative and administrative framework, the duty to take operational measures, and a procedural obligation to investigate.⁴⁶ The requirements of the procedural limb under Article 4 are informed by the converging principles under Articles 2 and 3 of the ECHR, requiring public authorities to take proactive, reasonable steps when there is a real and imminent risk to life/of torture or ill treatment.⁴⁷
- 3.6 Modern slavery and human trafficking also pose a threat to life, equate to torture or ill-treatment, or compromise an individual's physical or moral integrity. Article 2 of the ECHR requires the State to take reasonable steps to prevent intentional and unintentional deprivation of life within their jurisdictions.⁴⁸ They also must take reasonable steps to counteract a known real and imminent risk to life.⁴⁹ Article 3 of the ECHR requires the

⁴⁴ Articles 2-10 and 18-20, Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

⁴⁵ *Rantsev v Cyprus and Russia* (2010) ECHR 22, at para 284.

⁴⁶ ECtHR, 'Guide on Article 4 of the European Convention on Human Rights: Prohibition of Slavery and Forced Labour' (CoE, 2021), at para 54.

⁴⁷ *SM v Croatia* (2008) ECHR 633.

⁴⁸ *Öneryıldız v Turkey* (2004) ECHR 657; *LCB v UK* (1999) 27 EHRR 212, at para 36.

⁴⁹ *Burke v UK* (2006) ECHR 1212, at para 1.

State to take steps to eliminate torture, inhuman or degrading treatment or punishment under any circumstances. The right to respect for private life under Article 8 of the ECHR requires the State to put measures in place to protect a person's physical and moral integrity on the basis that "a person's body concerns the most intimate aspect of private life".⁵⁰

- 3.7 The UN Office of the High Commissioner for Human Rights has provided Recommended Principles and Guidelines on Human Rights and Human Trafficking. Guidelines 4 and 5 set out minimum requirements for ensuring an adequate legal framework and law enforcement response to human trafficking. These include requirements for ensuring the protection of victims is built into anti-trafficking legislation⁵¹ and for the provision of adequate investigative powers and techniques to law enforcement for the effective investigation and prosecution of suspected traffickers.⁵²
- 3.8 In its response to the Department of Justice's 2014 consultation, the NIHRC requested clarification on and sought assurance that the Slavery Trafficking Risk Orders could not become a vehicle by which the criminal law and its inherent protections for the defendant are circumvented.⁵³ Therefore, the subsequent inclusion of practical examples from other jurisdictions in section 3 of the current consultation is welcomed.
- 3.9 The NIHRC acknowledges that Slavery Trafficking Risk Orders (or equivalent) have since become a key feature of criminal justice approaches to tackling modern slavery and human trafficking in Scotland, England and Wales. Drawing from this, recent recommendations from the Criminal Justice Inspectorate for NI⁵⁴ and the Independent Anti-Slavery Commissioner⁵⁵ support introducing risk orders to NI.
- 3.10 Therefore, the NIHRC welcomes the introduction of Slavery Trafficking Risk

⁵⁰ *YF v Turkey* (2003) ECHR 391, at para 33.

⁵¹ E/2002/68/Add.1, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council: Addendum', 20 May 2002, at Guideline 4(6).

⁵² E/2002/68/Add.1, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council: Addendum' 20 May 2002, at Guideline 5(3).

⁵³ NI Human Rights Commission, 'Response of the NI Human Rights Commission to the Department of Justice Consultation on 'Human Trafficking and Slavery: Strengthening NI's response' (NIHRC, 2014), at paras 38-43.

⁵⁴ Criminal Justice Inspectorate for NI, 'An Inspection of how the Criminal Justice System Deals with Modern Slavery and Human Trafficking in NI' (CJINI, 2020).

⁵⁵ Independent Anti-Slavery Commissioner, 'Independent Anti-Slavery Commissioner Annual Report 2020-2021: Presented to Parliament Pursuant to Section 42 (10) (b) of the Modern Slavery Act 2015' (IASC, 2021).

Orders as an additional tool to help the Police Service NI protect victims, while continuing to combat offences or potential offences from occurring. It is particularly welcomed that Home Office Guidance advises that such orders are not a substitution for prosecution and that the Independent Anti-Slavery Commissioner States that “[Slavery Trafficking Risk Orders] can be particularly helpful when investigations are lengthy or a trial date is set for 12-18 months ahead and make it possible to protect victims prior to prosecution”.⁵⁶

3.11 The NIHRC recommends that the Department of Justice introduces Slavery and Trafficking Risk Orders and that these are promptly provided for by legislation.

Training and guidance

3.12 Article 18(3) of the EU Trafficking Directive requires States “to promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.”⁵⁷

3.13 Article 10 of the UN Palermo Protocol requires States to provide or strengthen training for law enforcement and other relevant officials in the prevention of trafficking in persons. It stipulates that the training should take into account the need to consider human rights and child- and gender-sensitive issues and encourage cooperation with relevant organisations and civil society.

3.14 The Independent Anti-Slavery Commissioner reviewed the use of Slavery and Trafficking Risk Orders and Slavery and Trafficking Prevention Orders within the UK after concerns were raised about the failure of law enforcement to effectively exploit their full value.⁵⁸ The review highlighted the practical importance of guidance and training to increase awareness and expertise within the police service.

3.15 The NIHRC recommends that the Department of Justice, in

⁵⁶ Independent Anti-Slavery Commissioner, ‘Independent Anti-Slavery Commissioner Annual Report 2020-2021: Presented to Parliament Pursuant to Section 42 (10) (b) of the Modern Slavery Act 2015’ (IASC, 2021), at 2.3.8.

⁵⁷ Article 18(3), Directive 2011/36/EU, ‘Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

⁵⁸ Independent Anti-Slavery Commissioner, ‘The Use of Modern Slavery Risk and Prevention Orders’ (IASC, 2022).

partnership with the Police Service of NI, develops a comprehensive and sufficiently-resourced specialised training package on the use, management and monitoring of Slavery and Trafficking Risk Orders. This training should be mandatory for everyone involved in fulfilling these roles. The training should also be kept under review and updated as necessary.

- 3.16 Article 22 of the EU Victims' Directive provides that States should make individual assessments of victims to identify specific protection needs. Article 22(3) of the EU Victims' Directive requires States to pay particular attention to the needs to victims who have "suffered considerable harm due to the severity of the crime", including victims of human trafficking.⁵⁹
- 3.17 Articles 13-15 of the EU Trafficking Directive provides for general provisions on assistance, support and protection measures for child victims of human trafficking.⁶⁰ Article 1(2) of the EU Victims' Directive requires, where the victim is a child, the best interests of the child principle shall be a primary consideration, with Article 24 providing for protection of child victims during criminal proceedings. The EU Child Sexual Exploitation Directive also identifies the need to take account of the best interests of the child when providing assistance, support and protection to child victims of sexual abuse and exploitation.⁶¹
- 3.18 Specific international obligations are placed on States in the context of combating human trafficking and sexual exploitation of children. Articles 34 and 35 of the UN CRC require States protect children from all forms of sexual exploitation and abuse and take all possible measures to ensure children are not abducted, sold or trafficked. The provisions in the UN CRC are augmented by the UN Optional Protocol on the sale of children, child prostitution and child pornography.⁶² In addition, the CoE Lanzarote Convention imposes obligations on the UK Government and NI Executive to undertake preventative measures to combat child sexual exploitation.

⁵⁹ Article 22(3), Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

⁶⁰ Article 19, Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

⁶¹ Article 18, Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, 13 December 2011; see also Recitals 2, 6 and 30.

⁶² A/RES/54/263 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' 25 May 2000.

- 3.19 While it is a matter for a court to determine on the basis of evidence whether a Slavery Trafficking Risk Order is necessary, rights-based guidance will be crucial to ensure that prohibitions are tailored to the particular case and will in fact prevent the specific harm, taking into account the victim's own circumstances and vulnerabilities. .
- 3.20 It cannot be ignored that the restrictions or prohibitions will also have a significant impact on the defendant's private and family life under Article 8 ECHR. However, (unlike the non-derogable right to freedom from slavery and servitude under Article 4(1)), Article 8 of the ECHR is not an absolute right; it can be interfered with so long as it is lawful, necessary and proportionate to do so.
- 3.21 Article 8(2) of the ECHR and its partnering jurisprudence, provide guidance on the type of situations when an individual's Article 8 rights could be interfered with. The ECtHR has stated that:
- an interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient."⁶³
- 3.22 Article 8(2) specifies a list of legitimate aims which include public safety and the protection of the rights and freedoms of others. It is best practice that each application contains clear and sufficient justification for the conditions required to protect a victim or potential victim(s) based on the specific circumstances presented.
- 3.23 **The NIHRC recommends that the Department of Justice develops robust statutory guidance to support the use of Slavery and Trafficking Risk Orders in NI. In line with international human rights standards and Protocol Article 2, this guidance should require individual assessments of victims to be conducted for the purposes of identifying the necessity and proportionality of a risk order.**

⁶³ Fernández Martínez v. Spain (2014) ECHR 851, at para 124.

- 3.24 **The NIHRC recommends that the Department of Justice ensures that any statutory guidance on Slavery and Trafficking Risk Orders explicitly incorporate the best interests of the child and take account of children’s particular vulnerability to human trafficking and child sexual exploitation.**

Protocol Article 2 and EU General Data Protection Regulations

- 3.25 The Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement refers to the “civil rights... of everyone in the community.”⁶⁴ The chapter then affirms a list of rights *in particular*, with the phrase “in particular” suggesting that this is not intended as an exhaustive list.
- 3.26 Under the Belfast (Good Friday) Agreement, the UK Government committed to the full incorporation of the ECHR into NI law. As identified above, the NIHRC has adopted the working assumption that the non-diminution commitment in Protocol Article 2 encompasses the full range of rights set out in the ECHR, to the extent that they are underpinned by EU law. ECtHR has recognised that the protection of personal data is of fundamental importance to a person’s enjoyment of his or her right to respect for private and family life and engages Article 8 of the ECHR.⁶⁵ It is well established that EU law recognises the right to privacy and data protection as a fundamental right:

protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the EU and Article 16(1) of the Treaty on the Functioning of the European Union provide that everyone has the right to the protection of personal data concerning him or her.⁶⁶

- 3.27 Insofar as the protection of the right to respect for private and family life in Article 8 ECHR is underpinned by data protection rights in EU law, including EU General Data Protection Regulations, the NIHRC considers

⁶⁴ Belfast (Good Friday) Agreement 1998 at Rights, Safeguards and Equality of Opportunity.

⁶⁵ *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* (2017) ECHR 607, at para 137.

⁶⁶ Article 1, Regulation (EU) 2016/679, ‘Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)’ 27 April 2016.

data protection as falling within scope of Protocol Article 2. Protection of personal data is also identified under Recital 30 of the EU Trafficking Directive⁶⁷ and Recital 68 of the EU Victims' Directive.⁶⁸

- 3.28 So far, the UK has not diverged significantly from EU General Data Protection Regulations but may do so in the future. New powers to impose Slavery and Trafficking Risk Orders and Prevention Orders will certainly require the processing of data. The NIHRC reminds the Department that any data processing may still be subject to EU General Data Protection Regulations and diverging from these standards may engage Protocol Article 2.
- 3.29 **The NIHRC recommends the Department of Justice consider how it intends to process personal data associated with Slavery and Trafficking Risk Orders and Prevention Orders and ensure that this is compliant with Protocol Article 2 and EU General Data Protection Regulations.**

4.0 Duty to Notify

- 4.1 The Department proposes commencing the duty to notify provisions of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 that would require specified public authorities in NI to notify the Single Competent Authority if they have any reason to believe that a person may be a victim of modern slavery and human trafficking. The duty is proposed as a way of enhancing the collation and processing of data about trafficking activity in NI and enable more targeted enforcement activity and provision of support services.
- 4.2 At present, the UK National Referral Mechanism is the only system which is collecting and processing data about trafficking and exploitation in NI. However, it is widely accepted that it does not provide the most accurate assessment of the scale and extent of trafficking, due to the fact a victim must consent to a referral being made and the many reasons why they

⁶⁷ Recital 33, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

⁶⁸ Recital 68, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

may be hesitant to engage in the process.⁶⁹ The Criminal Justice Inspectorate for NI advise that:

victims [are] among the most vulnerable people in society and could be hesitant to seek help due to fear of, and control by, their traffickers. Victims may also be reluctant to report abuses because of their immigration status, fear of being returned to their country of origin, fear of the police and authorities in Great Britain and NI based on their past experiences in other countries, or may consider the current conditions they worked in as a lesser evil than those in the country which they left.⁷⁰

- 4.3 Article 10(2) of the CoE Convention on Action against Trafficking in Human Beings obliges States to "adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations".
- 4.4 In addition, Article 9 of the EU Trafficking Directive requires States to positively investigate and prosecute offences of human trafficking, and to ensure that prosecution is not contingent on reporting or accusation by the victim.⁷¹ Articles 19 and 20 of the EU Trafficking Directive require States to set up appropriate national mechanisms to, among other things, gather and report relevant statistics on human trafficking.⁷²
- 4.5 The duty to notify provisions would be of significant value to law enforcement agencies in identifying victims and targeting perpetrators in NI. Despite that, it is likely that additional safeguards will be required to ensure the duty is applied and monitored in accordance with international human rights standards. Good governance practices are examined in more detail below, including training and guidance, victim-centred safety measures, and monitoring.

⁶⁹ Criminal Justice Inspectorate for NI, 'An Inspection of how the Criminal Justice System Deals with Modern Slavery and Human Trafficking in NI' (CJINI, 2020) at para 2.35; GRETA(2021)12, 'CoE Group of Experts on Action against Trafficking in Human Beings - Evaluation Report: UK', 20 October 2021, at para 87; 'Potential upsurge in modern slavery in NI', *ITV News*, 18 October 2018.

⁷⁰ Criminal Justice Inspectorate for NI, 'An Inspection of how the Criminal Justice System Deals with Modern Slavery and Human Trafficking in NI' (CJINI, 2020), at para 1.2

⁷¹ Article 9, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

⁷² Articles 19 and 20, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

Training and guidance

- 4.6 As set out in full above, Article 18(3) of the EU Trafficking Directive requires States to promote regular training for officials likely to come into contact with victims of human trafficking.⁷³ Article 12 of the EU Trafficking Directive provides that victims of human trafficking should be protected from repeat or secondary victimisation during criminal investigations and proceedings.⁷⁴
- 4.7 Recital 57 of the EU Victims' Directive elaborates that as victims of human trafficking tend to experience higher levels of secondary or repeat victimisation, particular attention must be paid when assessing risk including risk of victimisation, intimidation and retaliation. It also stipulates the importance of special protection measures being put in place if a risk is identified.
- 4.8 As above, Article 10 of the UN Palermo Protocol requires States to provide training to law enforcement and other relevant officials in contact with potential victims of human trafficking to increase identification of potential instances of trafficking in human beings. In addition, Guideline 2 of the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking also stipulates that States are "under an obligation to ensure that such identification can and does take place." Some of the measures recommended for effective identification of victims include development of manuals and guidelines for law enforcement agencies which come in contact with potential or actual victims, their training, and facilitation of law enforcement co-operation.
- 4.9 Specific international standards exist in relation to women given their particular vulnerability to trafficking. Article 6 of the UN CEDAW requires States Parties to take measures to suppress trafficking, exploitation and prostitution of women and the UN CEDAW Committee has made specific comments on the need to adopt a gender-sensitive approach to properly

⁷³ Article 18(3), Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

⁷⁴ Article 12, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; see also Recital 20.

identifying victims of human trafficking among women asylum seekers and access to asylum procedures without discrimination.⁷⁵

- 4.10 In 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive “Continue to improve the National Referral Mechanism, including by implementing the reform package announced in October 2017, to ensure that victims of trafficking are properly identified and adequately protected and supported”.⁷⁶
- 4.11 Through its monitoring, the UN Committee against Torture also recognises the many links between human trafficking and torture and cruel, inhuman or degrading treatment. In 2019, the Committee recommended that the UK Government and NI Executive:
- improve the training of law enforcement officers, prison personnel and other first responders to include statutory training into the identification of potential victims of human trafficking and modern slavery, and continue developing specialised training programmes for support workers and those providing foster care.⁷⁷
- 4.12 Therefore, it is important that first responders receive compulsory and specialised training to ensure a consistent and effective approach to the identification of victims. Modern slavery and human trafficking are highly complex and covert crimes that often involve a wide range of abuses and other criminal offences. It is also important to consider that many victims of modern slavery and human trafficking are deeply traumatised and vulnerable. Consequently, it could be very difficult for them to come forward and speak to authorities openly about their experiences.⁷⁸
- 4.13 First responders and anyone involved in a victim’s journey should be aware of the potential impact that their interactions can have. It is critical that their interactions do not cause any further harm. Training must be trauma-informed and victim-centred. Such training requires expertise and experience in its development. There are providers of such training with

⁷⁵ CEDAW/C/GC/32, ‘UN CEDAW Committee General Recommendation No 32: Gender-related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women’, 5 November 2014, paras 44-46.

⁷⁶ CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 33.

⁷⁷ CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 59.

⁷⁸ GRETA(2021)12, ‘CoE Group of Experts on Action against Trafficking in Human Beings - Evaluation Report: UK’, 20 October 2021, at para 87.

the necessary experience to assist.

- 4.14 **The NIHRC recommends that the Department of Justice requires compulsory specialised training and guidance to all relevant staff. Relevant staff includes at least those with a duty to notify. Training should be trauma-informed and victim-centred, to ensure victims are accurately identified and supported.**

Anonymity

- 4.15 Article 11 of the CoE Convention on Action against Trafficking in Human Beings explicitly requires States to protect the private life and identity of trafficking victims. Section 13(4)(a) and (b) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 similarly requires that regulations provide a notification relating to a person 18 or older must not contain information that identifies them or could lead to their identification. Consideration should be given to the collection of any personal data to ensure it is compliant with EU General Data Protection Regulations.
- 4.16 Ensuring anonymity is important in the context of the duty to notify in the Nationality and Borders Act 2022. Section 58 of the 2022 Act provides the Secretary of State with the new power to issue Trafficking Information Notices to potential victims which the victim will be required to respond to by a specified date. Section 59 of the 2022 Act provides that failure to comply with a notice by the specified date must be considered as a factor in damaging a potential victim's credibility. In a joint briefing paper on the Bill, the NIHRC and the Equality Commission for NI stated that these measures potentially breach Articles 8, 9 and 11 of the EU Trafficking Directive and also, therefore, Protocol Article 2.⁷⁹
- 4.17 Additionally, victims of modern slavery may fail to identify themselves as victims immediately and there can be numerous reasons for not doing so,

⁷⁹ NI Human Rights Commission and Equality Commission NI, 'Joint NIHRC/ECNI briefing paper on the modern slavery and human trafficking and Electronic Travel Authorisation provisions in the Nationality and Borders Bill', (NIHRC and ECNI, 2022), at 9; Article 8 of the EU Trafficking Directive requires that Member States are entitled not to prosecute victims for crimes they were compelled to commit, article 9 requires that States positively identify victims of human trafficking and article 11 requires States to provide assistance and support as soon as competent authorities have a reasonable grounds decision.

including a failure to recognise their situation as exploitation.⁸⁰ Article 11(5) of the EU Trafficking Directive identifies that assistance and support will be provided to victims on a “consensual and informed basis”.⁸¹ There is a risk that Trafficking Information Notices could weaken the principle of consensual and informed support. Therefore, it is important to ensure anonymity when developing and implementing regulations on the duty to notify.

4.18 The NIHRC advises the Department of Justice to give close consideration to relevant EU Directives and Court of Justice of the EU jurisprudence in its development and implementation of regulations relating to the Duty to Notify.

4.19 The NIHRC advises that training for public authorities on the Duty to Notify should identify and guide the importance of anonymity for potential victims.

5.0 Monitoring

5.1 Guideline 3 of the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking highlights that effective and realistic anti-trafficking strategies must be based on accurate and current information, experience, and analysis and that all parties involved in developing and implementing these strategies maintain a clear understanding of the issues. It therefore recommends:

Monitoring and evaluating the relationship between the intention of anti-trafficking laws, policies and interventions, and their real impact. In particular, ensuring that distinctions are made between measures which actually reduce trafficking and measures which may have the effect of transferring the problem from one place or group to another.⁸²

5.2 The Independent Anti-Slavery Commissioner’s recent review of the use Slavery and Trafficking Risk Orders highlighted that good management

⁸¹ Article 11(5) of Directive 2011/36/EU ‘Council Directive on preventing and combating trafficking in human beings and protecting its victims’, 5 April 2011.

⁸² E/2002/68/Add.1 ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council: Addendum’, 20 May 2002, at Guideline 3(5).

practices, such as the development of a system to record and monitor orders, will ensure that perpetrators are abiding by the conditions imposed.⁸³

5.3 The NIHRC recommends that the Department of Justice ensures any use of Slavery and Trafficking Risk Orders is recorded, monitored and thereafter evaluated by the Police Service of NI. Any steps required following evaluation must be taken immediately. This process should involve meaningful engagement with representative organisations, victims or potential victims that are protected by the risk orders, and individuals that are subject to the risk orders.

5.4 The CoE Convention on Action Against Trafficking set up a specific monitoring mechanism to supervise its implementation, consisting of the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of Parties. GRETA published its third evaluation report of the UK in October 2021.⁸⁴ The report highlighted apparent concerns with the oversight and management of both the National Referral Mechanism and the Duty to Notify referral process, particularly in respect of the delivery of training.⁸⁵

5.5 Section 12 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 requires the Department of Justice to publish an annual Modern Slavery and Human Trafficking Strategy. Section 12(4) specifies commitments to be included in the strategy, including arrangements for co-operation between relevant organisations and victims, the provision of training and equipment of those involved in investigating/prosecuting offences or dealing with victims, and awareness-raising initiatives for the rights and entitlements of victims.

5.6 The NIHRC recommends that the Department of Justice ensures that implementation of the duty to notify is subject to robust and frequent monitoring and evaluation. This process should consider

⁸³ Independent Anti-Slavery Commissioner, 'The Use of Modern Slavery Risk and Prevention Orders' (IASC, 2022).

⁸⁴ GRETA(2021)12, The Council of Europe Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report: United Kingdom' 20 October 2021.

⁸⁵ GRETA(2021)12, The Council of Europe Group of Experts on Action against Trafficking in Human Beings, 'Evaluation Report: United Kingdom' 20 October 2021, at para 255.

whether victims are being identified and supported, oversee the adequacy and frequency of training delivered to public authorities and ensure remedial steps are implemented. This should be subject to annual reporting alongside commitments in the NI Modern Slavery and Human Trafficking Strategy.

6.0 Additional Powers to Search a Person

- 6.1 A power to search persons pursuant to a warrant under section 10 of the Police and Criminal Evidence (NI) Order 1989 is a valuable investigatory tool in the context of modern slavery and human trafficking offences. The EU Trafficking Directive requires States to “take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases” are available in the investigation and prosecution of trafficking offences.⁸⁶
- 6.2 However, search warrants are one of the most intrusive powers available to the police and a direct interference with an individual’s right to respect for private and family life under Article 8 ECHR. Article 8 of the ECHR recognises that “everyone has the right to respect for his private and family life, his home and his correspondence”. This is not an absolute right and can be limited. Article 8(2) of the ECHR permits interference with this right in the interests of public safety or for the protection of the rights and freedoms of others, provided that such interference is in accordance with law, in pursuance of a legitimate aim and is no more than is necessary in a democratic society – proportionate and based on the principle of non-discrimination.⁸⁷
- 6.3 The ECtHR’s case law indicates that the “in accordance with law” element of Article 8(2) incorporates a “quality of law” requirement.⁸⁸ This implies that the domestic law must not only be accessible and foreseeable in its application but must provide adequate and effective safeguards and guarantees against abuse.⁸⁹ Therefore, the Department must ensure that

⁸⁶ Article 9(4), Directive 2011/36/EU, ‘EU Council Directive on preventing and combating trafficking in human beings and protecting its victims’, 5 April 2011.

⁸⁷ *Soering v UK* (1989) ECHR 14.

⁸⁸ *Halford v. the United Kingdom* (1997) ECHR 32, at para 49.

⁸⁹ *Gillan and Quinton v UK* (2009) ECHR 755, at para 87; *Vig v Hungary* (2021) ECHR 24, at para 62; *Roman Zakharov v Russia* (2015) ECHR 1065, at para 236.

any additional police search power is sufficiently circumscribed to not be misused and provides adequate protection against arbitrary interference. In the creation of domestic safeguards, the Department should consider “the nature, scope and duration of the possible measures, the grounds required for ordering such measures, the authorities competent to permit, carry out and supervise such measures, and the kind of remedy provided by the national law”.⁹⁰

6.4 It is difficult to provide substantive comment on this proposal without details of safeguards that explicitly set out when the proposed power may be exercised, the manner in which it may be exercised or any governance and oversight arrangements.

6.5 In conclusion, the NIHRC seeks further information from the Department of Justice on its proposal for additional search powers under section 10 of the Police and Criminal Evidence (NI) Order 1989, which should include:

- **analysis of current statutory powers and comparison with other jurisdictions;**
- **proposed safeguards to ensure the power is not used arbitrarily; and**
- **a detailed human rights impact assessment, with particular regard for Article 8 ECHR.**

⁹⁰ *Klass and Others v Germany* (1978) ECHR 4, at para 50.

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