



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**NIHRC Response to the Department for
Infrastructure's Consultation on Concessionary
Fares**

22 August 2023

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Recommendations

- 2.9** The NIHRC recommends that the Department for Infrastructure conducts a human rights impact assessment on the full range of potential options for changes to the Concessionary Fares Scheme proposed in the consultation document.
- 2.14** The NIHRC recommends that the Department for Infrastructure consider mitigations to any negative environmental impact which may result from any restrictions to the Concessionary Fares Scheme.
- 3.9** The NIHRC recommends that the Department for Infrastructure refrains from increasing the age eligibility for concessionary fares from 60+ to either 65+ or State pension age without fully assessing and mitigating the impact on affected older persons, particularly those already vulnerable to social exclusion.
- 3.15** The NIHRC advises that the Department for Infrastructure consider how limiting concessionary travel to off-peak times will impact on service users who provide unpaid care, and the wider impact that may have on budgets across the NI Executive Departments.
- 3.19** The NIHRC advises that the Department for Infrastructure does not limit concessionary fares to off-peak travel times given the disproportionate impact this will have on service users experiencing poverty. The NIHRC recommends that, should the Department decide to implement this proposal, they do so in close consultation with the service users that this most impacts on, namely older persons, disabled people and people with caring responsibilities and organisations which represent them.
- 3.24** The NIHRC recommends that the Department for Infrastructure closely consult with disabled people and relevant organisations which represent disabled people to ensure that all public transport is accessible to everyone in the community.
- 3.25** The NIHRC recommend that any changes made to the Concessionary Fares Scheme do not have a disproportionate impact on disabled people, and that any impact is mitigated as much as possible.
- 3.26** The NIHRC recommends that the Department for Infrastructure consider geographically where removing trains from the

Concessionary Fares Scheme might have the greatest impact and consults with the local community on the best way to support service users there.

- 3.28 The NIHRC recommends that, should the Department for Infrastructure introduce a fee for the application, renewal and replacement of smart passes, this fee should be capped at a minimum, affordable amount and not raised without meaningful consultation with the individuals this affects, and the organisations which represent them.**
- 4.8 The NIHRC recommends that the Department for Infrastructure explores extending the Concessionary Fares Scheme to include disabled people. This should be done in close consultation with disabled people and representative organisations to ensure the extension of the Scheme meets the specific needs of these individuals.**
- 4.9 The NIHRC recommends that the Department for Infrastructure extends the Concessionary Fares Scheme to include companion passes for disabled service users.**
- 4.19 The NIHRC recommends that the Department for Infrastructure explores extending the Concessionary Fares Scheme to include people seeking asylum and victims of human trafficking. This should be done in consultation with people who have experienced this, and their representative organisations.**

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC is also mandated, under section 78A(1) of the Northern Ireland Act 1998, to monitor the implementation of Article 2 of the Windsor Framework, to ensure there is no diminution of rights protected in the “Rights, Safeguards and Equality of Opportunity” chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK’s withdrawal from the EU.¹ In accordance with these functions, the following advice is submitted to the Department for Infrastructure in response to its consultation on changes to the Concessionary Fares Scheme.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and treaty obligations of the Council of Europe (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:
- UN International Covenant on Economic, Social and Cultural Rights 1966;² (ICESCR)
 - UN Convention on People with Disabilities 2006;³ (UN CRPD)
 - UN Convention on the Rights of the Child 1989 (UN CRC);⁴ and
 - UN Convention on the Elimination of Discrimination Against Women and Girls 1981.⁵ (UN CEDAW)
- 1.3 In addition to these treaty standards, the following declarations and principles provide further guidance in respect of specific areas:
- CoE Committee of Ministers on the promotion and protection of older persons;⁶
 - UN CESCR Committee General Comment No. 6;⁷

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

² Ratified by the UK in 1976.

³ Ratified by the UK in 2009.

⁴ Ratified by the UK in 1991.

⁵ Ratified by the UK in 1986.

⁶ Recommendation CM/Rec(2014)2, ‘CoE Committee of Ministers to Member States on the Promotion of Human Rights of Older Persons’, 19 February 2014.

⁷ Committee on Economic, Social and Cultural Rights, ‘General Comment No. 6: the economic, social and cultural rights of older persons’.

- UN CRPD Committee General Comment No. 5;⁸
- UN Independent Expert on Older People's report on the impact of social exclusion on older persons;⁹ and
- UN Special Rapporteur on Extreme Poverty and Human Rights' Statement on their visit to the UK.¹⁰

1.4 The NIHRC further advises on the UK Government's commitment in Windsor Framework Article 2(1) 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 Northern Ireland Act 1998 provides that the NI Assembly is prohibited from making any law which is incompatible with Windsor Framework Article 2. Section 24 of the 1998 Act also provides that all acts of the Department should be compatible with Windsor Framework Article 2.

2.0 General Comments

Human Rights Context

- 2.1 The NIHRC notes that the Department for Infrastructure has identified within its consultation document that the costs of the Concessionary Fares Scheme (the Scheme) have increased significantly since 2007/08, when the Scheme was last amended. The Department attributes this rise in cost to people living longer and bus fares increasing in real terms over time.¹¹ Part A of the consultation focuses on measures to cut the overall costs of the Scheme, with Part B focusing on widening the Scheme to include other marginalised groups, including people seeking asylum and disabled people.
- 2.2 The Department has identified within the consultation document that any measures taken to implement the options in Part B would likely increase the costs of the Scheme and would therefore require additional budget, and the Department is using this opportunity to consult initially on these

⁸ CRPD/C/GC/5,' UN CRPD Committee General Comment No 5: Living Independently and Being Included in the Community', 27 October 2017

⁹ A/HRC/39/50, Report of the Independent Expert on the enjoyment of all human rights by older persons, 10 July 2018.

¹⁰ A/HRC/41/39.Add.1, Report of the Special Rapporteur on extreme poverty and human rights on their visit to the UK of Great Britain and NI, 23 April 2018.

¹¹ Department for Infrastructure, 'Consultation on free and discounted fares on public transport (concessionary fares)', (DfI, 2023), at 2.

options as potential proposals for the future.¹² The NIHRC understands, therefore, that there is no guarantee that the measures in Part B will be implemented in the future, even if additional budget could be secured for the Scheme. While the consultation document cites the intention of Part A “to identify changes to the current eligibility criteria which could reduce the costs of the Scheme”¹³, the proposals outlined in Part B that could help promote social inclusion and may increase the cost of the Scheme are “longer term”.¹⁴ However, the NIHRC is concerned that formatting the consultation in this way could be misconstrued as placing beneficiary groups in competition for resources with one another. The Department should take into consideration its human rights obligations when allocating budget to its Concessionary Fares Scheme.

- 2.3 Article 2(1) of the International Covenant on Economic, Social and Cultural Rights requires States to “take steps... to the maximum of its available resources, with a view to achieving progressively the full realisation of rights recognised in the present Covenant”. ICESCR General Comment No.3 advises that the concept of progressive realisation is an ongoing obligation on governments to “move as expeditiously and effectively as possible” toward full implementation of all economic, social and cultural rights.¹⁵
- 2.4 In General Comment No. 6, the ICESCR Committee identifies that, while the ICESCR does not specifically reference the rights of older persons, it is clear that older persons are entitled to enjoy the full range of rights provided within the Covenant.¹⁶ Additionally, General Comment No. 6 identifies that “insofar as respect for the rights of older persons requires special measures to be taken, States parties are required by the Covenant to do so to the maximum of their available resources”.¹⁷
- 2.5 The NIHRC recognises the difficult challenges all NI Executive Departments due to the NI Budget 2023/24 .¹⁸ During times of economic crisis, protecting the rights of marginalised groups becomes particularly

¹² Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DfI, 2023), at 3.

¹³ Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DfI, 2023), at 2.

¹⁴ Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DfI, 2023), at 2.

¹⁵ E/1991/23, ‘ICESCR Committee General Comment No.3: The nature of State Parties’ obligations’, 14 December 1990, at para 9.

¹⁶ Committee on Economic, Social and Cultural Rights, ‘General Comment No. 6: the economic, social and cultural rights of older persons’, at para 10.

¹⁷ Committee on Economic, Social and Cultural Rights, ‘General Comment No. 6: the economic, social and cultural rights of older persons’, at para 10.

¹⁸ UK Parliament, ‘Written Statement: NI Finances 2023-24 – Chris Heaton-Harris, Secretary of State for NI - UIN HCWS748’, 27 April 2023.

pertinent, so as not to compound pre-existing patterns of exclusion and discrimination in the political, economic, and social spheres.¹⁹ It is acknowledged that economic policy in times of crisis requires complex analysis and decision-making, and governments enjoy a wide margin of appreciation in respect of the specific circumstances.²⁰ However, the protection of social and economic rights is vital for inclusive recovery.²¹

- 2.6 Article 11 of the ICESCR requires States to recognise the right of everyone to an adequate standard of living. The ICESCR Committee's General Comment No. 6 draws attention to the need to "take account of the functional living capacity of the elderly in order to provide them with a better living environment and facilitate mobility and communication through the provision of adequate means of transport".²²
- 2.7 Article 12 of the ICESCR recognises the right of everyone to the "highest attainable standard of physical and mental health". The UN Independent Expert on older people identified that a lack of opportunities for older persons to participate "may contribute to their social exclusion and consequently the decline of their mental and physical health".²³
- 2.8 The CoE Committee of Ministers, in its recommendation on the promotion of human rights of older persons, stressed that "older persons should be able to fully and effectively participate and be included in society and that all older persons should be able to live their lives in dignity and security, free from... isolation".²⁴ The Committee of Ministers recommended that Member States should "take all measures to facilitate the mobility of older persons, including access to infrastructure for them".²⁵
- 2.9 **The NIHRC recommends that the Department for Infrastructure conducts a human rights impact assessment on the full range of potential options for changes to the Concessionary Fares Scheme proposed in the consultation document.**

¹⁹ E/1990/23, 'ICESCR Committee General Comment No.2: International technical assistance measures', 2 February 1990, at para 9; Council of Europe Commissioner for Human Rights, 'Safeguarding human rights in times of economic crisis' (CoE, 2013), at 7.

²⁰ Council of Europe Commissioner for Human Rights, 'Safeguarding human rights in times of economic crisis' (CoE, 2013), at 7.

²¹ Ibid.

²² Committee on Economic, Social and Cultural Rights, 'General Comment No. 6: the economic, social and cultural rights of older persons', at para 33.

²³ A/HRC/39/50, Report of the Independent Expert on the enjoyment of all human rights by older persons, 10 July 2018, at para 30.

²⁴ Recommendation CM/Rec(2014)2, 'CoE Committee of Ministers to Member States on the Promotion of Human Rights of Older Persons', 19 February 2014, at 7.

²⁵ Recommendation CM/Rec(2014)2, 'CoE Committee of Ministers to Member States on the Promotion of Human Rights of Older Persons', 19 February 2014, at para 22.

Environmental Impact

- 2.10 Encouraging people to use public transport and walk has environmental benefits. The Department for Infrastructure has identified within the consultation document that this Scheme has an important and positive environmental impact.²⁶
- 2.11 The United Nations has cited climate change as “the defining issue of our time”.²⁷ Climate change threatens the enjoyment of all human rights, including the rights to health, water, food, housing, self-determination, and life itself. Therefore, the protection of these rights should form part of the rationale for climate change protections in NI. These rights are protected by various human rights treaties:
- Article 1 of International Covenant on Economic, Social and Cultural Rights (ICESCR) protects the right to self-determination.
 - Article 11, ICESCR protects the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
 - Article 12, ICESCR protects the right to the enjoyment of the highest attainable standard of physical and mental health.
 - Article 2 of the European Convention on Human Rights (ECHR) protects the right to life.
 - ICESCR General Comment No 15 recognises the right to water under Articles 11 and 12 of ICESCR.
- 2.12 The UN Paris Agreement calls upon States to respect, promote and consider their respective human rights obligations when taking action to address climate change.²⁸ The UN Paris Agreement is a legally binding international treaty on climate change. The Agreement sets out long term goals to reduce greenhouse gas emissions to limit the global temperature increase to 2 degrees Celsius while pursuing the goal of limiting the increase even further, to 1.5 degrees.²⁹
- 2.13 Reducing access to the Scheme for older people and people with disabilities, who may have mobility issues and rely heavily on transport to move around NI, may increase reliance on cars, which will have a negative impact on the environment.

²⁶ Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DfI, 2023), at 2.

²⁷ United Nations, ‘Climate Change’ <https://www.un.org/en/sections/issues-depth/climate-change/index.html>

²⁸ UN Paris Agreement, 2015. The UK Government signed and ratified the Paris Agreement in 2016.

²⁹ United Nations, ‘The Paris Agreement’. Available at: [The Paris Agreement | United Nations](#)

- 2.14 **The NIHRC recommends that the Department for Infrastructure consider mitigations to any negative environmental impact which may result from any restrictions to the Concessionary Fares Scheme.**

3.0 Part A – Options to reduce costs

Option 1: Raising the age of eligibility for the Senior Smart Pass

- 3.1 Part A of the consultation presents options to limit the use of the Smart Pass which could reduce the costs of the Scheme. Option 1 proposes to raise the age of eligibility to receive a Senior Smart Pass from 60+ to either 65+ or to state pension age. State pension age is currently 66 but, as noted within the consultation, this is expected to rise to 67 between 2025 to 2028.³⁰ The Commission is concerned that if the Scheme raises the eligibility age to state pension age, this could continue to rise in the future without the need for further consultation. It would be clearer for users of the Scheme to understand their entitlements if age eligibility was a set number.
- 3.2 The Department has identified that the objective of its review of the Scheme is to make the Scheme financially sustainable and to ensure the Scheme is targeted at members of the community who are most vulnerable to social exclusion.³¹
- 3.3 Older persons are vulnerable to social exclusion. As outlined in a report from the Independent Expert on older people, social exclusion of older people involves “the lack or denial of resources, rights, goods and services as people age and the inability to participate in societal relationships and activities, available to the majority of people across the varied and multiple domains of society”.³² While the NIHRC welcomes the Department’s commitment to ensuring that groups most vulnerable to social isolation can benefit from concessionary travel, as shown in Part B of the consultation, this should not be to the detriment of older people, who remain vulnerable to social isolation.

³⁰ Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DfI, 2023), at 17.

³¹ Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DfI, 2023), at 12.

³² A/HRC/39/50, Report of the Independent Expert on the enjoyment of all human rights by older persons, 10 July 2018, at para 17.

- 3.4 It is also important to note that older people are not a homogenous group, there are people from marginalised groups within the older population that are at heightened risk of social exclusion, for example based on gender, ethnicity, social class or disability.³³ The UN Independent Expert on older persons has highlighted that “the relationship between social categorisations, such as gender, ethnicity and class, and exclusion is complex, given the correlation with other risk factors such as living alone and income”.³⁴ If older people’s access to concessionary travel is reduced, those with intersecting identities may be even more at risk of social exclusion and isolation.
- 3.5 In 2016, the ICESCR Committee recommended to the UK Government that it “take steps to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty”.³⁵ Two years later, the UN Special Rapporteur on extreme poverty recommended that the UK Government remedy the systemic disadvantage created by welfare policies on, among others, older persons.³⁶
- 3.6 According to statistics as of May 2022, there are around 65,000 households aged 60+ in NI who will have insufficient income to cover their essential spending for the year, with around 25,000 of these households living in poverty or just above the poverty line and/or in receipt of benefits.³⁷ The UN Independent Expert on older persons identified that poverty can exacerbate the denial of basic human rights and limit people’s choices and opportunities, and exclusion from material and financial resources later in life can manifest social exclusion.³⁸
- 3.7 Older women are more likely to experience poverty and women have lower rates of employment than men. The Department’s consultation notes that, in 2022, 44% of females aged 60-65 were employed, compared with 61.5% of males. In addition to a lower number of women in employment than men, the UN CEDAW Committee has identified that “women are more likely to be engaged in informal, temporary or precarious forms of

³³ A/HRC/39/50, Report of the Independent Expert on the enjoyment of all human rights by older persons, 10 July 2018, at para 19.

³⁴ Ibid.

³⁵ E/C.12/GBR/CO.6, Concluding observations on the sixth periodic report of the UK of Great Britain and NI, 14 July 2016, at para 48.

³⁶ A/HRC/41/39.Add.1, Report of the Special Rapporteur on extreme poverty and human rights on their visit to the UK of Great Britain and NI, 23 April 2018, at para 96(j).

³⁷ Age NI, ‘Press Release: Age NI statement on the cost of living’, 26 May 2022.

³⁸ A/HRC/39/50, Report of the Independent Expert on the enjoyment of all human rights by older persons, 10 July 2018, at para 19.

employment”.³⁹ The Department has additionally identified that women are less likely to hold a driving licence than men and will therefore potentially need to avail of public transport.⁴⁰ Delaying access to a senior smart pass will have a disproportionately negative impact on older women, particularly those with lower-income.

3.8 The Commission is concerned that delaying access to the senior smart pass until 65 or state pension age may negatively impact on levels of social exclusion and isolation among older persons below the eligible age, which may be further exacerbated by poverty or belonging to an already marginalised group.

3.9 **The NIHRC recommends that the Department for Infrastructure refrains from increasing the age eligibility for concessionary fares from 60+ to either 65+ or State pension age without fully assessing and mitigating the impact on affected older persons, particularly those already vulnerable to social exclusion.**

Option 2: Limiting concessionary fares to off-peak travel times

3.10 Option 2 of the Department’s consultation proposes limiting concessionary fares to off-peak travel for all users, including older people over 60, individuals who are registered blind, war disabled and those who benefit from half fares.⁴¹ This would mean that, for travel before 9:30am on weekdays, users of the Scheme would have to pay full fare to travel.

3.11 The Department has identified that this may have a negative impact on service users with caring responsibilities, noting that as more women than men have caring responsibilities, they will be further impacted.⁴² In 2019, the UN CEDAW Committee noted with concern “that reductions in social care services increase the burden on primary caregivers, who are disproportionately women”.⁴³

3.12 The Census 2021 detailed that there are 222,200 people providing unpaid care in NI, which accounts for one in eight people. The common age group providing unpaid care is 40-64, where 124,600 people are providing

³⁹ 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 43(b)

⁴⁰ Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DoI, 2023), at 19.

⁴¹ Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DfI, 2023), at 24.

⁴² Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DfI, 2023), at 24.

⁴³ 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 17.

unpaid care, accounting for one in five people.⁴⁴ The Census also listed 38,863 people age 65+ are providing unpaid care for a friend or relative.⁴⁵ Additionally, in 2021, 55% of families in NI used grandparents to provide some or all of their childcare, with this being the most popular form of childcare in NI.⁴⁶ Providing childcare supports the economy, by allowing parents to re-join the workforce. Grandparents who provide childcare may be using their smart pass to commute to their childcare responsibilities before off-peak times, and will be impacted by these proposed changes.

- 3.13 Unpaid carers contribute to the economy, with research from Carers UK and the University of Sheffield estimating that the value of unpaid care in England and Wales accounts for £162 billion per year.⁴⁷ Before the COVID-19 pandemic, the care provided by unpaid carers in NI was worth £4.6 billion per year.⁴⁸ During the COVID-19 pandemic, it is estimated that this increased to £6.9 billion per year.⁴⁹
- 3.14 Limiting travel to off-peak times under the Scheme will impact negatively on service users who have caring responsibilities, including providing childcare, and their families, who may be forced to make alternative care arrangements. While this may save money for the Scheme in the short term, it could potentially contribute to a rise in costs across other departments that are currently being absorbed by unpaid carers.
- 3.15 **The NIHRC advises that the Department for Infrastructure consider how limiting concessionary travel to off-peak times will impact on service users who provide unpaid care, and the wider impact that may have on budgets across the NI Executive Departments.**
- 3.16 Limiting concessionary fares to off-peak travel times will also impact on service users who have medical appointments and those who travel to work or volunteer programmes. Volunteering can prevent social isolation and promote good mental health. The Mental Health Strategy for NI states that the emotional wellbeing and mental health of individuals and communities can be improved by, among other activities, volunteering opportunities.⁵⁰

⁴⁴ NI Statistics and Research Agency, 'Main statistics for NI: Statistical bulletin health, disability and unpaid care', (NISRA, 2022), at 7.

⁴⁵ NI Statistics and Research Agency, 'Provision of unpaid care by broad age bands MS-D-17', (NISRA, 2022).

⁴⁶ Employers for Childcare, 'Northern Ireland Childcare Survey 2021', (2023), at 17.

⁴⁷ Carers UK, 'Press Release: Unpaid care in England and Wales valued at £445 million per day', 3 May 2023

⁴⁸ Carers NI, 'Unpaid Carers, Poverty and the Cost of Living Crisis in NI' (CNI, 2022), at 5.

⁴⁹ Carers UK, 'Unseen and Undervalued: The Value of Unpaid Care During the COVID-19 Pandemic' (CUK, 2020), at 4.

⁵⁰ Department of Health, 'Mental Health Strategies 2021-2031', (DoH, 2021), at para 44.

- 3.17 Limiting concessionary fares to off-peak times will impact disproportionately on service users with lower-incomes or those living in poverty who would have to pay to use public transport during peak times, which may not be possible for people without disposable income. The Department has identified in its Equality Impact Assessment that this option may impact negatively on disabled people who may utilise their smart pass in peak times to travel to work.⁵¹ The UN CRPD Committee have identified their concerns with a persistent pay gap affecting disabled people, “especially women and persons with psychosocial and/or intellectual disabilities, as well as persons with visual impairments”.⁵² The Special Rapporteur on extreme poverty has identified that disabled people are more likely to live in poverty or be in insecure employment.⁵³
- 3.18 The NIHRC is also concerned about the impact of limiting travel to off-peak times on access to healthcare for older people. Given the current pressures faced by the NHS, patients may not have the option to re-schedule appointments for later in the day when they can utilise their smart passes. Additionally, smart pass users who are in employment or voluntary programmes, or with caring responsibilities, may not be able to schedule appointments during their working day, meaning they would need to rely on earlier appointments and use public transport during peak times. Limiting use of smart passes to off-peak times will place additional financial pressures on users of the Scheme who use public transport to attend medical appointments.
- 3.19 **The NIHRC advises that the Department for Infrastructure does not limit concessionary fares to off-peak travel times given the disproportionate impact this will have on service users experiencing poverty. The NIHRC recommends that, should the Department decide to implement this proposal, they do so in close consultation with the service users that this most impacts on, namely older persons, disabled people and people with caring responsibilities and organisations which represent them.**

Option 3: Limiting Smart Pass use to bus travel only

- 3.20 Option 3 of the Department’s consultation proposes to limit Smart Pass use to bus travel only, meaning that users of the Scheme will not be able to

⁵¹ Department for Infrastructure, ‘Draft equality impact assessment: Changes to the NI concessionary fares scheme’, (DfI, 2023), at 6.

⁵² CRPD/C/GBR/CO/1, Concluding observations on the initial report of the UK of Great Britain and NI, 3 October 2017, at para 56(a).

⁵³ A/HRC/41/39.Add.1, Report of the Special Rapporteur on extreme poverty and human rights on their visit to the UK of Great Britain and NI, 23 April 2018, at para 76.

use their pass to travel on trains. The Department has identified that this may have a significant negative impact on some groups, including disabled people, who may find trains more accessible than travelling by bus.⁵⁴

3.21 Article 19 of UNCRPD requires States to:

recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.

In General Comment No. 5, the CRPD Committee identifies barriers to the full implementation of Article 19, including a lack of affordable transport.⁵⁵

3.22 In its concluding observations on the UK, the CRPD Committee recommended that the UK Government and NI Executive “develop community-based independent living schemes through a holistic and cross-cutting approach, including ... transport”.⁵⁶

3.23 The NIHRC notes that there may be areas within NI that are better served by trains than others, or where accessing trains is more efficient than accessing buses.

3.24 **The NIHRC recommends that the Department for Infrastructure closely consult with disabled people and relevant organisations which represent disabled people to ensure that all public transport is accessible to everyone in the community.**

3.25 **The NIHRC recommend that any changes made to the Concessionary Fares Scheme do not have a disproportionate impact on disabled people, and that any impact is mitigated as much as possible.**

3.26 **The NIHRC recommends that the Department for Infrastructure consider geographically where removing trains from the Concessionary Fares Scheme might have the greatest impact and**

⁵⁴ Department for Infrastructure, ‘Draft equality impact assessment: Changes to the NI concessionary fares scheme’, (DfI, 2023), at 28.

⁵⁵ CRPD/C.GC/5, General Comment No. 5 on living independently and being included in the community, 27 October 2017.

⁵⁶ CRPD/C/GBR/CO/1, Concluding observations on the initial report of the UK of Great Britain and NI, 3 October 2017, at para 45(d).

consults with the local community on the best way to support service users there.

Option 4: Application, renewal and replacement fees

- 3.27 The Department for Infrastructure has proposed to introduce fees to apply, renew or replace smart passes. The Department has identified that, should a fee be introduced, it would be on a cost recovery basis and the price will likely be in the region of £5 to £10 pounds to each card issued.⁵⁷ The NIHRC reminds the Department that older people and disabled people, who this will impact on, are at higher risk of living in poverty. Introducing a fee on a cost recovery basis could suggest that, should costs go up, the fee too could continue to rise.
- 3.28 **The NIHRC recommends that, should the Department for Infrastructure introduce a fee for the application, renewal and replacement of smart passes, this fee should be capped at a minimum, affordable amount and not raised without meaningful consultation with the individuals this affects, and the organisations which represent them.**

4.0 Part B – Options to promote social inclusion

- 4.1 The NIHRC welcomes proposals to promote the social inclusion of marginalised groups under the Concessionary Fares Scheme. The NIHRC notes that, in relation to the options outlined in Part B to promote social inclusion, the Department states that “it is not currently in a position to implement these changes in light of the significant financial challenges being faced”, and that the proposals consulted on in Part B are to inform future thinking, should the Department’s budgetary position change.⁵⁸ As highlighted above, the NIHRC is concerned that the structure of this consultation document places groups at a heightened risk of social exclusion against one another to compete for resources. The NIHRC reiterates that the Department should allocate budget in compliance with its human rights obligations.

⁵⁷ Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DfI, 2023), at 31.

⁵⁸ Department for Infrastructure, ‘Consultation on free and discounted fares on public transport (concessionary fares)’, (DfI, 2023), at 32.

4.2 In this section, the NIHRC will comment briefly on the groups suggested for future inclusion in the Concessionary Fares Scheme. For the purposes of analysis, these have been grouped thematically. The NIHRC would be happy to provide more detailed commentary should the Department be in a position to develop further policy proposals on these issues in the future.

Disabled people

4.3 Part B of the consultation document sets out three options to extend the Scheme to disabled people. NI is currently the only location in the UK and Ireland that does not provide free travel for disabled people.

4.4 The UN CRPD compels States to ensure that persons with disabilities are supported to live in the community on an equal basis with others. Article 19 requires that States:

recognise the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

4.5 The UN CRPD Committee defines independent living as meaning “individuals with disabilities are provided with all necessary means to enable them to exercise choice and control over their lives and make all decisions concerning their lives”.⁵⁹ The Committee defines being included

⁵⁹ CRPD/C/GC/5, 'UN CRPD Committee General Comment No 5: Living Independently and Being Included in the Community', 27 October 2017, at para 16(a).

in the community as including “living a full social life and having access to all services offered to the public and to support services offered to persons with disabilities to enable them to be fully included and participate in all spheres of social life”.⁶⁰ The Committee identifies that these services can relate to, among others, transport.⁶¹ Furthermore, the Committee has recommended that authorities:

ensure that public budgets take into account the rights of persons with disabilities, that sufficient budget allocations are made available to cover the extra costs associated with living with a disability and that appropriate mitigation measures, with appropriate budget allocations, are in place for persons with disabilities affected by austerity measures.⁶²

4.6 It is recognised that fulfilment of social, economic and cultural rights, can only be achieved over time in a process of ‘progressive realisation’.⁶³ The Committee on Economic Social and Cultural Rights has confirmed that States are expected to “move as expeditiously and effectively as possible”⁶⁴ and take “deliberate, concrete and targeted” steps towards the realisation of the right in question.⁶⁵

4.7 The consultation document identifies an option to introduce Companion passes for those traveling with disabled people who use the Scheme. In General Comment No.5, the CRPD Committee identify that “States parties should empower family members to support the family members with disabilities to realize their right to live independently and be included in the community”.⁶⁶ The Committee further note that “financial support is also crucial for family carers, who often live in situations of extreme poverty without the possibility of accessing the labour market”.⁶⁷ The NIHRC note that not all companions will be family members. Extending the Scheme to include companions could assist disabled people to live independently.

4.8 **The NIHRC recommends that the Department for Infrastructure explores extending the Concessionary Fares Scheme to include**

⁶⁰ CRPD/C/GC/5, ‘UN CRPD Committee General Comment No 5: Living Independently and Being Included in the Community’, 27 October 2017, at para 16(b).

⁶¹ Ibid.

⁶² CRPD/C/15/4, ‘CRPD Committee inquiry concerning the UK of Great Britain and NI carried out by the Committee under article 6 of the optional protocol to the Convention’, 24 October 2017, at para 114(d).

⁶³ Office of the United Nations High Commissioner for Human Rights, Questions on Economic, Social and Cultural Rights (Factsheet 33), at 13.

⁶⁴ E/1991/23, UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 3: The Nature of States Parties’ Obligations’, (CESCR, 1990), at para 9.

⁶⁵ Ibid, at para 2.

⁶⁶ CRPD/C/GC/5, ‘UN CRPD Committee General Comment No 5: Living Independently and Being Included in the Community’, 27 October 2017, at para 55.

⁶⁷ CRPD/C/GC/5, ‘UN CRPD Committee General Comment No 5: Living Independently and Being Included in the Community’, 27 October 2017, at para 67.

disabled people. This should be done in close consultation with disabled people and representative organisations to ensure the extension of the Scheme meets the specific needs of these individuals.

- 4.9 The NIHRC recommends that the Department for Infrastructure extends the Concessionary Fares Scheme to include companion passes for disabled service users.**

People receiving asylum support and victims of human trafficking

- 4.10 The UN Committee on the Rights of the Child has recommended that the UK Government and NI Executive “strengthen measures to ensure that all asylum-seeking, refugee and migrant children have equal and prompt access to education, health-care services, housing, psychosocial support and social protection, including benefit entitlements”.⁶⁸
- 4.11 The CEDAW Committee has noted that, due to the low levels of financial support available to them, women seeking asylum in the UK are placed at higher risk of exploitation, abuse and trafficking.⁶⁹ Additionally, the ICESCR Committee has identified a significant rise in homelessness affecting people seeking asylum, among other groups, particularly in England and NI.⁷⁰
- 4.12 Article 2 of the Windsor Framework requires the UK Government and NI Executive to ensure that 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. This commitment to ensure ‘no diminution’ is measured by and against the relevant EU standards on 31 December 2020. As such, the UK Government has committed to ensuring that there will be no diminution of protections as were contained in relevant underpinning EU law on this date.⁷¹

⁶⁸ CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the combined sixth and seventh periodic reports of the UK of Great Britain and NI', 22 June 2023, at para 50(d).

⁶⁹ 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 55.

⁷⁰ 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 51.

⁷¹ UK Government, 'UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland', (NIO, 2020), at para 13.

- 4.13 Windsor Framework Article 2 entails a commitment by the UK Government that NI equality law will dynamically align or “keep pace” with any EU law developments falling within the six EU Equality Directives listed in Annex 1 to the Windsor Framework after 1 January 2021.⁷² This “keep pace” obligation means that if the minimum standards in the Annex 1 Directives are amended or replaced by the EU, the UK Government and NI Executive must ensure that domestic legislation in Northern Ireland reflects any enhancements in relevant protections. The EU Charter on Fundamental Rights continues to have relevance in the application and interpretation of those provisions of EU law which are relevant to the application of Protocol Article 2.
- 4.14 The UK Government recognises that Article 2 of the Windsor Framework applies to “everyone who is subject to [NI]... law”.⁷³ The NIHRC takes the view that the commitment in the Belfast (Good Friday) Agreement 1998 to the civil rights and religious liberties of “everyone in the community” includes asylum seekers and refugees. The NIHRC has identified the EU Reception Directive⁷⁴ as falling within scope of Article 2 of the Windsor Framework.⁷⁵
- 4.15 The EU Reception Directive, which details the minimum standards for the treatment of stateless persons or refugees in Europe, states that the best interests of the child shall be the primary consideration when implementing provisions of the Directive that relate to minors.⁷⁶ The Directive provides that states must grant asylum seeking minors access to education.⁷⁷ Additionally, the Directive obligates States to take into consideration the specific situation of, among others, children and young people and disabled people.⁷⁸

⁷² Article 13(3) of the Windsor Framework. 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.

⁷³ 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?’ (NIO, 2020), at para 8.

⁷⁴ Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

⁷⁵ Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland ‘Working Paper: The Scope of Article 2(1) of the Ireland/ Northern Ireland Protocol’, (NIHRC and ECNI, December 2022).

⁷⁶ Article 18, Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

⁷⁷ Article 10, Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

⁷⁸ Article 17, Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

- 4.16 For people without recourse to public funds, reliance on local authority provision as an alternative source of support is a specific problem in NI, where local councils do not have responsibility for housing, social services or education.⁷⁹ Direct accounts of the living conditions for people seeking asylum in contingency accommodation are consistent with UK-wide reports, including raising issues of inadequate access to food that meet dietary requirements or is culturally appropriate. There are also restrictions on private and family life, and insufficient access to basic services.⁸⁰ These issues are particularly challenging for children and persons with disabilities.⁸¹
- 4.17 People seeking asylum and victims of human trafficking are already at an increased risk of poverty, which impedes social inclusion. The costs of public transport may not be within budget for people seeking asylum or victims of human trafficking, which could impede access to healthcare, education and the fulfilment of other economic, social and cultural rights.
- 4.18 The Department for Infrastructure have proposed to amend the current residency test from 3 months permanent residence to primary residence to make this more accessible to all NI residents.⁸² The NIHRC supports this inclusion. Refugees, people seeking asylum and ethnic minorities are some of the most marginalised groups in society⁸³; extending the Scheme to these communities could help mitigate social isolation, which can lead to loneliness and poor mental health, and may also support effective integration.
- 4.19 **The NIHRC recommends that the Department for Infrastructure explores extending the Concessionary Fares Scheme to include people seeking asylum and victims of human trafficking. This should be done in consultation with people who have experienced this, and their representative organisations.**

⁷⁹ NI Human Rights Commission, 'Response to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI' (NIHRC, 2021).

⁸⁰ Independent Chief Inspector of Borders and Immigration, 'An Inspection of Contingency Asylum Accommodation May 2021-November 2021' (UK Gov, 2022), at paras 9.7 and 9.41.

⁸¹ Meetings between NI Human Rights Commission and civil society organisations, May 2022, August 2022 and October 2022.

⁸² Department for Infrastructure, 'Consultation on free and discounted fares on public transport (concessionary fares)', (DfI, 2023), at 45.

⁸³ The UN Refugee Agency, 'Press Release: Minorities and indigenous peoples', Available at: [Minorities and indigenous peoples | UNHCR](#)

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