



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the Department for Communities
on its Budget 2023-24 Allocations**

July 2023

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Recommendations

The Northern Ireland Human Rights Commission:

- **recommends that, before making its final mitigations, the Department for Communities conducts a human rights based, cumulative impact assessment of the range of intended measures, and demonstrates that every effort has been made to use all resources that are at its disposal to satisfy, as a matter of priority, the minimum essential levels of each of the relevant rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR).**
- **recommends that the Department for Communities prioritise taking effective steps to ensure that social security is adequate, accessible and promptly available across NI, and the maximum available resources are used to guarantee an adequate standard of living to all recipients.**
- **recommends that the Department for Communities prioritises the Discretionary Support Grants scheme to ensure resources adequately meet need and ensure compliance with international human rights obligations, particularly Article 3 and Article 8 of the European Convention on Human Rights.**
- **recommends that the Department for Communities takes targeted measures to ensure the impact of the delayed introduction of New Welfare Mitigations does not have a sustained impact on the right to an adequate standard of living for vulnerable individuals and groups, in particular women, carers, people with dependents, people with disabilities, and children.**
- **recommends that the Department for Communities maintains targeted programmes that ensure access to, retention of and advancement in the labour market, particularly for people with disabilities, young people, women, migrants, older people and those living in rural areas.**
- **recommends that the Department for Communities takes all appropriate measures to sustain resources in third sector organisations and safeguard the effective provision of support and advice on social security, employment, and housing to those who require it most.**
- **recommends that the Department for Communities maintains and prioritises adequate funding to the housing sector and takes appropriate mitigating measures to address waiting lists and prevent homelessness. Particular consideration must be afforded to those living in unfavourable conditions in NI, in accordance with Article 11 of ICESCR and Article 8 of ECHR.**

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 Communities in response to its consultation on budget allocations for the 2023-24 financial year.
- 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:
- European Convention on Human Rights 1950 (ECHR);²
 - UN Convention on Economic, Social and Cultural Rights (UN ICESCR);³
 - UN Convention on the Elimination of Racial Discrimination 1965 (UN CERD);⁴
 - UN Convention on Elimination of Discrimination against Women 1981 (UN CEDAW);⁵
 - UN Convention against Torture 1984 (UN CAT);⁶
 - UN Convention on the Rights of the Child 1989 (UN CRC);⁷ and
 - UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD).⁸

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 Article 31, UN Refugee Convention 1951.

³ Ratified by the UK 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights (ECtHR).

⁴ Ratified by the UK in 1976.

⁵ Ratified by the UK in 1969.

⁶ Ratified by the UK 1986.

⁷ Ratified by the UK 1988.

⁸ Ratified by the UK 1991.

⁹ Ratified by the UK 2009.

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

- ICESCR Committee General Comment No.2;⁹
- ICESCR Committee General Comment No.3;¹⁰
- ICESCR Committee General Comment No.4;¹¹
- ICESCR Committee General Comment No.19;¹²
- ICESCR Committee General Comment No.18;¹³
- UN Human Rights Council Resolution 40/8;¹⁴

2.0 General Comments

2.1 The NIHRC welcomes the opportunity to respond to the Department for Communities' (the Department) proposals for its Budget 2023-24 allocations. It is recognised that all NI Executive Departments face significant challenges following the announced cuts to the NI Budget 2023-24 by the Secretary of State for NI.¹⁵ It is disappointing that difficult decisions on budget allocations, with significant consequences for the NI public, must be progressed without a fully functioning NI Executive and its Ministers.

2.2 Economic policy is not exempt from the duty on the UK Government and NI Executive to respect, protect and fulfil human rights.¹⁶ Positive obligations, applicable to all levels of government, require the adoption of appropriate measures to facilitate the realisation of rights. This includes legislative, judicial, administrative, budgetary, economic, and other measures, such as the provision of essential public services and institutions.¹⁷

⁹ E/1990/23, 'ICESCR Committee General Comment No.2: International technical assistance measures', 2 February 1990.

¹⁰ E/1991/23, 'ICESCR Committee General Comment No.3: The nature of State Parties' obligations', 14 December 1990.

¹¹ E/1992/23, 'UN ICESCR Committee General Comment No.4: The right to adequate housing (Article 11)' 13 December 1991.

¹² E/C.12/GC/19, 'ICESCR Committee General Comment No.19: The right to social security (Article 9)', 4 February 2008.

¹³ E/C.12/GC/18, 'UN ICESCR Committee General Comment No.18: The right to work (Article 6)', 6 February 2022.

¹⁴ A/HRC/RES/40/8, 'Human Rights Council Resolution 40/8: The effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights', 5 April 2019.

¹⁵ UK Parliament, 'Written Statement: NI Finances 2023-24 – Chris Heaton-Harris, Secretary of State for NI - UIN HCWS748', 27 April 2023.

¹⁶ A/HRC/40/57, 'Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights: Guiding principles on human rights impact assessments of economic reforms', 19 December 2018, at para 5; Council of Europe Commissioner for Human Rights, 'Safeguarding human rights in times of economic crisis' (CoE, 2013), at 7.

¹⁷ For example, see: 'UN CEDAW Committee General Recommendation No.24 on Women and Health (Article 12)', 2 February 1999, at para 17; CRC/C/GC/14, 'UN CRC Committee General Comment No.14 on the right of the child to have his or her best interests taken a primary consideration', 29 May 2013, at para 10; CRPD/C/18/1, 'UN CRPD Committee General Comment No.19 on Article 19: Living independently and being included in the community', 29 August 2017, at para 54.

- 2.3 During times of economic downturn, protecting the rights of those already marginalised becomes particularly pertinent, so as not to compound pre-existing patterns of exclusion and discrimination in the political, economic, and social spheres.¹⁸ 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.¹⁹ However, the NIHRC emphasise that the protection of social and economic rights is vital for inclusive recovery.²⁰
- 2.4 The NIHRC notes the Department have announced its final budget allocations following a four-week consultation period on a Draft Equality Impact Assessment (EQIA).²¹ The wealth of evidence provided during this initial consultation is welcomed.²² However, the short timeframe for response and deviation from effective consultation approaches is disappointing. This submission highlights where the current proposals risk undermining obligations in the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in particular. It therefore seeks to supplement the findings already received, rather than reiterate all available data on the equality impacts which are set out in the Stage 1 Outcome Report.²³
- 2.5 The NIHRC's principal aim is to ensure that the Department takes its human rights obligations into account while deciding on further mitigations for the adverse impacts identified. Section 3 outlines the human rights framework within which economic policy and budget allocations must operate. Section 4 then focuses on specific areas of concern from the Department's EQIA and highlights where measures may be taken to align further decision-making with equality and human rights commitments.

3.0 Human Rights Framework

- 3.1 Article 2(1) of the ICESCR requires States to "take steps...to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant". In General

¹⁸ 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.

¹⁹ Council of Europe Commissioner for Human Rights, 'Safeguarding human rights in times of economic crisis' (CoE, 2013), at 7.

²⁰ Ibid.

²¹ Department for Communities, 'Press Release: Department outlines final budget allocations', 21 June 2023.

²² Department for Communities, 'Budget 2023-24: Draft Equality Impact Assessment Stage 1 Outcome Report' (DfC, 2023).

²³ Ibid.

Comment No.3, the ICESCR Committee advise 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.²⁴ Therefore, any retrogressive measures must only be applied in exceptional circumstances and only after careful consideration of all alternatives.²⁵

3.2 In General Comment No.13, the ICESCR Committee elaborates,

If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party’s maximum available resources.²⁶

3.3 Even in times of severe resource constraints, the ICESCR Committee advise there are “minimum essential levels” of each right that States must guarantee. For example, essential foodstuffs, essential primary healthcare, basic shelter and housing, or basic forms of education. Therefore, States must “demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations”.²⁷

3.4 The NIHRC reiterate that a fundamental obligation remains on the government “to strive to ensure the widest possible enjoyment” of ICESCR rights.²⁸ The ICESCR Committee emphasise that, in particular, “the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes”.²⁹ This reflects the principle of non-discrimination and equality in Article 2(2) of the ICESCR, as people who face the biggest barriers to realising their rights must be prioritised. The prohibition of discrimination is expressly recognised in all core international human rights treaties and is a non-derogable right. This

²⁴ E/1991/23, ‘ICESCR Committee General Comment No.3: The nature of State Parties’ obligations’, 14 December 1990, at para 9.

²⁵ E/C.12/GC/21, ‘ICESCR Committee General Comment No 21: Right of Everyone to Take Part in Cultural Life’, 21 December 2009, at para 65; E/C.12/GC/19, ‘ICESCR Committee General Comment No 19: The Right to Social Security’, 4 February 2008, at para 42; E/C.12/GC/18, ‘ICESCR Committee General Comment No 18: The Right to Work’, 6 February 2006, at para 21; E/C.12/GC/17, ‘ICESCR Committee General Comment No 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary or Artistic Production of which He or She is the Author’, 12 January 2006.

²⁶ E/C.12/GC/14, ‘ICESCR Committee General Comment No.14 on the right to education’, 11 August 2000, at para 45.

²⁷ E/1991/23, ‘ICESCR Committee General Comment No.3: The nature of State Parties’ obligations’, 14 December 1990, at para 10.

²⁸ Ibid, at para 11.

²⁹ Ibid, at para 12.

means it cannot be suspended or limited for any reason, including budget constraints.

- 3.5 Therefore, the NIHRC is concerned by the lack of specific data and analysis set out against each of the proposals contained within Section 7 in the DfC's Equality Impact Assessment (EQIA). The EQIA explains why each of the measures is necessary in light of budget constraints, however it does not identify the differential impacts of each measure and what specific mitigations have been taken to ensure that impact does not become adverse (see section 4 below).
- 3.6 For example, there is significant evidence that women in NI are more likely to claim social security benefits than men, are more reliant on public services, and more likely to be in low-paid, part-time or insecure work.³⁰ Moreover, women have more caring responsibilities for children and other family members.³¹ Consequently, any changes to the social security system are more likely to impact women than men. Rather than examining the differentiated impact, the EQIA simply states "both men and women will be impacted by the constrained funding available to support parity social security benefit delivery".³² This approach risks missing opportunities for identifying appropriately tailored mitigation measures from the outset of the allocation process and could risk exacerbating existing inequalities if decisions are made before such analysis.
- 3.7 To provide as comprehensive picture as possible, the NIHRC highlight the importance of additionally assessing how individuals confronting intersecting inequalities may be affected and protected. In this context, it is regrettable that a Rural Needs Impact Assessment was not conducted and that the Expert Panel Reports for the Social Inclusion Strategies are not cited. Many of the proposed measures will have a disproportionate impact on those facing multiple barriers to social and economic inclusion. The NIHRC consider that a human rights impact assessment should supplement the Department's EQIA as it will provide a broad and intersectional lens to the current proposals.
- 3.8 Further analysis of the individual and cumulative impact for each proposal is also critical for ensuring the satisfaction of minimum essential levels of relevant rights in ICESCR. In fact, the UN ICESCR Committee, UN CRC Committee, UN CRPD Committee and UN CEDAW Committee have all

³⁰ NI Human Rights Commission, 'Submission to the Department for Communities in Response to Their Equality Impact Assessment of the Draft Budget 2021-22' (NIHRC 2021).

³¹ Women's Regional Consortium, 'Impact of Ongoing Austerity: Women's Perspectives', (WRC, 2019), at 6.

³² Department for Communities, 'Budget 2023-24 Equality Impact Assessment' (DfC, 2023), at 25.

previously urged the UK to assess the cumulative impact of social security reforms between 2010-2017.³³ The NIHRC would refer the Department to its Cumulative Impact Assessment on Tax and Social Security Reforms in NI as an example of how such an assessment could be conducted.³⁴

3.9 In summary, the following key principles should inform an assessment of whether government budgets are consistent with economic, social and cultural rights in particular:

- Progressive realisation and ensuring the use of maximum available resources.
- Prohibition of retrogression and the burden of proving “careful consideration of all alternatives”.
- Protection of the “minimum essential levels” of each right.
- Prohibition of discrimination.

3.10 The UN Human Rights Council and the Office of the UN High Commissioner for Human Rights (OHCHR) have each published guidance on how to apply these principles while assessing the human rights impact of government budgets.³⁵ Drawing from these documents, the NIHRC consider the following queries significant for assessing each of the proposals contained within section 7 of the consultation document:

- Has every effort has been made to use all resources at the Department’s disposal (including international assistance)?
- Has every effort has been made to satisfy, as a matter of priority, certain minimum human rights obligations?
- Has particular attention been paid to marginalised or vulnerable groups, and have measures have been taken to prevent or mitigate any adverse human rights impacts?

³³ E/C.12/GBR/CO/6, ‘UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 19; CRC/C/GBR/CO/5, ‘UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 3 June 2016, at para 12; CRPD/C/GBR/CO/1, ‘UN Committee on Rights of Persons with Disabilities Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland’, 3 October 2017, at para 59(b); CEDAW/C/GBR/CO/8, ‘UN Committee on the Elimination of Discrimination against Women Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland’ 8 March 2019, at para 17.

³⁴ NI Human Rights Commission, ‘Cumulative Impact Assessment of Tax and Social Security Reforms’, (NIHRC, 2019).

³⁵ Office of the UN High Commissioner for Human Rights (OHCHR), ‘Realising Human Rights Through Government Budgets’ (OHCHR, 2017) at 18-20; A/HRC/40/57, ‘Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights: Guiding principles on human rights impact assessments of economic reforms’, 19 December 2018; A/HRC/RES/40/8, ‘Human Rights Council Resolution 40/8: The effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights’, 5 April 2019.

- Will any restrictive measures taken be rescinded if additional resources are obtained in 2023-24, particularly with regard to repairing adverse effects on marginalised or vulnerable groups?

3.11 The NIHRC recommends that, before making its final mitigations, the Department for Communities conducts a human rights based, cumulative impact assessment of the range of intended measures, and demonstrates that every effort has been made to use all resources that are at its disposal to satisfy, as a matter of priority, the minimum essential levels of each of the relevant rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

4.0 Impact of Proposals

4.1 The following section highlights specific proposals from the Department’s EQIA that risk having a disproportionate impact on the realisation of rights for certain individuals and groups. However, the NIHRC reiterates that any retrogressive action from the range of measures proposed must be “justified by reference to the totality of the rights” in ICESCR and in the context of the full use of the “maximum available resources”. It is therefore incumbent on the Department to assess each of its intended measures using the guidance above/below.

Social Security Delivery

4.2 The European Court of Human Rights (ECtHR) has reflected social security rights within cases brought under ECHR Articles 8 (right to private life) and 14 (prohibition of discrimination) and Article 1 of Protocol 1 (protection of property).³⁶ This includes a number of cases where the applicants complained about aspects of austerity measures in response to financial crises.³⁷ While acknowledging that measures were taken with the public interest in mind, the ECtHR also considered the proportionately of such measures, including whether they represented a threat to the applicants’ livelihood and if they were of temporary nature.³⁸

4.3 Article 9 of ICESCR protects the right to social security, noting “the States Parties to the present Covenant recognise the right of everyone to social

³⁶ Moskal v Poland (2009) 50 EHRR 22; Kjartan Ásmundsson v Iceland (2004) ECHR 512; in both cases pertain to applicants who had pension payments removed by the state, the ECtHR held a violation to Article 1 of Protocol 1 in both cases.

³⁷ Mockienė v. Lithuania (2017) ECHR 738; Da Silva Carvalho Rico, Application no. 13341/14, Judgment of 1 September 2015; Savickas and Others v. Lithuania (2013) ECHR 1217; these cases considered reductions of social insurance, salary entitlements and tax measures in relation to Article 1 of Protocol 1.

³⁸ Council of Europe, ‘Guide on Article 1 of Protocol No. 1 to the ECHR: Protection of Property’ (CoE, 2022), at para 434.

security, including social insurance". The right to social security is also provided for by the UN Convention on the Elimination of Discrimination against Women (UN CEDAW),³⁹ the UN Convention on the Rights of the Child (UN CRC),⁴⁰ and the UN Convention on the Rights of Persons with Disabilities (UN CRPD).⁴¹

- 4.4 In General Comment No.19, the ICESCR Committee confirms that the right to social security requires a social security system to be in place that is available, adequate and accessible. Social security "should be provided in a timely manner" and must be accessible in terms of coverage, eligibility, affordability, participation and information, and physical access.⁴²
- 4.5 The social security system plays an important role in supporting the realisation of many of the rights in the ICESCR. The Committee specify that benefits "must be adequate in amount and duration in order that everyone may realise his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care" (Articles 10, 11 and 12 ICESCR).⁴³ Ultimately, the social security system is of central importance to protecting the human dignity of recipients.
- 4.6 In 2023, the ICESCR Committee flagged its concern regarding the indexation of benefit rates and the rising cost of living in the UK and NI, which could exacerbate the living conditions for individuals on social security.⁴⁴ Existing delays in the benefits system are well documented for pushing vulnerable individuals and families into hardship, including increased reliance on foodbanks and increased debt vulnerability, which can lead to individuals turning to illegal lenders.⁴⁵ In 2019, the (then) Special Rapporteur on Extreme Poverty and Human Rights recommended that the UK government should "eliminate the five-week delay in receiving initial Universal Credit benefits", noting that these delays often take up to twelve weeks.⁴⁶

³⁹ Article 13, UN CEDAW.

⁴⁰ Article 26, UN CRC.

⁴¹ Article 28, UN CRPD.

⁴² E/C.12/GC/19, 'ICESCR Committee General Comment No.19: The right to social security (Article 9)', 4 February 2008, at paras 9-27.

⁴³ Ibid at para 22.

⁴⁴ E/C.12/GBR/Q/7, 'UN ICESCR Committee List of issues in relation to the seventh periodic report of UK of Great Britain and NI', 23 March 2023.

⁴⁵ Institute for Fiscal Studies, 'The IFS Deaton Review of Inequalities: Benefits and tax credits' (IFS, 2023); NI Human Rights Commission, 'Submission to the UN ICESCR Committee: Parallel Report for the List of Issues in Relation to the Seventh Periodic Report of the UK' (NIHRC, 2022), at para 6.4; Consortium for the Regional Support for Women in Disadvantaged and Rural Areas 'Women Living with Debt' (CRSWDRA, 2022); Joseph Rowntree Foundation, 'Financial Resilience and the Transition to Universal Credit: A Report by Policy in Practice' (JRF, 2019); 'Spotlight: Paramilitary loan sharks targeting food bank users', BBC News, 13 December 2022.

⁴⁶ A/HRC/41/39/Add.1, 'Visit to the United Kingdom of Great Britain and Northern Ireland, Report of the United Nations Special Rapporteur on extreme poverty and human rights', 23 April 2019, at para 96(h)

- 4.7 Therefore, the NIHRC is concerned by the failure to secure the funding necessary to appropriately resource the delivery of benefits and pensions. The Department advise that key areas of risk include: the ability to deliver the increasing Universal Credit caseload, the Move to Universal Credit for tax credits and legacy customers, addressing increasing level of fraud in the welfare system and the IT infrastructure required to support delivery. Rather than redressing or mitigating the delay in benefit payment that is driving people further into debt, the budget 2023-24 is likely to exacerbate its impact.
- 4.8 Further, the ICESCR Committee advise that “beneficiaries should have physical access to the social security services in order to access benefits and information”.⁴⁷ There are pre-existing accessibility issues around social security payments in NI, including substantial reliance on online interaction, lack of practice support, documentation requirements and bureaucratic delays.⁴⁸ Vulnerable groups are particularly impacted as a result, including people who may not use or access the internet, including rural communities without appropriate internet connection, people with disabilities, and refugees and those seeking asylum who may not have the required documentation.⁴⁹
- 4.9 The NIHRC is cautious about the consideration being given to reducing the overall size of the Departmental estate.⁵⁰ While the cost-saving benefit of closing Departmental offices one day a week is acknowledged, the potential impact on front line customer service delivery needs to be carefully evaluated. Particular attention should be paid to persons with disabilities, migrants, older persons and persons living in remote areas who may require more face-to-face support and assistance. Local access to Jobs and Benefits offices should be protected to ensure such individuals do not have to travel further distances.

4.10 The NIHRC recommends that the Department for Communities prioritise taking effective steps to ensure that social security is adequate, accessible and promptly available across NI, and the maximum available resources are used to guarantee an adequate standard of living to all recipients.

⁴⁷ E/C.12/GC/19, 'ICESCR Committee General Comment No.19: The right to social security (Article 9)', 4 February 2008, at para 27.

⁴⁸ NI Human Rights Commission, 'Submission to the Northern Ireland Affairs and Work and Pensions Committees' Joint Inquiry into Northern Ireland's Social Security Policy', (NIHRC, 2020), at para 7.2.

⁴⁹ NI Human Rights Commission, 'Submission to the Northern Ireland Affairs and Work and Pensions Committees' Joint Inquiry into Northern Ireland's Social Security Policy', (NIHRC, 2020), at para 7.3.

⁵⁰ Department for Communities, 'Budget 2023-24 Equality Impact Assessment' (DfC, 2023).

Discretionary Support Grants

4.11 Discretionary Support is a vital contingency measure for claimants who find themselves in extreme or crisis circumstances and have little or no capacity to meet basic needs. The Department's Independent Review of Discretionary Support highlighted that it often makes the difference between someone living in or escaping from destitution.⁵¹ It relates to fundamental needs for human survival, including food, clothing and a safe home.⁵² The Review concluded that,

The need for Discretionary Support is likely to increase because too many individuals are unable to meet their essential needs from the income they receive through social security benefits or employment and so they remain at high risk of destitution.⁵³

4.12 The NIHRC is therefore deeply concerned by the cuts to the Discretionary Support Grants scheme. Individuals with the lowest incomes are most likely to need this contingency measure, in particular lone parents, families with children and households with disabled people.⁵⁴ These grants act as a final safety net to those with limited financial resilience, it will therefore have a substantial impact to their ability to meet basic needs if this access is reduced.

4.13 Where a certain level of severity is reached, a lack of adequate provision of social security or social insurance could fall within scope of obligations under Article 3 of ECHR (prohibition of inhuman or degrading treatment) and Article 8 of ECHR (private and family life). Article 3 is an absolute and non-derogable right (i.e. cannot be interfered with in any circumstances) and is guaranteed "irrespective of the victims' conduct".⁵⁵ Article 3 could be engaged where extreme poverty, amounting to destitution, has arisen due to a State's actions or inactions.⁵⁶ The European Court of Human Rights (ECtHR) has established that "a complaint about a wholly insufficient amount of social benefits may, in principle, raise an issue under Article 3".⁵⁷

⁵¹ Department for Communities, 'Independent Review of Discretionary Support' (DfC, 2022) at 11.

⁵² Department for Communities, 'Independent Review of Discretionary Support' (DfC, 2022) at 11.

⁵³ Ibid at 14.

⁵⁴ Ibid at 39.

⁵⁵ Articles 3 and 15(2), ECHR; *Chahal v UK* (1996) 23 EHRR 413, at para 79.

⁵⁶ *O'Rourke v UK*, Application No 39022/97, Admissibility Decision, 26 June 2001; *Moldovan and Others v Romania* (No 2) (2007) 44 EHRR 16; *Regina v Secretary of State for the Home Department, ex parte Limbuela* [2005] UKHL 66.

⁵⁷ *Larioshina v. Russia* [2002] ECHR 862.

- 4.14 Article 8 is qualified and can be limited in certain circumstances.⁵⁸ An interference with this right may be justified if the State's acts or inaction were lawful, served a legitimate aim and were proportionate.⁵⁹ In *R (Bernard) v Enfield London Borough*, the High Court stated there must be "a singular lack of respect for the claimant's private and family life", such as condemning the claimant to "living conditions which made it virtually impossible for them to have any meaningful private or family life for the purposes of Article 8".⁶⁰
- 4.15 Corresponding international obligations under UN CRC,⁶¹ UN CEDAW⁶² and UN CRPD⁶³ reinforce the need to take targeted measures to prohibit inhuman and degrading treatment and protect the right to an adequate standard of living.
- 4.16 The NIHRC welcomes the Department's commitment to continuous review of this proposal and the anticipated EQIA specifically for Discretionary Support.⁶⁴ As part of its review and in accordance with the recommendation at paragraph 3.12, the NIHRC reiterate the importance of examining the human rights implications of the reductions to Discretionary Support.
- 4.17 The NIHRC recommends that the Department for Communities prioritises the Discretionary Support Grants scheme to ensure resources adequately meet need and ensure compliance with international human rights obligations, particularly Article 3 and Article 8 of the European Convention on Human Rights.**

Welfare Mitigations

- 4.18 In 2016, the ICESCR Committee highlighted its concerns that social security reforms in the UK were having a disproportionate, adverse impact on the enjoyment of rights by marginalised groups, particularly women, children and persons with disabilities.⁶⁵ The Committee reminded the UK Government and NI Executive of obligations under Article 2 of ICESCR, and

⁵⁸ Article 8(2), ECHR.

⁵⁹ *Dudgeon v United Kingdom* (1981) ECHR 5, at para 53.

⁶⁰ *R (Bernard) v Enfield London Borough* [2002] EWHC 2282, at paras 33-34.

⁶¹ Article 27 (adequate standard of living) and Article 37 (freedom from torture or cruel, inhuman or degrading treatment), UN CRC.

⁶² Article 14 (rural women), UN CEDAW.

⁶³ Article 15 (freedom from torture or cruel, inhuman or degrading treatment) and Article 28 (adequate standard of living and social protection), UN CRPD.

⁶⁴ Department for Communities, 'Budget 2023-24: Draft Equality Impact Assessment Stage 1 Outcome Report' (DfC, 2023) at 119.

⁶⁵ E/C.12/GBR/CO/6, 'ICESCR Committee Concluding Observations on the Sixth Periodic Review of the UK of Great Britain and NI', 14 July 2016, at paras 18 – 19.

noted that any policies or measures enacted to manage a period of crisis must be “temporary, necessary, proportionate and not discriminatory, must not disproportionately affect the rights of disadvantaged and marginalised individuals and groups and respect the core content of rights”.⁶⁶

4.19 In 2016, the UN CRC Committee recommended that the UK Government,

...where necessary, revise [social security reforms] in order to fully respect the right of the child to have his or her best interests taken as a primary consideration, taking into account the different impact of the reform on different groups of children, particularly those in vulnerable situations.⁶⁷

4.20 In 2016, the UN CRPD Committee conducted an inquiry examining the impact of welfare reforms in the UK and NI on the rights of people with disabilities. It set out a range of recommendations including the need for measures to be informed and monitored by cumulative impact assessments and that public budgets,

... take into account the rights of persons with disabilities [and] 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.⁶⁸

4.21 The NIHRC welcomes that ring-fenced funding has been provided for the continuation of existing Welfare Mitigations, Housing Benefit Rates and Debt Advice.⁶⁹ These measures played a critical role in easing the impact of social security reforms implemented between 2010 and 2017.⁷⁰ However, further changes have been introduced, namely Universal Credit and the two-child limit for claimants of certain benefits.

4.22 The UN CEDAW Committee found that Universal Credit “risks depriving women in abusive relationships access to necessary funds and trapping them in situations of poverty and violence”.⁷¹ It also expressed “deep

⁶⁶ Ibid, at para 19.

⁶⁷ CRC/C/GBR/CO/5, ‘UN Committee on Rights of the Child Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 3 June 2016, at para 70(c).

⁶⁸ CRPD/C/15/4, ‘UN 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: Report of the Committee’, 24 October 2017, at para 114.

⁶⁹ Department for Communities, ‘Budget 2023-24 Equality Impact Assessment’ (DfC, 2023), at para 5.7.

⁷⁰ NI Human Rights Commission, ‘Cumulative Impact Assessment of Tax and Social Security Reforms’ (NIHRC, 2019).

⁷¹ CEDAW/C/GBR/CO/8, ‘UN Committee on the Elimination of Discrimination against Women Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland’ 8 March 2019, at para 50.

concern” at the introduction of a two-child tax credit limit, which it describes as having “a perverse and disproportionate impact on women.”⁷²

- 4.23 The Department for Communities’ recent review of Welfare Mitigations emphasised the need for further mitigations to offset the impact of these changes and to tackle poverty and inequality, particularly in light of the rising cost of living.⁷³ Therefore, the NIHRC is concerned that the bid for funding to support a new mitigation package was not met within the current settlement. There is significant evidence that the recent changes to social security are having a disproportionate impact on individuals and groups already marginalised or struggling financially.⁷⁴
- 4.24 The review’s Independent Advisory Panel reiterated that individuals on the lowest incomes and most affected by the changes, were women, carers, people with dependents, and people/children with disabilities.⁷⁵ Without taking further action, it is foreseeable that such individuals will fall into debt, rent arrears and serious hardship.
- 4.25 The NIHRC considers that the failure to take appropriate mitigations in the current circumstances risks exacerbating existing inequalities and could impact the realisation of the right to an adequate standard of living (Article 11 ICESCR) for those individuals and groups most affected. The NIHRC reiterates its previous concern that it does not appear to be the case that social security reforms since 2010 are “temporary, necessary and proportionate”.⁷⁶
- 4.26 It is therefore concerning that no consideration was given to mitigating any adverse impacts of this measure, individual and cumulative, in the draft EQIA. For instance, it would be helpful to understand whether the Department considered any alternative measures or actions, such as the redistribution of internal budgets or if money received in-year will be directed to certain priority areas. While it is recognised that critical decisions on the budget settlement were outside the control of the Department, it has continuing obligations to respect, protect and fulfil

⁷² Ibid.

⁷³ Department for Communities, ‘Welfare Mitigations Review: Independent Advisory Panel Report’ (DfC, 2022). See paras 13-16: Recommendations included offsetting the two-child limit, a higher winter fuel payment, further support for carers and people with disabilities, and tackling the five week wait for first payment of Universal Credit, among others.

⁷⁴ A/HRC/41/39/Add.1, ‘Visit to the United Kingdom of Great Britain and Northern Ireland, Report of the United Nations Special Rapporteur on extreme poverty and human rights’, 23 April 2019, at para 52. See also: Joseph Rowntree Foundation, ‘Financial Resilience and the Transition to Universal Credit: A Report by Policy in Practice’ (JRF, 2019).

⁷⁵ Ibid at 4.

⁷⁶ NI Human Rights Commission, ‘Cumulative Impact Assessment of Tax and Social Security Reforms’ (NIHRC, 2019), at 136.

human rights within its sphere of responsibility during the allocation process.

4.27 The NIHRC recommends that the Department for Communities takes targeted measures to ensure the impact of the delayed introduction of New Welfare Mitigations does not have a sustained impact on the right to an adequate standard of living for vulnerable individuals and groups, in particular women, carers, people with dependents, people with disabilities, and children.

Employment Support

- 4.28 Article 6 of ICESCR provides for the right to work and requires the State to take appropriate steps to safeguard this right, including “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development”. UN CRC,⁷⁷ UN CEDAW⁷⁸ and UN CRPD⁷⁹ also require affirmative measures to ensure access to, retention of and advancement in the labour market, on an equal basis with others, including through pre-employment initiatives.
- 4.29 In its 2016 Concluding Observations on the UK, the ICESCR Committee recommended that the state “review its employment policies to address the root causes of unemployment ... with a specific focus on groups disproportionately affected by unemployment, such as young people, persons with disabilities and persons belonging to ethnic, religious or other minorities”.⁸⁰ This was reiterated by the UN CRPD Committee in 2017, which emphasised that women with disabilities, persons with psychosocial and/or intellectual disabilities and persons with visual impairments required particular attention.⁸¹
- 4.30 The International Labour Organisation (ILO) has identified labour market interventions to mitigate unemployment and help the unemployed back into work as an effective way to manage a crisis.⁸² In response to the economic impact of Covid-19, the ILO called for “urgent and immediate

⁷⁷ Article 23, UN CRC.

⁷⁸ Article 11, UN CEDAW.

⁷⁹ Article 27, UN CRPD.

⁸⁰ E/C.12/GBR/CO/6, ‘ICESCR Committee Concluding Observations on the Sixth Periodic Review of the UK of Great Britain and NI’, 14 July 2016, at para 30.

⁸¹ CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 57.

⁸² International Labour Organisation, ‘Covid-19: Public Employment Services and Labour Market Policy Responses’, (ILO, 2020).

policy responses to actively support transitions into decent work and prevent a significant drop in labour market participation”.⁸³

- 4.31 The NIHRC is concerned that the proposed cuts to the employment support budget will impact upon the Department’s obligations in respect of the right to work. In particular, the proposal to pause resourcing to the Labour Market Partnerships from 1 July 2023 onwards will inevitably adversely affect those experiencing barriers to the labour market. This includes people with disabilities, children and young people, women, migrants and minority ethnic communities.⁸⁴ Further, the rising cost of living means that older people are more likely to seek to return to work and need access to support to re-train or upskill.⁸⁵
- 4.32 The implications of this measure are particularly concerning in the context of the loss of the European Social Fund and the ongoing issues with the UK Shared Prosperity Fund.⁸⁶ The cumulative impact of funding reductions to employment support services is likely to result in the weakening of measures that promote inclusivity, non-discrimination, and equal access to work in NI. In this context, the NIHRC emphasise the vital role of third sector organisations who enable and provide access to essential services, particularly for marginalised people who face significant barriers.
- 4.33 The NIHRC would highlight that the right to work, as a minimum, requires “deliberate, concrete and targeted” steps that combat discrimination, promote equal access and monitor progress, particularly for disadvantaged individuals and groups.⁸⁷ In accordance with Article 2 ICESCR and recommendation 3.12 above, the Department should demonstrate that every effort has been made to use all resources that are at its disposal to satisfy, as a matter of priority, the minimum essential levels of the right to work.
- 4.34 The NIHRC recommends that the Department for Communities maintains targeted programmes that ensure access to, retention of and advancement in the labour market, particularly for people with**

⁸³ Ibid, at 15.

⁸⁴ CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 56; CERD/C.GBR/CO/21-23, ‘UN CERD Committee Concluding Observations on the Combined twenty-first to twenty-third Periodic Reports of the UK of Great Britain and NI’, 2 July 2016, at para 32; CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, (CEDAW, 2019), at paras 45-46.

⁸⁵ ‘British workers increasingly likely to work into their 70s, research suggests’, The Guardian UK, 30 April 2023.

⁸⁶ NI Union of Supported Employment, ‘Future Funding for Disability Employment Services’ (NIUSE, 2019); NI Council for Voluntary Action, ‘Press Release: Latest on the UK Shared Prosperity NI Programme’, 3 August 2022.

⁸⁷ E/C.12/GC/18, ‘UN ICESCR Committee General Comment No.18: The right to work (Article 6)’, 6 February 2022, at para 19 and 31.

disabilities, young people, women, migrants, older people and those living in rural areas.

4.35 The NIHRC recommends that the Department for Communities takes all appropriate measures to sustain resources in third sector organisations and safeguard the effective provision of support and advice on social security, employment, and housing to those who require it most.

Social Housing and Homelessness

4.1 Article 11 of ICESCR provides for the right to an adequate standard of living, including adequate housing, which is inextricably linked to the right to social security. In General Comment No.4, the ICESCR Committee establishes that this right applies without discrimination and should be given a wide interpretation,

...the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head [...]. Rather it should be seen as the right to live somewhere in security, peace and dignity.⁸⁸

4.2 In addition, the Committee makes clear that, even during economic recession, States ought not to regress on measures established to protect the right to adequate housing and must continue to afford particular consideration for those living in unfavourable conditions,

States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration... The Committee is aware that external factors can affect the right to a continuous improvement of living conditions... the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.⁸⁹

⁸⁸ E/1992/23, 'UN ICESCR Committee General Comment No.4: The right to adequate housing (Article 11)' 13 December 1991, at para 7.

⁸⁹ Ibid, at para 11.

- 4.3 The ECHR does not contain an explicit right to adequate housing analogous to the ICESCR, Article 11(1). In certain contexts, however, social housing provision has been deemed to fall within Article 8 and Article 1 of Protocol 1. As abovementioned, in *R (Bernard) v Enfield London Borough*, the High Court found that the failure of a local council to provide a severely disabled woman and her family with suitably adapted accommodation “made it virtually impossible for them to have any meaningful private or family life for the purposes of Article 8”.⁹⁰ In *Teteriny v Russia*, the ECtHR found a violation of Article 1 of Protocol 1 where the State had failed for ten years due to a lack of resources to provide social housing to an individual where a legitimate expectation had been established via a court order.⁹¹
- 4.4 In 2016, the UN ICESCR Committee urged the UK Government and NI Executive to,
- ...adopt all necessary measure to address the housing deficit by ensuring a sufficient supply of housing, in particularly social housing units, especially for the most disadvantaged and marginalised individuals and groups, including middle-and-low income individuals and households, young people and persons with disabilities.⁹²
- 4.5 In 2017, the CRPD Committee emphasised particular concerns facing people with disabilities in respect of the availability of accessible and affordable housing in the UK and NI.⁹³
- 4.6 The NIHRC is concerned by the proposed cuts to the 2022/23 baseline budget of the NI Housing Executive and the impact this will have on the development and maintenance of social housing. NI’s social housing sector continues to struggle to meet its targets for housing provision and cope with increased need. On 31 March 2023, the number of applicants on the social housing waiting list was 45,105.⁹⁴ Of these applicants, 32,633 were in housing stress.⁹⁵ Any reduction in funding is likely to have an adverse impact on those most vulnerable to poverty, social exclusion and

⁹⁰ *(Bernard) v Enfield London Borough* [2002] EWHC 2282, at paras 33-34.

⁹¹ *Teteriny v Russia*, ECtHR, Appl. No 11931/03 (30 June 2005), para 51, see also, paras 45-47.

⁹² E/C.12/GBR/CO/6, ‘ICESCR Committee Concluding Observations on the Sixth Periodic Review of the UK of Great Britain and NI’, 14 July 2016, at para 50.

⁹³ CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at paras 14, 17 and 24.

⁹⁴ NI Statistics and Research Agency, ‘NI Housing Statistics 2021-22’ (DfC, 2022).

⁹⁵ *Ibid.*

homelessness, including households with dependents, with disabilities, women at risk of domestic violence and LGBTQI+ persons.⁹⁶

- 4.7 Beyond the immediate need for new social housing, there are a number of other issues facing the sector that need to be addressed and any reduction in capacity is likely to limit progress. For instance, there is no up-to-date housing supply strategy for NI and a lack of comprehensive equality data on housing.⁹⁷ Social housing continues to be allocated on a points-based system, which determines applicant's position on the waiting list. The current definition for intimidation points excludes domestic violence, coercive control or intimidation due to nationality.⁹⁸ There is also no official appeals mechanism, and the informal complaints procedure is lengthy and exacerbates harm on already vulnerable households.
- 4.8 The cumulative effect of the cost of living crisis and the proposed cuts, namely those to Social Security Delivery and Discretionary Support Grants, is likely to increase the number of people presenting as homeless. In 2021-22, there were 10,135 households accepted as statutorily homeless in NI, an increase from 9,889 households in 2020-21.⁹⁹ This figure does not include the 'hidden homeless', cases who have had their application rejected or did not apply in the first place. This is particularly concerning in light of the marked increase in deaths of rough sleepers, particularly women, on the streets of Belfast.¹⁰⁰
- 4.9 Therefore, any reductions to the level of funding for the Supporting People Programme is further concern. This programme assists some of the most vulnerable people in NI to live independent lives, namely those experiencing homelessness, young people, people with disabilities, and older people. Without this support, it is foreseeable that further demands will be placed on homelessness services and the healthcare system.

⁹⁶ Department for Communities, 'Expert Advisory Panel Report: Gender Equality Strategy' (DfC, 2020) at 8.1.4; Department for Communities, 'Expert Advisory Panel Report: LGBTQI+ Strategy' (DfC, 2020) at 52.

⁹⁷ Department for Social Development, 'Facing the Future: The Housing Strategy for NI 2012-2017' (DSD, 2012); NI Human Rights Commission, 'Submission to the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities – Parallel Report to the CoE Advisory Committee on the Fifth Monitoring Report of the UK' (NIHRC, 2022), at para 5.37.

⁹⁸ In 2022, the NIHRC assisted several individuals who have not been awarded intimidation points, despite being victims of intimidation. Intimidation points are awarded to applicants whose home has been destroyed or seriously damaged or they are in serious and imminent risk of being killed or seriously injured as a result of a terrorist, racial or sectarian attack, or because of an attack motivated by hostility because of an individual's disability or sexual orientation or result of an attack due to neighbourhood nuisance or other similar forms of anti-social behaviour. See NI Housing Executive, 'Housing Selection Scheme Rules' (NIHE, 2014), at Rule 23.

⁹⁹ NI Statistics and Research Agency, 'NI Housing Statistics 2021-22' (DfC, 2022).

¹⁰⁰ In 2021, 23 people were estimated to be sleeping rough in NI, a 27 per cent increase from 18 in 2020. See NI Housing Executive, '2021 Rough Sleeping Count/Estimates' (NIHE, 2021); Rory Carroll and Simon Hattenstone, 'Protest march called in Belfast after the deaths of 14 homeless people', *The Guardian*, 22 July 2022.

4.10 The NIHRC recommends that the Department for Communities maintains and prioritises adequate funding to the housing sector and takes appropriate mitigating measures to address waiting lists and prevent homelessness. Particular consideration must be afforded to those living in unfavourable conditions in NI, in accordance with Article 11 of ICESCR and Article 8 of ECHR.

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