

The 2017 Annual Statement

Human Rights in Northern Ireland

2017

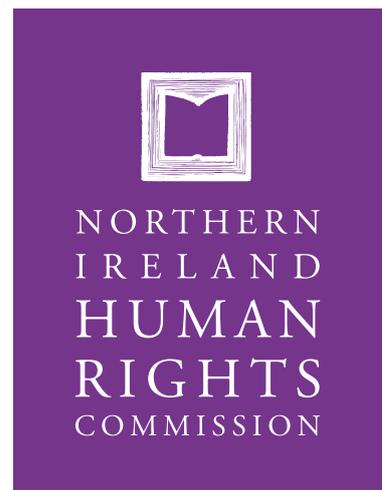


NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

The 2017 Annual Statement

Human Rights in Northern Ireland

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About us

The NI Human Rights Commission (the Commission) protects and promotes the human rights of everyone in NI. We do this by:

- keeping under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights;
- advising the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights;
- advising the NI Assembly whether proposed legislation is compatible with human rights standards;
- promoting understanding and awareness of the importance of human rights in NI by, for example, undertaking or commissioning or otherwise assisting research and educational activities.

In addition, the Commission has powers to:

- give assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights;
- bring proceedings involving law or practice concerning the protection of human rights;
- institute, or intervene in, legal proceedings concerning human rights where it need not be a victim or potential victim of the unlawful act to which the proceedings relate;
- conduct investigations, and;
- require a person to provide information and documents in their possession, and to give oral evidence, in respect of an investigation;
- enter a specified place of detention in NI, in respect of an investigation, and;
- publish its advice and the outcome of its research and investigations.

Our mission statement

The Commission champions and guards the rights of all those who live in NI.

Chief Commissioner: Les Allamby
Commissioners: Helen Ferguson
Helena Macormac
Paul Mageean
John McCallister
Eddie Rooney
Graham Shields

Chief Executive: Dr David Russell

Acronyms

CFREU	Charter of Fundamental Rights of the European Union
CAT	Convention Against Torture, Inhuman or Degrading Treatment or Punishment
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Disabled Persons
ECHR	European Convention on Human Rights
ECt.HR	European Court of Human Rights
ESC	European Social Charter
FCNM	Framework Convention for the Protection of National Minorities
HRA	Human Rights Act
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights,
NI	Northern Ireland
UK	United Kingdom
UN	United Nations

Understanding the annual statement

The Commission's annual statement uses a traffic light system to assist readers.

Red  identifies a subject that requires immediate action by the UK Government, NI Executive or relevant public authorities and the issue may be an ongoing violation or abuse of human rights within NI.

Amber  identifies a subject that requires action by the UK Government, NI Executive or relevant public authorities. The issue may not be at a level that constitutes an ongoing violation or abuse of human rights. Initial steps toward providing an effective response could have already been taken or the necessity of taking action acknowledged by the relevant body. Such actions may have commenced but are not yet completed.

Green  identifies a subject that has been acknowledged as requiring action to protect human rights in NI and an effective response has been provided by the UK Government, NI Executive or relevant public authorities. A firm commitment to address the matter will have been demonstrated and undertaken.

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Foreword

It is difficult to write in a positive vein on the developments in human rights in 2017. There is not a single green light for the UK government, Northern Ireland Executive or any relevant public authority denoting an effective response to addressing specifically identified human rights issues in Northern Ireland. The lack of progress reflects the absence of a working Northern Ireland Assembly throughout this year.

The annual statement's charting of the state of play illustrates why an effective devolved Assembly is so important for human rights. Outstanding strategies to promote gender equality, improve the circumstances of people with disabilities, and to enhance the lives of LGBTI individuals as well as to tackle poverty based on objective need all remain on the drawing board. In the case of the anti-poverty strategy this unsatisfactory state of affairs prevails despite a High Court ruling two and a half years ago that the Northern Ireland Executive had failed to meet its legal obligation to produce such a strategy.

These strategies are not academic. The annual statement, for example, highlights research from the Institute for Fiscal Studies projecting a significant increase in absolute child poverty driven entirely by a sharp rise in poverty among families with three or more children, which is a result of planned tax and social security reforms. The impact of recent legislative changes to confine entitlement to new claimants for child tax credit and universal credit to two children only is just the type of issue which should be debated in the Northern Ireland Assembly, particularly so, given that we have proportionally higher numbers of large families than in Britain.

Moreover, the recent concluding observations of the Committee on the Rights of Persons with Disabilities set out in forthright terms how far we have to go to ensure people with disabilities can fully realise the right to live independently and be included in community life.ⁱ

The Programme for Government offered a welcome outcomes-based approach to policy and legislative development. Such a focus can only work if it is politically led and driven. However the political impasse plays out, the next 12 months will see a very significant and full in-tray of human rights issues for Ministers to tackle.

Elsewhere for example in Scotland, there has been significant progress in meeting the recommendations made by the UN treaty monitoring bodies. The Minister for Childcare and Early Years in Scotland has announced a Bill will be introduced in this session to increase the minimum age of criminal responsibility to 12 years of age. In addition, the Scottish government has also announced it will remove the defence of justifiable assault that allows for the physical punishment of children by supporting a Bill brought forward by the Green MSP John Finnie.

A further year has also passed without concrete progress being made on the outstanding legacy inquests, inquiries and other issues of our past. We can only move forward effectively if we deal properly with the past and resource the necessary initiatives accordingly. This recognises the reality that any process will inevitably leave some dissatisfied and many questions unanswered. One lesson of history is that the impact of conflict is inter-generational and the past cannot simply be swept under the carpet.

Finally, this year has seen a complete turnover of Commissioners while the Chief Executive of the Commission has also moved on to new pastures. I would like to record my thanks to the outgoing Commissioners and to Virginia McVea for their support, commitment and robust engagement with the human rights issues facing the Commission. There have been a significant number of achievements under their watch and they leave a healthy platform for the six new Commissioners and the new Chief Executive David Russell to build on.



Les Allamby
Chief Commissioner

ⁱ United Nations Convention on Rights of People with Disabilities: Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland – Committee on the Rights of Persons with Disabilities, 29 August 2017.

Chapter 1 Introduction

The Commission was established following the Belfast (Good Friday) Agreement 1998. It is a National Human Rights Institution with 'A status' accreditation at the Global Alliance of National Human Rights Institutions.

Having assessed developments affecting human rights protections in NI throughout 2017, the Commission publishes this annual statement, operating in accordance with the NI Act 1998, and recalling its mandate to:

- *keep under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights; and*
- *to advise the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights.*¹

The Commission also recalls the UN Paris Principles, and, in particular, the responsibility of a National Human Rights Institution to:

*submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.*²

The Commission's assessment of developments during 2017 is premised upon the requirements of domestic human rights standards and those treaty obligations of the UN and European systems that are legally binding in NI on the basis of their ratification by the UK.

The treaties which the UK has ratified include:

- *European Convention on Human Rights (ECHR) [UK ratification 1951] – given further domestic effect by the Human Rights Act (HRA) 1998;*
- *European Social Charter (ESC) [UK ratification 1962];*
- *Framework Convention for the Protection of National Minorities (FCNM) [UK ratification 1998];*
- *Convention on Action against Trafficking in Human Beings [UK ratification 2008];*
- *European Charter for Regional or Minority Languages [UK ratification 2001];*
- *International Covenant on Civil and Political Rights (ICCPR) [UK ratification 1976];*
- *International Covenant on Economic, Social and Cultural Rights, (ICESCR) [UK ratification 1976];*
- *Convention on the Elimination of All Forms of Racial Discrimination (CERD) [UK ratification 1969];*
- *Convention on the Elimination of Discrimination Against Women, (CEDAW) [UK ratification 1986];*
- *Convention on the Rights of the Child (CRC) [UK ratification 1991];*

1 See section 69, NI Act 1998.

2 Principles relating to the Status of National Institutions, adopted by UN General Assembly resolution 48/134 of 20 December 1993

- *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict [UK ratification 2003]*
- *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography [UK ratification 2009]*
- *Convention Against Torture, Inhuman or Degrading Treatment or Punishment (CAT) [UK ratification 1988];*
- *the UN Educational, Scientific and Cultural Organisation Convention on the Protection and Promotion of the Diversity of Cultural Expressions [UK ratification 2007]*
- *Charter of Fundamental Rights of the European Union (CFREU) [UK ratification 2000]*
- *Convention on the Rights of Disabled Persons, (CRPD) [UK ratification 2009].*

Human rights law further applies by virtue of the NI Act 1998, Section 24 (1). Ministers of the Executive Committee of the NI Assembly (NI Executive) and Executive departments are therefore required to ensure that all legislation and actions are compatible with the ECHR.³

In addition the NI Act 1998, Section 26, requires compliance with other international human rights obligations, and that for this purpose the Secretary of State for NI may, by direct order, prevent any proposed action by Ministers of the NI Executive and devolved Executive departments.⁴

The ECHR is given further domestic effect in the UK as a consequence of the HRA. Subject to Section 6 (3), all public authorities in NI must ensure that their actions are compatible with the HRA. The definition of a public authority includes a 'court or tribunal, and any person certain of whose functions are functions of a public nature'.⁵ This means that private sector contractors may, at times, be subject to the requirements of the HRA. Government departments have the duty to ensure that actions carried out following public procurement exercises comply with the ECHR.

The Commission, in assessing compliance with international human rights standards, takes account of the findings of the international monitoring bodies that are directed to or otherwise apply to NI, as well as the general comments and other interpretive texts adopted by such bodies.

Treaty examinations and reports issued in 2017:

UN Convention on the Rights of Persons with Disabilities

The UN CRPD Committee examined the UK's initial report on compliance with the UN CRPD in 2017. The Committee published its concluding observations in August 2017; the report contained recommendations of specific and general relevance to persons with disabilities in NI. These are set out in the relevant sections of the annual statement.

Council of Europe Framework Convention for the Protection of National Minorities

In February 2017 the Advisory Committee on the FCNM published its fourth Cycle Opinion which continued to analyse the UK following its delegation visit to the UK in March 2016. Also in February, the UK Government submitted responding comments on the Advisory Committee's Opinion as adopted in May 2016.

3 Section 24 of the NI Act 1998 states: 'A Minister or NI department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act— (a) is incompatible with any of the Convention rights'

4 Section 26 of the NI Act 1998 states: 'If the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order, he may by order direct that the proposed action shall not be taken'

5 See section 6, Human Rights Act 1998

Chapter 2 Substantive rights and issues

Equality and non-discrimination

ICCPR	Article 2(1) Article 3 Article 24 Article 26
ECHR	Article 14
CFREU	Article 20 Article 21 Article 23
ICESCR	Article 2(2) Article 3
CRC	
CRPD	
CERD	
CEDAW	
FCNM	

Consolidating, strengthening and clarifying equality protections

In NI, discrimination is prohibited by a number of laws and regulations, resulting in a complex framework.⁶ Three UN treaty bodies have raised concerns that NI law does not provide for a single legislative instrument to consolidate, clarify and enhance existing equality protections.⁷

The Commission has again reported the matter to the UN in 2017. In August 2017 the UNCRPD Committee recommended reform of equality law in NI,

to protect persons with disabilities in Northern Ireland from direct and indirect disability-based discrimination and discrimination through association.

In 2016 the UN ICESCR Committee stated its regret that, despite its previous recommendation the situation in NI has not been addressed.⁸ It urged ‘a similar level of protection to rights holders with regard to all grounds of discrimination for all individuals in all jurisdictions of the State party, including NI.’ The European Commission against Racism and Intolerance has also recommended, as a priority for implementation, that the authorities ‘consolidate equality legislation into a single, comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the Equality Commission for NI’.⁹

6 See, Employment Equality (Age) Regulations (NI) 2006; Disability Discrimination Act 1995; Special Educational Needs & Disability (NI) Order 2005; Equal Pay Act (NI) 1970; Sex Discrimination (NI) Order 1976; Race Relations (NI) Order 1997; Fair Employment & Treatment (NI) Order 1998; Employment Equality (Sexual Orientation) Regulations (NI) 2003; Equality Act (Sexual Orientation) Regulations (NI) 2006; and, Northern Ireland Act 1998.

7 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 23; UN Committee on the Elimination of Racial Discrimination, Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom, CERD/C/GBR/CO/21-23, UN CERD, 26 August 2016, para 8 (c); UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/7, UN CEDAW, July 2013, para 18.

8 NIHRC, Submission to the UN Committee on Economic, Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom’s Compliance with ICESCR, April 2016, p. 25.

9 ECRI, Report on the United Kingdom (fifth monitoring cycle), CRI(2016)38, Adopted on 29 June 2016, European Commission against Racism and Intolerance, 4 October 2016, para 22.

The Commission notes that the NI Executive previously expressed its intent to review the current equality framework through a step-by-step approach rather than through a single legislative instrument.¹⁰ In year the Commission has raised the issue of law reform with senior officials within the NI Executive Office who have emphasised that there are no plans at present for a single overview of existing equality law and no agreement on a Single Equality Bill.

Recommendation

The Commission continues to recommend that the Executive Office prioritise the introduction of legislation that will strengthen, simplify and harmonise equality law within a Single Equality Act. It calls upon the NI Executive to support the Executive Office and secure necessary political consensus on this matter.



Age discrimination

In June 2016 the UN CRC Committee recommended that the State Party including the NI Executive:

Consider the possibility of expanding legislation to provide protection of all children under 18 years of age against discrimination on the grounds of their age.¹¹

There is currently no prohibition on discrimination in the provision of goods, facilities and services in NI on the basis of age. The Office of the First Minister and Deputy First Minister (now the NI Executive Office) published a consultation document in 2015 proposing to extend age discrimination legislation to cover the provision of goods, facilities and services.¹² The Commission welcomed the initiative but, along with the NI Commissioner for Children and Young People and a number of children's organisations, expressed concern that these proposals exclude children under 16.¹³ NI Executive Ministers have stated that the decision to exclude under 16s was made on the basis of seeking to advance legislation as quickly as possible with the aim of eventually extending age discrimination protection to children under 16.¹⁴ The legislation was not progressed prior to the suspension of the NI Assembly. Engagement with officials in year has indicated that the policy content of the proposed legislation is not yet settled.

Recommendation

The Commission recommends that the Executive Office introduces legislation to extend age discrimination to cover the provision of goods, facilities and services. If the proposed legislation does not however include under 16s, then the Commission further recommends that the Executive Office provides an assurance that legislation will be introduced to ensure children under 16 are protected against discrimination in the provision of goods, facilities and services within a specific and expedited timeframe. The Commission calls upon the NI Executive to support the Executive Office and secure necessary political consensus on this matter.

10 See comments to the UN Committee on the Elimination of Discrimination against Women, Replies of United Kingdom of Great Britain and Northern Ireland to the list of issues to be taken up in connection with the consideration of its seventh periodic report, CEDAW/C/GBR/O/7/Add.1, UN CEDAW, February 2013, para 17; See also comments in the draft Racial Equality Strategy, OFMDFM, 'A Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014 – 2024' (pp. 38 and 40), consultation period August – October 2014.

11 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016.

12 OFMDFM, Proposals to Extend Age Discrimination Legislation (Age Goods, Facilities and Services) Consultation Document, July 2015.

13 NICCY, 'Don't exclude us! Strengthening protection for Children and Young people when Accessing Goods, Facilities and Services', 2013; Northern Ireland NGO Alternative Report, Submission to the United Nations Committee on the Rights of the Child for Consideration During the Committee's Examination of the United Kingdom of Great Britain and Northern Ireland Government Report, Children's Law Centre and Save the Children NI, June 2015, p. 14; NIHRC, Response to consultation on Proposals to Extend Age Discrimination Legislation (Age Goods, Facilities and Services), 2015.

14 Committee for the Office of the First Minister and Deputy First Minister, 'Age Discrimination Legislation: OFMDFM Junior Ministers and Officials', Official Report (Hansard), 15 April 2015.

Extension of civil marriage to same sex couples

The UN Human Rights Committee has welcomed the adoption of the Marriage (Same Sex Couples) Act 2013, which provides for same sex marriage in England and Wales.¹⁵ Similar provision was made in Scotland through the Marriage and Civil Partnership (Scotland) Act 2014.¹⁶ A year later, following a referendum, Ireland also enacted the Constitution (Marriage Equality) Act 2015 to provide for same sex marriage.¹⁷

The Marriage (Same Sex Couples) Act 2013 at schedule 2 provides for a marriage of a same sex couple under the law of England and Wales to be treated as a civil partnership formed under the law of NI (and accordingly, the spouses are to be treated as civil partners). In August 2017 the NI High Court dismissed an application from a gay man seeking a declaration that his marriage in London was a valid and subsisting marriage under the law of NI. Mr Justice O'Hara held that on the basis of the case law of the ECt.HR, he could not conclude that X's Convention rights had been violated because in NI, X's marriage, whilst legally recognised in England and Wales, is only recognised as a civil partnership.¹⁸ He stated:

*To the frustration of supporters of same sex marriage, the Assembly has not yet passed into law any measure to recognise and introduce same sex marriage. Their frustration is increased by the fact that the Assembly has voted by a majority in favour of same sex marriage, but by reason of special voting arrangements which reflect the troubled past of this State, that majority has not been sufficient to give the vote effect in law.*¹⁹

Recommendation

The Commission remains concerned that NI is the only part of the UK retaining a statutory bar on same sex couples marrying. It observes that a change in the law elsewhere may have led to an unequal level of human rights protection across the jurisdictions of the UK and continues to advise the Department of Finance of these concerns.

Gender equality strategy

The Gender Equality Strategy 2006-2016 expired in December 2016.²⁰ In December 2016, the then Minister for Communities indicated that the issue of gender equality would be addressed in a Social Strategy.²¹ At the time of writing a draft Social Strategy has not been published nor has a consultation taken place. In the absence of a Minister, the Commission has raised concerns with officials in year.

Recommendation

The Commission continues to call upon the Department for Communities to prioritise the publication of a strategy to promote gender equality, accompanied by a measurable plan of action to address gender inequalities and effective monitoring arrangements.

15 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 3.

16 Same Sex and Civil Partnership (Scotland) Act 2014.

17 Thirty-fourth Amendment of the Constitution (Marriage Equality) Act 2015.

18 Northern Ireland Courts Service, Judge dismisses Same Sex Marriage Petition, 17 August 2017

19 Northern Ireland Courts Service, Judge dismisses Same Sex Marriage Petition, 17 August 2017

20 Office of the First Minister and deputy First Minister, Gender Equality Strategy 2006-2016 Review, April 2013

21 Northern Ireland Assembly, AQO 83216-21, Mr Cathal Boylan, 5 December 2016



Hate crimes

In 2015, the UN Human Rights Committee recommended that the UK, including the NI Executive, seek to eradicate racism through:

*(a) Effectively implementing and enforcing the existing relevant legal and policy frameworks on combating hate crimes; (b) Introducing new awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity; (c) Improving the reporting of cases of incitement to discrimination, hostility or violence, and of hate crimes; (d) Thoroughly investigating alleged cases of incitement to discrimination, hostility or violence, and hate crimes, prosecuting perpetrators and, if convicted, punishing them with appropriate sanctions, and providing victims with adequate remedies, including compensation.*²²

The Police Service NI has reported 1,054 racist incidents and 660 racist crimes in the financial year 2016/17, a decrease on the previous year, with 167 fewer incidents and 193 fewer crimes recorded.²³

The Public Prosecution Service NI publishes statistics on cases considered by a prosecutor to have been 'aggravated by hostility'. During 2016/17, prosecutorial decisions were issued by the Public Prosecution Service in respect of 347 persons in cases considered to have involved hate crime which was 'aggravated by hostility'. This was lower than the total issued during 2015/16 (516).²⁴

Two of the 20 defendants convicted during the period 2016/17 in the Crown Court received an increased sentence where the Judge accepted that the aggravating feature of the offence(s) had been proven beyond reasonable doubt.²⁵ This compared to one out of 14 in 2015/16. In the Youth and Magistrates Court, this figure was 42 (30%) of the 141 defendants. This compared to 88 out of 244 in 2015/16 (36%).²⁶

The NI Policing Board published its Human Rights Thematic Review: Policing Race Hate Crime in June 2017. The Review examined to what extent the Police Service NI are complying with the Human Rights Act 1998 when dealing with and for those from minority racial groups.²⁷ It focused on how the Police Service NI identify, record and investigate race hate crime; how victims are encouraged to report incidents; and how they are supported. It provides a detailed account of the domestic and international legal framework and standards relating to hate crime. After examining current police policy, the Review found '*application of policy in practice occasionally falls below that dictated by policy*', and produced 14 recommendations.²⁸

As reported in previous annual statements, in 2013 the Commission published an investigation report 'Racist hate crime: human rights and the criminal justice system in NI'.²⁹ Throughout 2017 the Criminal Justice Inspectorate NI has been reviewing the criminal justice system's response to hate crime and it is due to publish its report shortly.

22 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 10.

23 PSNI, Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Quarterly Update to 31 March 2017 (Providing final figures for 1st April 2016 to 31st March 2017), 17 May 2017, see Table One

24 Public Prosecution Service, Statistical Bulletin: Cases Involving Hate Crime 2016/17, August 2017, p. 16

25 Public Prosecution Service, Statistical Bulletin: Cases Involving Hate Crime 2016/17, August 2017, p. 17

26 Ibid

27 Policing Board NI, Human Rights Thematic Review: Policing Race Hate Crime, June 2017

28 Ibid, p.63

29 NIHRC, 'Aggravated by Racial Hostility: Human rights and the criminal justice system', Belfast 2013.

Recommendation

The Commission welcomes the NI Executive's commitment to addressing racist hate crimes. It continues to encourage relevant public authorities, particularly the Department of Justice, Executive Office, Police Service NI and Public Prosecution Service, to prioritise actions that prevent, prohibit and prosecute hate crimes and to take all necessary measures to protect victims.



Intersectional multiple discrimination

NI legislation does not provide for intersectional multiple discrimination cases.³⁰ The Equality Act 2010 which covers other parts of the UK contains a dual discrimination provision, however this provision has not been brought into force as of yet, despite a recommendation from the House of Lords Select Committee on the Equality Act 2010 and Disability on the issue.³¹ At present, each discrimination ground has to be considered and ruled on separately.

In 2017 the UNCRPD Committee recommended that the UK Government and devolved administrations,

*explicitly incorporate in its national legislation protection from, in particular multiple and intersectional discrimination on the basis of gender, age, race, disability, migrant, refugee and / or other status, and provide appropriate compensation, and redress for victims, and sanctions proportional with the severity of the violation.*³²

The Equality Commission NI reported in an engagement with the Commission that there were 389 hybrid complaints/enquiries in 2016/17. Hybrid complaints are those which fall under two or more protected characteristics.

Recommendation

The Commission recommends that the Executive Office introduce legislation providing for intersectional multiple discrimination claims in NI.



Persons with disabilities

Responsibility for disability was transferred to the Department for Communities in 2016. In March 2017 the NI Executive's 'Strategy to Improve the Lives of People with Disabilities' expired.³³ A new strategy to promote the rights of persons with disabilities has not been introduced or consulted upon. The Commission raised specific concerns at the failure of the NI Executive to ensure the effective participation of persons with disabilities in the oversight of the previous strategy.³⁴ In August 2017 the UNCRPD Committee stated that it was,

concerned at the lack of State party-led initiatives aimed at assessing and sufficiently addressing the inclusion of and living conditions for persons with disabilities, particularly in Northern Ireland and the overseas territories. The Committee recommends that the State party collect information

30 'Intersectional discrimination' refers to a discriminatory experience based on two or more grounds taken together, but where each ground could not prove the discrimination if taken individually.

31 Select Committee on the Equality Act 2010 and Disability, "The Equality Act 2010: The Impact on Disabled People", Report of session 2015-16, HL Paper 117, published 24 March 2016.

32 Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, para 19

33 OFMDFM, Junior Ministers Jennifer McCann and Michelle McIlveen have announced the Executive's Disability Strategy will be extended until the end of March 2017, 12 May 2015.

34 NI Executive, 'A Strategy to improve the lives of people with disabilities 2012-2015' Annual Report, June 2015. p. 28.

*and adopt a strategic and measurable plan of action for improving the living conditions of all persons with disabilities, including in close cooperation with authorities in Northern Ireland and the overseas territories.*³⁵

In year the Commission has met with officials pressing for implementation of the UNCRPD Committee's recommendation.

Recommendation

The Commission continues to call upon the Department for Communities to develop a robust disability strategy, accompanied by a measurable plan of action for improving the living conditions of all persons with disabilities and effective monitoring arrangements. This strategy should be developed in conjunction with people with disabilities and representative organisations.



Religious tolerance

The Equality Act (Sexual Orientation) Regulations (NI) 2006, at Regulation 5 provide that,

5.—(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services.

The Regulations were the subject of an appeal to the Court of Appeal in 2016. The appellants, Ashers Baking Co. Ltd, argued that if they were compelled by the Regulations to provide a cake with the slogan 'Support Gay Marriage' to a customer this would run contrary to the ECHR, Article 9 right to manifest their religion and as such the Regulations should be interpreted accordingly.³⁶ The Attorney General made submissions in support of the appellants, arguing that if,

*the appellants were compelled on pain of civil liability to articulate views hostile to their religious and political views, they were protected from such coerced speech by Article 10 ECHR (freedom of expression).*³⁷

In dismissing the appeal, the NI Court of Appeal ruled that the 2006 Regulations were lawfully made and did not discriminate against the appellants as the legislation treated all parties in the same way. The NI Court of Appeal noted that the answer, in this case, was not to remove the equality protections in the 2006 Regulations, but rather '*for the supplier of services to cease distinguishing, on prohibited grounds, between those who may or may not receive the service*'.³⁸ The NI Court of Appeal also did not find any breach of the appellant's Article 9 ECHR right to manifest their religion or Article 10 ECHR right to freedom of expression.

The UK Supreme Court has accepted an application from Ashers Baking Company and a hearing is to take place in Belfast commencing on 30 April 2018.³⁹ A separate attempt by the Attorney General to refer the case to the Supreme Court to rule on issues relating to devolution was unsuccessful.⁴⁰

³⁵ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, paras 8 and 9

³⁶ Court of Appeal of Northern Ireland, Gareth Lee v. Colin McArthur, Karen McArthur and Ashers Baking Company Limited 2016 NICA 39, NI Courts and Tribunal Service, 24 October 2016, para 100.

³⁷ *Ibid*, para 39.

³⁸ *Ibid*, para 100.

³⁹ Newsletter, Supreme Court to consider judgment in Ashers case, 10 May 2017

⁴⁰ Newsletter, Ashers case: Attorney general 'too late' with Supreme Court referral, 21 December 2016. Available at: <http://www.newsletter.co.uk/news/crime/ashers-case-attorney-general-too-late-with-supreme-court-referral-1-7744002>

Recommendation

The Commission opposes the proposition that freedom to manifest one's religion is undermined by protecting individuals from discrimination on the ground of sexual orientation. The Commission continues to advise the right to hold religious beliefs is absolute, but the right to manifest one's religion or beliefs is qualified. Attempts in NI to permit restrictions on access to goods, facilities and services by private companies that in practice would be applied against one community or one protected group are retrogressive and undermine a fundamental principle of human rights.



Sectarianism

The Police Service NI has reported 938 sectarian incidents and 666 sectarian crimes in the financial year 2016/17. This marks a decrease on the previous year, with 414 fewer incidents and 335 fewer crimes recorded.⁴¹ Nonetheless the continuance of sectarian violence raises significant human rights concerns, including: individuals being subjected to torture, inhuman and degrading treatment; individuals being forced from their homes and denied the right to choose their place of residence; and individuals being denied the right to express their culture.

Throughout 2017, flags, cultural symbols and emblems remained a source of dispute.⁴² The Stormont House Agreement proposed the establishment of a Commission on Flags, Identity, Culture and Tradition. The Commission on Flags, Identity, Culture and Tradition was constituted in June 2016 and has conducted a schedule of meetings throughout NI. The report is expected by the end of 2017.

The 'Together: Building a United Community' strategy contains a commitment to develop a statutory definition of 'sectarianism' and 'good relations'. In August 2016, the UN ICERD Committee reiterated its '*previous concern that measures to tackle racism and sectarianism are kept outside the framework of protections against discrimination provided by the Convention and the Durban Programme of Action*'.⁴³ The Committee recommended that the next periodic report contain information on concrete measures adopted to address racial discrimination and on the impact of the Together: Building a United Community Strategy.⁴⁴ In February 2017 the Advisory Committee on the FCNM recommended that,

*the Northern Ireland Executive should endeavour to implement the 'good relations' duty as provided under the Northern Ireland Act 1998 in a manner that does not run counter to the equality duty and that does not prevent access to rights of persons belonging to all national and ethnic minorities.*⁴⁵

The NI Executive has not consulted on proposed definitions of 'sectarianism' or 'good relations' and an update on implementation of the strategy published in June 2017 did not indicate any substantive progress in relation to this matter.⁴⁶

41 PSNI, Police Recorded Security Situation Statistics Annual Report covering the period 1st April 2016 – 31st March 2017, 17th May 2017

42 BBC News NI, 'Irish tricolour flag flown over Stormont', 3 June 2015.

43 UN Committee on the Elimination of Racial Discrimination, Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom, CERD/C/GBR/CO/21-23, UN CERD, 26 August 2016, para 36.

44 *Ibid*, para 37.

45 Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on the United Kingdom (ACFC/OP/IV(2016)005), 27 February 2017, p. 2

46 NI Executive, 'Together: Building a United Community Update Report', June 2017

Recommendation

The Commission condemns sectarianism and supports a NI that promotes the human rights principles of tolerance, understanding and mutual respect. It welcomes the establishment of a Commission on Flags, Identity, Culture and Tradition. It advises the Executive Office to ensure compliance with relevant human rights treaties and appropriate consideration of related soft law in any future developments. The Commission calls upon the Executive Office to introduce legislation committed to in the 'Together: Building a United Community' strategy, including definitions of 'sectarianism' and 'good relations' as well as amending and strengthening the current domestic legal framework in accordance with its human rights obligations.

Sexual orientation strategy

The Office of the First Minister and Deputy First Minister (now the NI Executive Office) issued a public consultation in March 2014 on the development of a Sexual Orientation Strategy.⁴⁷ Responsibility for the strategy transferred to the Department for Communities in 2016. In year the Commission has met with officials within the Department for Communities who have informed the Commission that the sexual orientation strategy is being considered within the context of the NI Executive's draft Social Strategy.⁴⁸

Recommendation

The Commission recommends that the Department for Communities prioritise the publication of a sexual orientation strategy for NI, accompanied by a measurable plan of action and effective monitoring arrangements. It calls on the NI Executive to support the NI Executive Office and secure necessary political consensus on this matter.

47 OFMDFM, Developing a Sexual Orientation Strategy - Consultation document and Questionnaire, March 2014.

48 Correspondence between Department for Communities and NIHRC, 15 November 2016

Right to life

ICCPR	Article 6
ECHR	Article 2
CRFEU	Article 2
CRC	Article 6(1)
CRPD	Article 10



Conflict related deaths: transitional justice and individual cases

In 2015 the UN Human Rights Committee recommended that the UK, including the NI Executive:

(a) Ensure, as a matter of particular urgency, that independent, impartial, prompt and effective investigations, including those proposed under the Stormont House Agreement, are conducted to ensure a full, transparent and credible account of the circumstances surrounding events in NI with a view to identifying, prosecuting and punishing perpetrators of human rights violations, in particular the right to life, and providing appropriate remedies for victims;

(b) Ensure, given the passage of time, the sufficient funding to enable the effective investigation of all outstanding cases and ensure its access to all documentation and material relevant for its investigations.⁴⁹

On 23 December 2014 the Stormont House Agreement was reached.⁵⁰ The Agreement sets out a structure for the effective investigation of conflict related deaths. Four bodies and one specific service to deal with 'The Past' are to be established. These are:

- *The Oral History Archive, which will 'provide a central place for peoples from all backgrounds (and from throughout the UK and Ireland) to share experiences and narratives related to the Troubles.'⁵¹*
- *Victims and Survivors' 'Services', which will include a Mental Trauma Service, a proposal 'for a pension for severely physically injured victims', and advocate-counsellor assistance.⁵²*
- *The Historical Inquiries Unit, which will 'take forward investigations into outstanding Troubles-related deaths'.⁵³*
- *The Independent Commission on Information Retrieval, which will 'enable victims and survivors to seek and privately receive information about the (Troubles-related) deaths of their next of kin'.⁵⁴*
- *The Implementation and Reconciliation Group, which will 'oversee themes, archives and information recovery' and commission an academic report after 5 years analysing themes.⁵⁵*

49 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 11(b).

50 NI Office, 'Stormont House Agreement', 23 December 2014.

51 NI Office, 'Stormont House Agreement', 23 December 2014, para 22.

52 NI Office, 'Stormont House Agreement', 23 December 2014, para 26-29.

53 NI Office, 'Stormont House Agreement', 23 December 2014, para 30.

54 NI Office, 'Stormont House Agreement', 23 December 2014, para 41.

55 NI Office, 'Stormont House Agreement', 23 December 2014, para 51.

The UK Government has stated that specific measures of the financial package to NI will include ‘up to £150m over 5 years to help fund the bodies to deal with the past’.⁵⁶

There continues to be a lack of political agreement around the establishment of the institutions envisaged by the Stormont House Agreement and no published plan is in place for the establishment of the relevant bodies.

The then Secretary of State for NI Theresa Villiers MP in February 2016 elaborated that:

*The dispute is about onward disclosure from the HIU. And it is an inescapable fact that there is information which would put lives at risk if it were put into the public domain. There are notorious examples of where people accused of being informants have been hunted down and murdered.*⁵⁷

In his keynote speech to the September 2017 British Irish Association Conference opening event at the University of Cambridge Secretary of State for NI Rt Hon James Brokenshire MP stated:

*Over the past year we have continued detailed work with the parties and with the Irish Government. And much genuine progress has been made. Discussions with the parties have been constructive and changes have been made to the detailed structure of the mechanisms. The structure has been improved as a result of these discussions. Again, we cannot continue this process indefinitely. We have also had extensive discussions with victims and survivors. In these meetings, we increasingly hear that victims want us to get on with it – to move debate out from behind closed doors and into a public discussion with the people who will be most affected by how we address the past. So I intend to be in a position to bring forward a formal consultation as soon as possible.*⁵⁸

A public consultation has not commenced at the time of writing.

In March 2017 the Special Rapporteur on Truth presented a report on his mission to the UK to the UN Human Rights Council, in his report the Special Rapporteur stated that:

Links between the different elements of the architecture are critical to their success; for example, the timeline of each institution must mesh in a reasonable way. Similarly, while the Agreement stipulates a different appointment and selection procedure for staffing each institution, the institutions are meant to work as a coordinated whole; however, the current draft provides no incentive for retaining a group of people that can actually work together.

*The overall challenge is ensuring that this complex institutional apparatus not only performs better than the earlier efforts it seeks to replace, but also delivers results, which earlier efforts did not envision, necessary for accounting for and redressing the past.*⁵⁹

The Commission exercised its speaking rights at the UN Human Rights Council and highlighted the need to put in place the proposed institutional apparatus set out within the Stormont House Agreement to investigate conflict related deaths, the Commission stated:

The visit by the Special Rapporteur occurred at a time at which negotiations between the political parties in Northern Ireland regarding dealing with the past were ongoing, but at a slow pace. These negotiations have not reached a resolution. The report of the Special Rapporteur

56 Stormont House Agreement, Financial Annex, 2014, p1. The SHA includes a further broad financial commitment to all sections covered in the SHA; ‘The total value of the Government’s package is additional spending power of almost £2 billion.’ Stormont House Agreement, Financial Annex, 2014, para 3.

57 Northern Ireland Office and The Rt Hon Theresa Villiers MP, A way forward for legacy of the past in Northern Ireland, Ulster University, Belfast, 11 February 2016.

58 James Brokenshire MP Secretary of State for Northern Ireland – 2017 Speech to British Irish Association Conference, 8 September 2017

59 Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/34/62/Add.1, UN Human Rights Council, 17 November 2016 para 17

*presents an opportunity to reignite discussions through demonstrating the interest of the international human rights system in the rights of the victims of the conflict.*⁶⁰

The UK has continued to fail to implement ECt.HR judgments stipulating measures to achieve effective investigations into 'Troubles-related' deaths since 2001,⁶¹ and this failure is itself resulting in new findings of violations against the UK.⁶² The Committee of Ministers has expressed deep regret that the implementation of the judgments has not occurred.⁶³ In June 2016 the Committee of Ministers:

*called upon the authorities to take all necessary measures to ensure the Historical Investigations Unit can be established and start its work without any further delay, particularly in light of the length of time that has already passed since these judgments became final and the failure of previous initiatives to achieve effective, expeditious investigations.*⁶⁴

The UK Government, in its National Report for the Universal Periodic Review, noted that 'The UKG will continue to work with Northern Ireland parties, victims' groups and other stakeholders to seek a resolution that will allow the Stormont House Agreement bodies to be established'.⁶⁵ In January 2017 the Secretary of State raised concerns regarding the current investigations into conflict related deaths and stated:

*I am clear the current system is not working and we are in danger of seeing the past rewritten. It is also clear the current focus is disproportionately on those who worked for the state - former members of the Armed Forces and the RUC.*⁶⁶

In April 2017 the Defence Select Committee issued a report on investigation into fatalities in NI involving British military personnel, in the Report the Committee, inter alia, stated:

We believe that to subject former Service personnel to legal pursuit under the current arrangements is wholly oppressive and a denial of natural justice. It can be ended only by a statute of limitations. [The Committee recommended] the enactment of a statute of limitations, covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces.

Following publication of the report the Commission advised the NI Office that a statute of limitation restricting the prosecution of state actors would amount to an amnesty, if such an amnesty were to be held to excuse acts constituting gross human rights violations and abuses (including the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment), this would be incompatible with human rights law.⁶⁷ The Commission recommends that the Stormont House Agreement is implemented in line with the recommendations of the UN Human Rights Committee and Council of Europe.⁶⁸

60 Northern Ireland Human Rights Commission, Oral Statement 34th Session of UN Human Rights Council Agenda item 3: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the United Kingdom of Great Britain and Northern Ireland. NIHRC, 7th March 2017

61 See the McKerr Group of Cases, Council of Europe, Committee of Ministers, Cases No. 25, 1201st meeting – 5 June 2014, Cases against the United Kingdom https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168065dbae

62 See *Hemsworth v. The United Kingdom*, Application No. 58559/09, 16 October 2013.

63 Committee of Ministers, 1259th meeting – 7-8 June 2016 Item H46-42 McKerr group v. the United Kingdom (Application No. 28883/95) Supervision of the execution of the Court's judgments.

64 *Ibid.*

65 UK Government, Universal Periodic Review, United Kingdom, British Overseas Territories and Crown Dependencies National Report, February 2017, para 13

66 James Brokenshire, 'We must not allow the past to be rewritten in Northern Ireland' *The Telegraph* 29 January 2017

67 NIHRC, Advice on the House of Common's Defence Committee report on 'Investigations in fatalities in Northern Ireland involving British military personnel', June 2017, para 34

68 *Ibid.*, para 40

Recommendation

The Commission highlights concern that the UK has continued to fail to implement ECt.HR judgments stipulating measures to achieve effective investigations into 'Troubles-related' deaths since 2001, and this failure is itself resulting in new findings of violations against the UK. The Commission advises the NI Executive and UK Government to commit to ensuring the resolution of all outstanding matters related to the Stormont House Agreement and to prioritise the implementation of measures committed to in the Stormont House Agreement, ensuring that these comply with human rights obligations.

Inquiries Act 2005

The UN recommended in 2015 that the UK:

*Reconsider its position on the broad mandate of the executive to suppress the publication of Inquiry reports under the Inquiries Act 2005.*⁶⁹

In 2014 a House of Lords Select Committee published a report on the operation of the 2005 Act, containing 33 recommendations.⁷⁰ The Select Committee did not recommend amendments to sections 13 and 14 of the 2005 Act, which empower Government Ministers to suspend and terminate inquiries, respectively.⁷¹ These powers have been the principal source of concern for the Commission and others.⁷² Nonetheless, of the Select Committee's 33 recommendations the Government rejected 14, including all but one recommendation relating to the independence of inquiries.⁷³

In correspondence to the Commission Dr Philip Leigh MP, Parliamentary Under-Secretary Ministry of Justice confirmed that the UK Government intend to bring forward legislation to address the Committee's recommendations. However, he was unable to commit to a specific timescale for introduction.

Recommendation

The Commission continues to recommend that the UK Government review and introduce necessary legislative amendments to guarantee the independence of inquiries established under the Inquiries Act 2005.

Legacy inquests and inquiries

The UN Human Rights Committee recommended that the UK, including the NI Executive:

*Ensure that the Legacy Investigation Branch [PSNI] and the NI Coroner's Court are adequately resourced and are well-positioned to effectively review outstanding legacy cases.*⁷⁴

The Stormont House Agreement does not contain specific commitments relating to legacy inquests but states that:

69 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 8.

70 House of Lords Select Committee on the Inquiries Act 2005, Report of Session 2013–14, The Inquiries Act 2005: post-legislative scrutiny, March 2014.

71 *Ibid.*

72 NIHRC, Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights, May 2015, paras 6.1.2 and 6.1.3.

73 Ministry of Justice, 'Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005', June 2014.

74 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 11 (b).

Processes dealing with the past should be victim-centred. Legacy inquests will continue as a separate process to the [Historical Inquiries Unit]. Recent domestic and European judgments have demonstrated that the legacy inquest process is not providing access to a sufficiently effective investigation within an acceptable timeframe. In light of this, the Executive will take appropriate steps to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements.⁷⁵

Following his appointment as President of the NI Coroner's Court the Lord Chief Justice instigated a review of the state of readiness of 53 outstanding inquests into conflict related deaths. This was conducted by Lord Justice of Appeal Reg Weir QC who expressed concerns regarding delays and resourcing of legacy inquests.⁷⁶ In February 2016 the Lord Chief Justice met with the families awaiting legacy inquests setting out plans to address outstanding legacy inquests.⁷⁷

The Lord Chief Justice made clear that his plans for addressing legacy inquests were contingent upon necessary resources being allocated to allow for the creation of a Legacy Inquest Unit within the NI Courts Service to support the Coroner's Service and the full cooperation of relevant state agencies including the Police Service NI and Ministry of Defence.

Following the initiative of the Lord Chief Justice, the Department of Justice prepared a funding request seeking to draw down funds from the allocated £150 million. On the basis that this proposal has not received the approval of the NI Executive, the UK Government has not released the necessary funds.⁷⁸

In March 2017 when presenting his mission report on the UK to the UN Human Rights Council the Special Rapporteur on Truth stated:

The Lord Chief Justice recently assumed responsibility for the coronial process, implementing reforms to ensure completion of outstanding inquests within five years. Such reforms include applying a thematic approach, creating structured and systematic linkages between cases, sequencing cases, ensuring that the presiding coroner reviews all relevant material in unredacted form, and establishing a dedicated legacy inquest unit. This initiative, as a wisely designed strategy to maximise the truth-telling potential of inquests for individual cases, and illustrating the structural dimensions of violations, deserves strong support.⁷⁹

In exercising its speaking rights in relation to the mission report the Commission informed the UN Human Rights Council of:

the need to provide requisite funding to ensure effective and expedited inquests into conflict related deaths. A practical proposal by the Lord Chief Justice for NI to undertake inquests into a small number of controversial conflict related deaths has not been advanced as the necessary funding has not been made available.⁸⁰

As part of the Universal Periodic Review Process the state of Switzerland recommended that the UK Government,

75 NI Office, 'Stormont House Agreement', 23 December 2014.

76 Communication from the United Kingdom concerning the McKerr group of cases against the United Kingdom (Application No. 28883/95) Committee of Ministers Council of Europe, McKerr Group of Cases DH-DD(2016)430, April 2016.

77 BBC News NI, 'Legacy inquests: Lord chief justice disappointed over funding bid', 4 May 2016.

78 BBC News NI, 'Lord Chief Justice legacy inquests plan put on hold', 3 May 2016.

79 Pablo de Greiff, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/34/62/Add.1, 17 November 2016, para 28

80 Oral Intervention by Northern Ireland Human Rights Commission to the Human Rights Council Thirty-fourth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. 7 March 2017

*Increase the necessary resources to the service of the Coroner to allow him to carry out impartial, swift and effective investigations on all the deaths linked to the conflict in Northern Ireland.*⁸¹

The UK Government did not accept this recommendation.

In September 2017 the Lord Chief Justice again raised the issue stating,

*It remains a deep frustration to me that I have still not received a response to the proposals I put forward over 18 months ago for dealing with the matters for which I have been given responsibility.*⁸²

Finucane

In 2015 the UN Human Rights Committee in 2015, which subsequently recommended that the UK:

*Consider launching an official inquiry into the murder of Pat Finucane.*⁸³

In 2015 the Finucane family unsuccessfully challenged in the NI High Court the decision of the then Secretary of State of NI to hold a review into the death rather than a public inquiry of the kind recommended following a judicial review by Judge Peter Cory.⁸⁴ A further appeal to the NI Court of Appeal in 2017 was unsuccessful. In delivering the leading judgment in this appeal Lord Justice Gillen stated:

*We conclude that not only was this reasoning transparent but, based on all the range of public interest factors under consideration, it was a lawful decision by the Government, within its discretion, that it should not be held bound to maintain a policy of instituting a public inquiry in this instance...*⁸⁵

In July 2017 the Finucane family were granted leave to appeal to the Supreme Court to challenge the judgement of the NI Court of Appeal.⁸⁶

On the Runs: administrative scheme

In its 2015 annual statement the Commission referred to the administrative scheme established by the UK Government through which 'comfort letters' were issued to individuals living outside of the UK, who believed they might face questioning or arrest in connection with terrorist or other criminal offences relating to the conflict in NI if they returned to the UK.⁸⁷ The Government has emphasised that the letters do 'not amount to immunity, exemption or amnesty from arrest'.⁸⁸ The Commission continues to monitor the implications of the administrative scheme and the use of the Royal Prerogative of Mercy in relation to crimes committed during the conflict in NI. A legal action has been brought to require the NI Executive to make the necessary funds available.⁸⁹

During a parliamentary debate on 10 January 2017 the Secretary of State for NI James Brokenshire MP reiterated:

81 MoJ, United Kingdom, British Overseas Territories and Crown Dependencies Annex to the response to the recommendations received on 4 May 2017, August 2017

82 BBC News NI, Top judge Sir Declan Morgan criticises legacy progress, 5 September 2017

83 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCRP/C/GBR/CO/7, UN HRC, July 2015, para 8.

84 Finucane's (Geraldine) Application 2015 NIQB 57.

85 Belfast Telegraph, 'Finucane family consider legal options after losing appeal for public inquiry' 21 February 2017

86 Irish Times, London Supreme Court to hear case for inquiry into Pat Finucane murder, 26 July 2017

87 NIHR, Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights, May 2015, paras 6.1 and 6.2.

88 NI Office, Statement by Secretary of State following the decision to hold an independent inquiry into the operation of the OTR administrative scheme, 27 February 2014.

89 BBC News NI, 'Legacy inquests: Families launch legal bid over funding', 3 November 2016

*There are no amnesties. We have been clear on that in relation to the 'on-the-runs' scheme, and Lady Justice Hallett's report concluded in 2014 that these things never amounted to an immunity from prosecution.*⁹⁰

Recommendation

The Commission calls on the NI Executive to fund the Lord Chief Justice's plans for addressing outstanding legacy inquests. The Commission highlights concern that in the absence of the necessary resources the legal obligation under Article 2 ECHR on the state to deliver these inquests will not be met.

The Commission advises the UK Government's NI Office, that it is required to ensure independent, impartial, prompt and effective investigations into deaths during the conflict in NI. These must be conducted with a view to identifying, prosecuting and punishing the perpetrators of human rights violations and abuses, and providing appropriate remedies for their victims. The Commission continues to note that the impact of 'comfort letters' on any future prosecutions of recipients remains unclear.



Rule of law: non-state actors

Police Service NI statistics for the financial year 2016/17 record five security related deaths, 61 shooting incidents and 29 bombing incidents. During the same period there were 28 casualties resulting from paramilitary style shootings and there were 66 casualties as a result of paramilitary style assaults.⁹¹ Both of these figures are an increase from 2015/16.

In 2016 the UN CRC Committee noted that:

*In Northern Ireland, children face violence, including shootings, carried out by non-State actors involved in paramilitary-style attacks, as well as recruitment by such non-State actors.*⁹²

The Committee recommended that the UK Government and NI Executive:

*Take immediate and effective measures to protect children from violence by non-State actors involved in paramilitary-style attacks as well as from recruitment by such actors into violent activities, including through measures relating to transitional and criminal justice.*⁹³

In July 2017 the Secretary of State for NI provided the House of Commons with a written summary of the main findings from the report by His Honour Brian Barker QC, the Independent Reviewer of National Security Arrangements in NI, covering the period from June 2016 to 31 December 2016. In his report the Independent Reviewer stated:

*The aim of a more stable society, where the effect of local terrorism has a decreasing impact, seemed to have made some progress through 2016 despite a picture of continuing terrorist threat. It is clear, however, that police and prison officers face high risks both on and off duty. The context in which national security activities are performed have been described in the past as challenging, and continue to be so.*⁹⁴

⁹⁰ Hansard NI: Political Developments – in the House of Commons at 1:25 pm on 10th January 2017.

⁹¹ Police Service NI, Police Recorded Security Situation Statistics Annual Report covering the period 1st April 2016 – 31st March 2017, 17th May 2017, p. 2

⁹² UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 47(b).

⁹³ *Ibid*, para. 47(c).

⁹⁴ Report by His Honour Brian Barker Q.C. on the National Security Arrangements in Northern Ireland, June 2016 - 31 December 2016, Northern Ireland Office written statement – made on 17th July 2017 HC Deb, 17 July 2017, cWS

Tackling paramilitarism

In July 2016 the NI Executive published an Action Plan on tackling paramilitary activity, criminality and organised crime, modelled on the four goals of; promoting lawfulness; support for transition; tackling criminality; and addressing systemic issues.⁹⁵ The Action Plan was informed by the findings of an independent three-person panel.⁹⁶ The Action Plan addressed the impact of paramilitarism on children and young people and includes a number of specific actions around discouraging young men who are at risk of becoming involved, or further involved, in paramilitary activity and to address underlying activities. A cross-departmental programme to prevent vulnerable young people being drawn into paramilitary activity will be developed to sit within an Early Intervention Transformation Programme. The Early Intervention Transformation Programme Board will develop a draft programme for consideration and approval by the NI Executive. This programme is to be designed in conjunction with representatives from wider civic society.

In March 2017 Kris Hopkins MP the then Parliamentary Under-Secretary (NIO) informed the House of Commons that:

*The Northern Ireland Executive has established a Strategic Programme Board and a Cross Departmental Advisory Group to manage funding agreed under the Fresh Start agreement to tackle paramilitary activity. The Programme Board has allocated £3.898 million in 2016/17 to law enforcement activities and other initiatives to tackle ongoing paramilitary activity and criminality, including £1.949 million of UK Government funding. The NI Executive's programme management structure will drive the next phase of implementation, which will include actions to support local communities to reject paramilitary activity and to develop mechanisms to support those individuals or groups who want to transition away from paramilitarism.*⁹⁷

Independent Reporting Commission

The NI (Stormont Agreement and Implementation Plan) Act 2016 received royal assent in May 2016. The Act provides for the establishment of an Independent Reporting Commission to promote progress towards ending paramilitary activity connected with NI.⁹⁸ In September 2016 the UK Government and the Government of Ireland agreed a Treaty providing for the establishment of the Independent Reporting Commission.⁹⁹

In December 2016 the Secretary of State for NI James Brokenshire MP provided an update to the House of Commons on the establishment of the Reporting Commission:

*Commissioners to the Independent Reporting Commission have been appointed by the UK Government, the Government of Ireland and the Northern Ireland Executive. They will begin their preparatory work in January 2017. The Commission will become fully operational when the Treaty signed in September between the UK Government and the Government of Ireland, and supporting legislation in Ireland, is in place. The UK Government is providing up to £3 million over four years under the Fresh Start Agreement to establish and run the Commission. It is anticipated that the Commission will comprise up to four support staff.*¹⁰⁰

Four members of the Independent Reporting Commission were appointed on 14 December 2016 and their work is ongoing.¹⁰¹

95 NI Executive, 'Tackling Paramilitary Activity, Criminality and Organised Crime - Executive Action Plan', 19 July 2016.

96 Lord Alderdice, John McBurney and Prof Monica McWilliams, 'The Fresh Start Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland', May 2016.

97 Hansard Terrorism: NI, Northern Ireland Office written question – answered on 10th March 2017.

98 NI (Stormont Agreement and Implementation Plan) Act 2016, section 2.

99 NI Office Press Release, 'UK-Ireland treaty brings end to paramilitarism a step closer', 13 September 2016

100 Hansard Independent Reporting Commission Northern Ireland Office written question – answered on 16th December 2016

101 NI Office Press Release, 'Appointments to the Independent Reporting Commission', 14 December 2017

Recommendation

The Commission recognises as a fundamental principle that human rights must operate and be truly effective within the framework of the rule of law. The Commission welcomes the establishment of the Independent Reporting Commission and calls on the UK Government and NI Executive to expedite the implementation of the Stormont House Agreement in order to combat terrorism and address paramilitary style assaults as a matter of urgency.

Right to liberty and security of the person

ICCPR	Article 9 Article 10 Article 11
CRPD	Article 14
ECHR	Article 5
CFREU	Article 6
CRC	Article 37 (b)

Alternatives to imprisonment

In 2013 the UN CAT¹⁰² Committee raised concerns regarding the overcrowding of prisons across the UK and recommended, a strengthening of efforts and setting of:

*concrete targets to reduce the high level of imprisonment and overcrowding in places of detention, in particular through the wider use of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non- custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110).*¹⁰³

In 2016/17 of 1,479 adult male prisoners, 682 were serving sentences of less than 6 months and of 96 adult female prisoners, 52 were serving sentences of less than six months.¹⁰⁴ This represented 47 per cent of the total number of adult prisoners. The Department of Justice has acknowledged that *'[t]he actual time served by offenders on short prison sentences provides little opportunity to address offending behaviour. Community sentences, where many offenders are under probation for a prolonged period, provide more opportunities to assist the offender to overcome the difficulties that lead the offender to reoffend'*.¹⁰⁵

In 2017 the Department of Justice published statistics on reoffending rates for those convicted of criminal offences in 2014/15 which demonstrated that 37.4 per cent of persons released from custody reoffended within one year of release. Of those who received a supervised community disposal 31 per cent reoffended within one year of completion.¹⁰⁶

The Prison Review Team recommended in 2011 that proposals be developed *'to ensure that effective community sentences are the preferred method of dealing with those who would otherwise get short custodial sentences'*.¹⁰⁷ In 2014, the Prison Review Oversight Group noted that this particular recommendation had not secured political consensus and no adequate proposals were forthcoming.¹⁰⁸ The Oversight Group held its final meeting in 2015, the recommendation remained outstanding.¹⁰⁹

¹⁰² NIHRC, Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights, May 2015, para 8.3.

¹⁰³ UN Committee against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), CAT/C/GBR/CO/5, UN CAT, 2013, para 31.

¹⁰⁴ Department of Justice, 'Analytical Services Group: The Northern Ireland Prison Population 2016 and 2016/17, Research and Statistical Bulletin 27/2017', September 2017, p. 26.

¹⁰⁵ Department of Justice, 'Consultation on a Review of Community Sentences', 26 April 2011.

¹⁰⁶ Department of Justice, 'Analytical Services Group: Adult and Youth Reoffending in Northern Ireland (2014/15 Cohort), Research and Statistical Bulletin 29/2017', October 2017, p. 12.

¹⁰⁷ Prison Review Team, 'Review of the Northern Ireland Prison Service Conditions, management and oversight of all prisons', Recommendation 3, October 2011.

¹⁰⁸ Prison Review Oversight Group, 'Second Annual Report', March 2014.

¹⁰⁹ Prison Review Oversight Group, 'Justice Committee Summary Report', May 2015.

In 2016 the Department of Justice announced a review of sentencing to consider *'the legislative framework for certain categories of crime, the setting of tariffs for murder, the arrangements for unduly lenient sentences and the effectiveness of the current sentencing guidelines mechanism to enhance public confidence, consistency and transparency in sentencing'*.¹¹⁰ The Commission met with officials to emphasise the importance of developing effective community sentences.

Throughout 2017, the NI Probation Board has continued to pilot an Enhanced Combination Order in the Court Divisions of Armagh & South Down and Ards.¹¹¹ The Enhanced Combination Order *'aims to divert offenders from short-term custodial sentences by offering judges a more intensive community order with a focus on rehabilitation, reparation, restorative practice and desistance'*. The pilot is continuing beyond the original 18-month period into March 2018. A final report of the pilot is not available at the time of writing. However indicative findings are positive and the Probation Board has reported a 40% reduction in the reoffending rate for those who complete the order.¹¹²

The Commission has encouraged the Department of Justice to consider the introduction of effective community sentences as the preferred method of dealing with those who would otherwise receive a short-term custodial sentence within the context of the sentencing review.

Recommendation

The Commission recommends that the NI Executive and Department of Justice introduce measures to ensure the wider use of non-custodial measures as an alternative to imprisonment, in particular as an alternative to short-term custodial sentences.



Definition of terrorism

In 2015 the Commission provided an update to the UN Human Rights Committee highlighting its support for the recommendation of the Independent Reviewer of Terrorism to reform the definition of terrorism within UK law.¹¹³ The Committee subsequently recommended that the UK Government:

Consider revising the broad definition of terrorism to require intent to coerce, compel, or intimidate a government or section of the public, and implementing the recommendations of the Independent Reviewers of Terrorism Legislation.

The present definition of terrorism used in the UK is contained in the Terrorism Act 2000, Section 1. Under Section 1 'terrorism' means the use or threat of action designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause. Section 1 goes on to list a range of actions and provides that the definition includes actions committed outside of the UK.

The May 2016 Queen's speech included proposals for a Counter-Extremism and Safeguarding Bill, to provide for a *'new civil order regime to restrict extremist activity'*.¹¹⁴ The Independent Reviewer of Terrorism has on a number of occasions raised concerns regarding the breadth of the definition of terrorism within the Terrorism Act 2000 and has stated *'concerns are likely to be accentuated if a still broader definition is given to extremism, and if extremist activity becomes punishable by suppressive*

110 Department of Justice Press Release, 'Justice Minister announces sentencing review', 9 June 2016.

111 Probation Board NI Press Release, 'New Probation Order aims to cut short term Prison sentences', 28 September 2015.

112 BBC News NI, Keep out of jail order cuts re-offending rates. 3 August 2017

113 NIHRC, Submission to the UN Human Rights Committee on the United Kingdom's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights, May 2015.

114 Cabinet Office, 'Queen's Speech 2016', 18 May 2016.

measures'.¹¹⁵ In July 2016 the Joint Committee on Human Rights published a report on counter extremism in which it stated:

*the Government has not demonstrated a need for new legislation. The current counter-terrorism, public order and equality legislation form a comprehensive framework which deals appropriately with those who promote violence. There is a danger that any new legislation may prove counter-productive.*¹¹⁶

The proposed Bill was not reflected in the 2017 Queen's speech. However a proposal for the development of a commission for countering extremism was included, as was a commitment to review the government's counter terrorism strategy, along with the length of custodial sentences for terrorism related offences.¹¹⁷

The Home Office sought a lead commissioner for the proposed commission for countering extremism in September 2017, in announcing the advertisement the Home Secretary stated:

*This government is committed to tackling extremism in all its forms – as the Prime Minister said after the London Bridge attack earlier this year, enough is enough. The new Commission for Countering Extremism will have a key role to play in this fight. It will identify and challenge tolerance of extremism, tackle extremist ideology and promote British values, learning the lessons from the struggle against racism in the twentieth century.*¹¹⁸

Recommendation

The Commission endorses the recommendations of both the UN Human Rights Committee and the Independent Reviewer of Terrorism calling for UK Government Home Office to conduct and publish a review of the broad definition of terrorism.



Imprisonment for fine default

The Commission has consistently raised concerns about the numbers of people imprisoned in NI for fine default and has reported concerns to the UN on a number of occasions.¹¹⁹ The Commission notes that the imprisonment of persons for fine default has historically contributed significantly to the prison population in NI.¹²⁰

In 2013, the UN CEDAW Committee recommended that the UK, including the NI Executive continue to develop alternative sentencing and custodial strategies for women convicted of minor offences.¹²¹ In 2013, the UN CAT Committee called for effective diversion from the criminal justice system for non-violent women offenders convicted of minor offences.¹²²

115 David Anderson QC, 'The Terrorism Acts in 2014: Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006', September 2015, para 4.20-4.16 and 10.14-10.18.

116 House of Lords House of Commons Joint Committee on Human Rights, Counter-Extremism, Second Report of Session 2016–17, HL Paper 39 HC 105, para 107.

117 Cabinet Office, Queen's Speech 2017, 21 June 2017

118 Home Office Press Release, Home Office advertises for extremism commissioner, 17 September 2017

119 See, NIHRC, Response to Department of Justice Consultation on Fine Default in Northern Ireland, October 2011; NIHRC, Submissions to the UN CEDAW Committee: Parallel Report on the 7th Periodic Report of the United Kingdom of Great Britain and Northern Ireland under the Convention on the Elimination of all Forms of Discrimination against Women, June 2013, paras 32-34; Shadow Report on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland, May 2008, paras 16-19; NIHRC, Submission to the United Nations Committee Against Torture, Parallel Report on the 5th Periodic Report of the United Kingdom under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2013, para 5.3 - 5.5; NIHRC, Annual Statement, 2012, pp. 19-20; NIHRC, Annual Statement, 2013, p. 20.

120 See Prison Population statistics at <http://www.dojni.gov.uk/index/ni-prison-service/nips-population-statistics-2.htm>

121 UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/7, UN CEDAW, July 2013, para 55 (b)

122 UN Committee against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), CAT/C/GBR/CO/5, UN CAT, 2013, para 33

The Justice Act (NI) 2016 inter alia provides for a statutory framework for the collection of fines. The new framework builds on earlier work undertaken by the Department of Justice to strengthen the fine enforcement system.¹²³

The Department of Justice prison population statistical bulletin records that:

*For the second year in succession, the number of fine default receptions increased from 456 during 2015 to 627 in 2016 (an increase of 37.5%). Fine default prisoners typically do not stay in prison for long periods (usually less than 4 days) so, even though fine default receptions accounted for 12.1% of all receptions in 2016, this isn't translated into similar percentages for the average daily prison population. In fact, during 2016, fine default prisoners only accounted for 0.5% of the average daily prison population. The increase in fine default receptions as a share of all receptions, from 9.6% in 2015 to 12.1% in 2016, was significant.*¹²⁴

The Commission continues to monitor the impact of the new fine collection framework on the number of individuals being imprisoned.

Recommendation

The Commission welcomes the introduction of the Justice (NI) Act 2016 which provides for a statutory framework for the collection of fines. The Commission continues to monitor the impact of the new fine collection framework on the number of individuals, in particular women in light of the UN CEDAW Committee's recommendation, being imprisoned.



Imprisonment of children with adults

The UN CRC Article 37(c) requires that *'every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so'*.¹²⁵ In June 2016 the UN CRC Committee recommended that the State Party, including the devolved administrations:

*Ensure that child detainees are separated from adults in all detention settings.*¹²⁶

The Criminal Justice (Children) (NI) Order 1998, makes provision for a 15-17 year old offender, considered likely to injure him or herself or others to be detained in the young offenders centre at Hydebank Wood, which accommodates offenders up to 21 years of age. An administrative scheme has operated effectively to prevent the imprisonment of children at Hydebank Wood and throughout 2017 no children have been detained alongside adults in NI.¹²⁷ However the imprisonment of children alongside adults remains legally permissible.

The Department has previously committed to abolish provisions of the 1998 Order allowing for the imprisonment of children alongside adults. Officials have confirmed with the Commission that reforms to the 1998 Order will be implemented by way of a proposed Department of Justice Children's Bill, which is planned for introduction to the NI Assembly in 2020.¹²⁸

123 Department of Justice Press Release, 'Ford highlights reforms to fine enforcement system', 2 February 2012.

124 Department of Justice, 'Analytical Services Group: The Northern Ireland Prison Population 2016 and 2016/17, Research and Statistical Bulletin 27/2017', September 2017, p. 13.

125 CRC, Article 37 (c)

126 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016

127 Correspondence with Department of Justice Officials 29.08.17

128 Declan McGeown, Scoping Study Stakeholder Update, Department of Justice NI, May 2017

Recommendation

The Commission continues to advise the Department of Justice that the provisions of the Criminal Justice (Children) (NI) Order 1998 permitting the imprisonment of children alongside adults is incompatible with the UN CRC and should be repealed. It recommends that the Department of Justice introduce legislation to the NI Assembly to remove the legal basis for the imprisonment of children alongside adults and that the NI Executive support these measures.

Powers of arrest under the Terrorism Act 2000

Under the Terrorism Act 2000 section 41 a constable may arrest without a warrant a person whom he reasonably suspects to be a terrorist. Of the 137 persons arrested in NI under the Terrorism Act 2000 section 41 in 2016/17, 19 were subsequently charged representing 14 per cent of those arrested.¹²⁹ In his final report as Independent Reviewer of Terrorism, David Anderson QC once again raised concerns at the low proportion of suspects arrested under section 41 who are subsequently charged.¹³⁰

In 2015 the UN Human Rights Committee recommended that the UK Government:

*Undertake a review of the exercise of arrest powers under section 41 of the Terrorism Act 2000 to ensure that the principles of necessity and proportionality are strictly observed when using such powers; ensure that any detention of suspects arrested under the Terrorism Act 2000 is based on an individualized determination that it is reasonable and necessary taking into account all the circumstances rather than on the nature of the crime; and, whilst ensuring public safety, make bail available to such persons, as recommended by the Joint Committee on Human Rights and the Independent Reviewer of Terrorism.*¹³¹

The Commission will highlight this recommendation to the proposed counter extremism commission once it is established.

Recommendation

The Commission again endorses the recommendation of the UN Human Rights Committee calling for the UK Government Home Office to conduct and publish a review of the exercise of arrest powers under section 41 of the Terrorism Act 2000 to ensure compliance with its human rights obligations.

The remand of children

The UN CRC Article 37(b) requires that:

*No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*¹³²

In June 2016 the UN CRC Committee noted that throughout the UK, including NI:

¹²⁹ Police Service NI, Police Recorded Security Situation Statistics Annual Report covering the period 1st April 2016 – 31st March 2017, 17th May 2017, p. 2

¹³⁰ David Anderson QC, The Terrorism Acts in 2015: The Report of the Independent Reviewer, December 2016, p. 58

¹³¹ UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland CCPR/C/GBR/CO/7, UN HRC, 17 August 2015, para 14(d)

¹³² CRC, Article 37 (b).

*The number of children in custody remains high, with disproportionate representation of ethnic minority children, children in care, and children with psycho-social disabilities, and detention is not always applied as a measure of last resort.*¹³³

The Committee recommended that the State Party, including the NI Executive:

*Establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children.*¹³⁴

The UN CRC Committee concluding observation reflected a similar observation of the UN Human Rights Committee in 2015, which called for actions to:

*ensure that detention on remand of child defendants is used only as a measure of last resort and for the shortest possible period of time and that suitable bail packages are available to child defendants in Northern Ireland.*¹³⁵

In March 2016 the then Minister of Justice, David Ford announced key findings from an internal scoping study into children in the justice system.¹³⁶ One of the recommendations emerging from the scoping study was ‘to develop the disposals available to the judiciary and reduce the use of custody to make it truly a measure of last resort’.¹³⁷ In May 2017 the Department of Justice provided an update on actions to take forward key recommendations contained within the scoping study:

*Several of the proposals within the Scoping Study require legislation to be put in place. A ‘Children’s Bill’ has therefore been put onto the Departmental Legislative Programme with a view to introduction in 2020, although this will be subject to the priorities of any new Minister or mandate. As one of the aims of the Scoping Study was to make the youth justice system simpler, the intention is to use this Bill to consolidate all legislation pertaining to children in justice into one place. Our intention is also to repeal all orders relating to community and custodial disposals for under-18s and create one new community order and one or possibly two custodial orders. It is also likely to include provisions relating to the use of remand and of bail, including the possible introduction of a ‘real prospects’ test and the potential removal of the Juvenile Justice Centre as a Place of Safety.*¹³⁸

In 2017 the Commission has met with officials within the Department of Justice and Youth Justice Agency emphasising the need to address the overuse of remand of children.

Recommendation

The Commission notes the high number of children held in pre-trial detention in NI. The law of NI should be amended to clearly enshrine the principle that a child should be held in pre-trial detention only as a measure of last resort and a child should never be detained on the basis that there is no suitable accommodation if released on bail. In addition, a range of non-custodial accommodation arrangements should be developed for children awaiting trial who cannot return to their homes.

133 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 77.

134 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 79.

135 NIHR, ‘Submission to the UN Committee on the Rights of the Child on the United Kingdom’s Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child’, July 2015, para 23.

136 Minister of Justice, Children in the Justice System: Scoping Study, Ministerial Statements – in the Northern Ireland Assembly at 12:00 pm on 14th March 2016.

137 *Ibid.*

138 Declan McGeown, Scoping Study Stakeholder Update, Department of Justice NI, May 2017



Women in prison

Statistics

In June 2017, there were 40 sentenced adult female, 19 unsentenced adult female, two young offender female sentenced and one young offender female unsentenced prisoners within Hydebank Wood. The average sentence length for adult females was 4.71 years and 0.53 years for young offender females. The average time on remand for adult females was 90.74 days.¹³⁹ An assessment of the 2016/2017 prison population has shown that the overall female population has remained at much the same level.¹⁴⁰

Separate facility for women prisoners

The Commission continues to advise that the absence of a discrete prison facility for women and gender appropriate services in NI undermines the reformatory and rehabilitative aims which imprisonment should strive towards.¹⁴¹ This has been supported by the UN CAT Committee and the National Preventative Mechanism, designated under the Optional Protocol to the UN CAT, who recommended that women should no longer be held at Hydebank Wood and that a separate custodial facility should be established.¹⁴²

In September 2017, the Department of Justice stated it remained committed to the development of a separate facility dedicated to women to provide fit for purpose accommodation that will aid their rehabilitation and enhance public protection.¹⁴³ However, capital funding for a separate facility dedicated to women is not yet secured. The Department of Justice is also reviewing the NI Prison Service's Estate Strategy, including the development of a new facility for women. This review does not question the need for the infrastructure changes that the NI Prison Service has already identified. It aims to consider if other delivery models can be identified. This review started in July 2017 and is ongoing.¹⁴⁴

In the interim, Ash House was upgraded in September 2014 to provide a range of services and facilities for women prisoners, including a training kitchen and drop-in centre. In addition, a Step-Down facility was constructed on the Hydebank Wood site for women prisoners, nearing the end of their sentences and working out in the community, in preparation for their release. The facility, which has the capacity for six prisoners, became operational in October 2015.¹⁴⁵

Women prisoners and health

In June 2016, the Department for Justice and Department for Health consulted on a draft strategy and action plan to ensure that children, young people and adults in contact with the criminal justice system were healthier, safer and less likely to be involved in offending behaviour.¹⁴⁶ In addition to advising the Department of Justice to publish details of the construction of a separate custodial facility for female prisoners in NI, the Commission advised that the strategy should set out how

139 NI Prison Service, Analysis of NIPS Prison Population from 01/04/2016 to 30/06/2017, Department of Justice, July 2017

140 Department of Justice, 'Analytical Services Group: The Northern Ireland Prison Population 2016 and 2016/17, Research and Statistical Bulletin 27/2017', September 2017, p. 5.

141 NIHR, Submission of the Northern Ireland Human Rights Commission to the Department of Justice and Department of Health Consultation on Improving Health within Criminal Justice, 2016, para. 7.4.

142 National Preventative Mechanism, 'Report on announced inspection of Ash House, Hydebank Wood Women's Prison 18 – 22 February', October 2013. 20 statutory bodies make up the UK National Preventive Mechanism of specific reference to Northern Ireland the Criminal Justice Inspector NI, the Independent Monitoring Board (NI), the Regulation and Quality Improvement Authority and the Northern Ireland Policing Board Independent Custody Visiting Scheme are included in the list of bodies.

143 Permanent Secretary of Department of Justice, COR-1076-2017: Letter from Department of Justice to NIHR, Department of Justice, 22 September 2017

144 Permanent Secretary of Department of Justice, COR-1076-2017: Letter from Department of Justice to NIHR, Department of Justice, 22 September 2017

145 Permanent Secretary of Department of Justice, COR-1076-2017: Letter from Department of Justice to NIHR, Department of Justice, 22 September 2017

146 Department of Justice and Department of Health, Improving Health with Criminal Justice, March 2016.

the healthcare needs of women would be addressed.¹⁴⁷ The final revised draft of the strategy and its action plan was prepared for Ministerial approval, and onward submission to the Executive was planned for early 2017.¹⁴⁸ However due to the suspension of the NI Assembly the strategy and action plan have not been published.

Recommendation

The Commission welcomes the commitment of the Department of Justice to develop a separate custodial facility for women. However, 12 years since it first advised on the need for a separate custodial facility, the Commission notes that construction has still not commenced. It recommends that the Department of Justice expedite this project and calls upon the NI Executive to provide any necessary support to ensure its completion.

147 NIHRC, Submission of the Northern Ireland Human Rights Commission to the Department of Justice and Department of Health consultation on improving health within criminal justice, 2016, para 7.4.

148 Committee for Justice, Official Report (Hansard) - Improving Health in the Criminal Justice System: NI Prison Service, NI Assembly, 1 December 2016

Freedom from torture, inhuman and degrading treatment

ICCPR	Article 7
CAT	Articles 1-16
ECHR	Article 3
CFREU	Article 4
CRPD	Article 15 Article 17
CRC	Article 37 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Abuse in health and social care settings

In 2017 the UNCRPD Committee recommended that the UK Government and NI Executive,

*Establish measures to ensure equal access to justice and to safeguard persons with disabilities, particularly women, children, intersex people and elderly persons with disabilities from abuse, ill-treatment, sexual violence and/or exploitation. [And] Ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities...*¹⁴⁹

The Mental Capacity (NI) Act 2016 at section 267 makes it an offence to ill-treat, or wilfully neglect a person who lacks capacity. In addition, the Act includes a statutory definition of restraint. The Department of Health is developing Codes of Practice and Regulations required prior to the commencement of the provisions.

During the passage of the then Bill, the Commission advised that the Bill should provide a free standing offence where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual.¹⁵⁰ This would have reflected provisions within the Criminal Justice and Courts Act 2015 which applies to England and Wales. However the Bill was not amended to provide for a free standing offence.

In year allegations of abuse at a care home led to arrests by the PSNI, underscoring the need for a robust legal framework to ensure the effective prosecution of abusers.¹⁵¹

Recommendation

The Commission continues to recommend changes in the criminal law framework of NI to ensure sufficient robust protection of individuals reliant on others for their health and social care needs. The Department of Justice should prioritise the introduction of a free standing offence where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual as is the case elsewhere in the UK.

149 Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, para 39

150 NIHRC, Submission to the Consultation on Proposals for New Mental Capacity Legislation for NI, September 2014

151 Belfast Telegraph, 'Northern Ireland care home staff arrested by police after abuse claims', 25 April 2017



Allegations of torture and cruel, inhuman or degrading treatment or punishment overseas

The UK Government has accepted the credibility of a number of allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas. On 6 July 2010 the then Prime Minister, David Cameron MP announced the establishment of an Inquiry to be led by Sir Peter Gibson to look into '*whether Britain was implicated in the improper treatment of detainees, held by other countries, that may have occurred in the aftermath of 9/11*'.¹⁵² On 16 January 2012 the Government announced its intention to bring the work of the Inquiry to a conclusion and Sir Peter published a report of its preparatory work which identified 27 separate issues that merited further investigation.¹⁵³

In December 2013 Kenneth Clarke, the then Minister without Portfolio informed the House of Commons that,

*the Prime Minister has discussed and agreed with the Intelligence and Security Committee of Parliament that it will inquire into the themes and issues that Sir Peter has raised, take further evidence, and report to the Government and to Parliament on the outcome of its inquiry. Additional resources will be provided to the Committee to undertake that work...*¹⁵⁴

In June 2015 the Commission, in conjunction with the other UK NHRIs, addressed the UN Human Rights Council highlighting:

*that the delay reinforces the need for a full, independent, judge-led inquiry which complies with the investigative obligation under international human rights law.*¹⁵⁵

In its 2015 concluding observations on the ICCPR the UN Human Rights Committee called on the UK to:

*Address the excessive delays in the investigation of cases dealt with by the Iraq Historical Allegations Team and consider establishing more robust accountability measures to ensure prompt, independent, impartial and effective investigations.*¹⁵⁶

The Intelligence and Security Committee reported on its work relating to detainees in its 2015/16 annual report, highlighting that '*it is a detailed and long-term Inquiry into an important issue and is expected to occupy the Committee for some time*'.¹⁵⁷ On 27 April 2017 the Intelligence and Security Committee issued a press release as due to the general election the Committee's annual report would not be published. In its press release the Committee stated:

We have also spent a very substantial amount of time since October 2015 investigating the possible involvement of the UK Government and Security and Intelligence Agencies in detainee mistreatment and rendition. We have to date considered over 40,000 documents and heard around 60 hours of oral evidence: we are grateful to all those who have given their time to help us with our Inquiry thus far. We have reached the point in the Inquiry where it only remains to take evidence from certain individuals who were 'on the ground' at the time. It is deeply

152 Hansard, Treatment of Detainees, Oral Answers to Questions — Foreign and Commonwealth Office — in the House of Commons at 3:32 pm on 6th July 2010.

153 Hansard, Detainee Inquiry Oral Answers to Questions — Prime Minister — in the House of Commons at 12:34 pm on 18th January 2012.

154 Hansard, Detainee Inquiry Part of Business of the House — in the House of Commons at 11:43 am on 19th December 2013.

155 Joint Oral Statement submitted by the NIHR, EHRC, and the SHRC, 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism', UN Human Rights Council 29th Session, Agenda Item 3, June 2015.

156 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 9 (b).

157 Intelligence and Security Committee, Annual Report 2015/16, HM Parliament, 5 July 2016, para 122.

*disappointing that we have not had access to those individuals in sufficient time to conclude our Inquiry prior to the Election. We regard it as essential that our successors continue this work.*¹⁵⁸

The Iraq Historic Allegations Team was established by the UK Government to review and investigate allegations of abuse by UK armed forces personnel in Iraq during the period of 2003 to July 2009. A report by House of Commons' Defence Select Committee published in February 2017 raised serious concerns regarding the fitness for purpose of the investigative procedures within the Historic Allegation team, and serious concerns in regard to the legal industry created around the Team which generated a significant number of cases against service personnel with *'little or no supporting evidence'*.¹⁵⁹ The Solicitors Disciplinary Tribunal found that Professor Phil Shiner of Public Interest Lawyers had engaged in misconduct when representing claims against British soldiers - including acting dishonestly.¹⁶⁰ Professor Shiner was struck off the roll of solicitors. Similar allegations against three solicitors at the firm Leigh Day were not upheld.¹⁶¹ Subsequently the Defence Secretary Sir Michael Fallon announced that the Iraq Historical Allegations Team would officially close on 30 June 2017. The Ministry of Defence stated:

*The remaining cases, expected to number around 20, will then be dealt with by the Service Police - a combination of Royal Navy Police and Royal Air Force Police, led by a senior Royal Navy Police officer. All investigations are expected to be completed by the end of next year.*¹⁶²

In addition, the Government established the Iraq Fatalities Investigations process, a form of inquest and judicial inquiry into cases referred by the Ministry of Defence. The Iraq Fatalities Investigations' website states:

*The Iraq Fatality Investigations (IFI) are a form of inquest and judicial inquiry. They are not a coroner's inquest which takes place under statute, nor are they a statutory inquiry. It may be more helpful, and less confusing, for our work to be seen as the work of a judicial inquiry. Our work involves investigating evidence in order to make findings about the circumstances in which a death has occurred. The IFI are not concerned with determining criminal or civil liability.*¹⁶³

The Commission's view is that investigations by the UK Government into these allegations have not fully satisfied the investigative duty under the UN CAT.¹⁶⁴

Application of ECHR in overseas operations

In October 2016 the then Minister of Defence the Rt. Hon Michael Fallon MP issued a statement declaring the Government's:

*intention to derogate from the ECHR, if possible in the circumstances that exist at that time, will protect British troops serving in future conflicts from the kind of persistent legal claims that have followed recent operations in Iraq and Afghanistan on an industrial scale.*¹⁶⁵

158 Intelligence and Security Committee Parliament, Press Statement, 27 April 2017

159 Defence Select Committee, Who guards the guardians? MoD support for former and serving personnel Sixth Report of Session 2016–17, HC 109, 10 February 2017

160 Solicitors Regulatory Authority, Professor Phil Shiner and the Solicitors Disciplinary Tribunal, 2 February 2017

161 Solicitors Regulatory Authority v Martin Jeremy Day, Sapna Malik, Anna Jennifer Crowther and Leigh Day. Case Number 11502-2016

162 Ministry of Defence, Press Release: IHAT to close at the end of June, 5 April 2017

163 Website of Iraq Fatality Investigations: accessed on 13.09.17

164 See NIHRC, EHRC and SHRC, 'Follow-up regarding Concluding Observations adopted by the Committee Against Torture on the 5th periodic report of the UK', September 2014, p. 3.

165 Ministry of Defence: Press Release, 'Government to protect armed forces from persistent legal claims in future overseas operations', 4 October 2016.

Within its report to the UN Human Rights Council as part of the Universal Periodic Review Process in February 2017 the UK Government reiterated:

With regard to the ECHR, the UKG has publicly stated that before embarking on significant overseas military operations it intends derogating from the ECHR, where this is appropriate in the precise circumstances of the operation in question. Any derogation would need to be justified and could only be made from certain Articles of the Convention. Whether such a derogation is made, the UK Armed Forces will continue to be subject to the rule of law at all times, including UK domestic criminal law, and where applicable, the Law of Armed Conflict.¹⁶⁶

Recommendation

The Commission continues to recommend that the UK Government establish a full, independent, judge-led inquiry in relation to allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas and rendition. This should comply with the investigative obligation under international human rights law. The Commission notes the stated intention of the UK Government to derogate from the ECHR in future conflicts. It calls on the UK Government to ensure that any such derogation must be to the extent strictly required by the exigencies of the situation and remain consistent with other obligations under international law.

Corporal punishment of children

The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable chastisement of a child, and provides that this is a defence to a charge of common assault tried summarily. In Ireland the Children Act 2011 and Children First Act 2015 abolished the statutory and common law defence of reasonable chastisement. On 24 October 2017 a proposal for a bill to give children equal protection from assault by prohibiting the physical punishment of children by parents and others caring for or in charge of children was introduced to the Scottish Parliament by a private member.¹⁶⁷ The Scottish Government has indicated its support for the Bill.¹⁶⁸

In July 2016 the UN CRC Committee again recommended an abolition of corporal punishment of children in the UK, recommending that the UK Government and devolved administrations:

(a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as 'reasonable chastisement';

(b) Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;

(c) Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.¹⁶⁹

In February 2017 the UK Government, in its National Report for the Universal Periodic Review, stated that it *'does not condone any violence towards children and has clear laws to deal with it. But parents should not be criminalised for giving a child a mild smack in order to control their behaviour'*.¹⁷⁰

¹⁶⁶ UK Government, Universal Periodic Review, United Kingdom, British Overseas Territories and Crown Dependencies National Report, February 2017, para 9

¹⁶⁷ Proposed Children (Equal Protection from Assault) (Scotland) Bill available at <http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

¹⁶⁸ The Telegraph, Smacking to be banned in Scotland after SNP backs legislation, 19 October 2017

¹⁶⁹ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 40.

¹⁷⁰ UK Government, Universal Periodic Review, United Kingdom, British Overseas Territories and Crown Dependencies National Report, February 2017, para 78

In year the Commission has highlighted the UN CRC Committee's recommendation to the Department of Justice, who have indicated that statistics are not currently collated on the number of cases in which the defence of reasonable chastisement is successfully pleaded.¹⁷¹ The Department has also indicated that the law governing reasonable chastisement is under consideration.

Recommendation

The Commission recommends that the Department of Justice repeal the defence of reasonable chastisement of a child and strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the use of corporal punishment in child-rearing.



Deprivation of citizenship

In 2016 the UN Human Rights Committee recommended:

*The [UK] should review its laws to ensure that restrictions on re-entry and denial of citizenship on terrorism grounds include appropriate procedural protections, and are consistent with the principles of legality, necessity and proportionality. The [UK] should also ensure that appropriate standards and procedures are in place to avoid rendering an individual stateless.*¹⁷²

In 2014 the Westminster Parliament amended the British Nationality Act 1981, empowering the Home Secretary to deprive a naturalised British citizen of their citizenship if they have engaged in conduct 'seriously prejudicial' to the UK's vital interests, and the Home Secretary has reasonable grounds to believe the person is able, under the law of a country or territory outside the UK, to become a national of such a country or territory. The UK Government may exercise powers to deprive an individual of their citizenship both when they are in the UK and when they are abroad.¹⁷³

In April 2016 the Independent Reviewer of Terrorism published a report into the operation of the power in the first 12 months.¹⁷⁴ The Independent Reviewer stated:

*The power under review was not exercised during the period under review, and indeed had still not been exercised as of April 2016, when this report went to print. There is therefore no concrete action to review.*¹⁷⁵

The Independent Reviewer noted the breadth of the discretion afforded to the Home Secretary and the absence of a requirement to obtain judicial consent before exercise of the power,¹⁷⁶ he noted:

*The power under review is an unusually strong one in international terms. It extends further than the laws of most comparable countries in Europe, North America or Australasia. . . It remains to be seen whether the power will be used in future – or, if used, whether it will be of any practical benefit in the global fight against terrorism.*¹⁷⁷

The Counter Terrorism and Security Act 2015 makes provision for Temporary Exclusion Orders. These prohibit the return of an individual to the UK unless the return is in accordance with a permit

171 NIHRC, Correspondence to Mr Nick Perry, Permanent Secretary, Department of Justice, September 2017.

172 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 15.

173 Melanie Gower, 'Deprivation of British Citizenship and withdrawal of passport facilities' SN/HA/6820, House of Commons Library, 30 January 2015.

174 David Anderson Q.C. Independent Reviewer of Terrorism Legislation, Citizenship Removal resulting in statelessness: First Report of the Independent Reviewer on the Operation of the Power to Remove Citizenship Obtained by Naturalisation from Persons who have other Citizenship, April 2016.

175 *Ibid*, para 1.9.

176 *Ibid*, para 3.16.

177 *Ibid*, para 4.9.

to return.¹⁷⁸ The Act makes provision for an individual subject to a Temporary Exclusion Order to be able to apply to the court for a statutory review of the Order on their return to the UK.¹⁷⁹ The UK Government has stated that '*It is not possible to predict how many temporary exclusion orders will be served*'.¹⁸⁰ During the passage of the Act the Commission provided a briefing to a number of NI peers emphasising the need for appropriate judicial safeguards.¹⁸¹

In February 2017 UK Government published the Transparency Report into the use of disruptive and investigatory powers, which included information relating to the use of deprivation of citizenship powers and the use of the temporary exclusion power. In this report UK Government stated:

*The Government considers removal of citizenship to be a serious step, one that is not taken lightly. This is reflected by the fact that the Home Secretary personally decides whether such action should be taken, where it is considered that it may be conducive to the public good to deprive an individual of citizenship. Between 1 January 2015 and 31 December 2015, five people were deprived of British citizenship on the basis that to do so was conducive to the public good.*¹⁸²

With respect to the use of temporary exclusion orders the report confirmed that '*[s]ince the power came into force in the second quarter of 2015, it has not been used*'.¹⁸³

In April 2017 in response to a Parliamentary question on the use of deprivation of citizenship powers, the Minister for Immigration Robert Goodwill stated:

*Except where someone has fraudulently obtained British citizenship, deprivation of citizenship is only pursued against dual nationals where the Home Secretary is satisfied that the statutory test that deprivation of citizenship would be "conducive to the public good", is met. To date, deprivation of citizenship on conducive grounds has been focused on protecting the UK from those involved in terrorism, unacceptable extremist behaviour, espionage or serious organised crime.*¹⁸⁴

Recommendation

The Commission continues to note the breadth of the discretion afforded to the Home Secretary to deprive an individual of his or her citizenship where they have engaged in conduct 'seriously prejudicial' to the UK's vital interests and when there are reasonable grounds to believe the person is able, under the law of a country or territory outside the UK, to become a national of such a country or territory. It calls upon the UK government to introduce a requirement to ensure judicial scrutiny before exercising the power to deprive an individual of their UK citizenship.

178 Counter-Terrorism and Security Act 2015, Section 2 (1)(a).

179 Counter Terrorism and Security Act 2015, Section 10.

180 Counter-Terrorism and Security Act 2015 - Temporary Exclusion Orders – Royal Assent IA No: H00144 11, February 2014.

181 Correspondence dispatched from the Chief Commissioner to NI Members of the House of Lords, January 2015.

182 HM Government, Transparency Report 2017: Disruptive and Investigatory Powers, Cm 9420, February 2017, p. 26

183 *Ibid.*, p. 27

184 Hansard script, British Nationality Home Office written question – answered on 24th April 2017.



Domestic violence

Istanbul Convention

The UN CEDAW Committee in its 2013 Concluding Observations urged the UK 'to ratify the Istanbul Convention'.¹⁸⁵

The UK Government has signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).

In August 2017, the UK Government, in its response to a recommendation received during the Universal Periodic Review process stated:

*the UK remains committed to ratifying the Istanbul Convention. In most respects, the measures already in place in the UK to protect women and girls from violence comply with or go further than the Convention requires. In order to be compliant with Article 44 of the Convention, the UK must take extra-territorial jurisdiction over certain offences if committed abroad by UK nationals. The UK Government will introduce the extra-territorial jurisdiction measures necessary for compliance for England and Wales as part of the forthcoming Domestic Abuse Bill.*¹⁸⁶

The Preventing and Combating Violence against Women and Domestic Violence (Ratification of Convention) Act 2017 requires the Secretary of State to establish a time frame for the ratification of the Istanbul Convention¹⁸⁷ and to annually report on progress.¹⁸⁸ The first report was submitted on 1 November 2017. The Department for Communities is coordinating NI's input to the progress reports with the assistance of other relevant departments, such as the Department of Justice.

Statistics

The UN ICESCR Committee highlighted in its 2016 Concluding Observations on the UK that the significant rise in homelessness in NI affected victims of domestic violence amongst other vulnerable groups. The UN ICESCR Committee urged the UK 'to take immediate measures, including allocating appropriate funds to local authorities... to ensure adequate provision of reception facilities, including emergency shelters, hostels and reception, as well as social rehabilitation centres'.¹⁸⁹

Statistics collated by the Police Service NI record that domestic violence has increased significantly since 2004/05 when the data series began. There were 29,166 domestic abuse incidents recorded in 2016/17. This was a 2.7 per cent increase over the previous year. There were 13,933 domestic abuse crimes recorded in 2016/17. This is a one per cent decrease on the crimes recorded the previous year, but the second highest level recorded since the data series began.¹⁹⁰

Domestic Violence Strategy

The Special Rapporteur on Violence Against Women following her 2014 mission to the UK recommended that:

the UK Government and devolved administrations implement comprehensive and co-ordinated strategies to prevent and combat violence against women and girls, introduce robust monitoring

¹⁸⁵ UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/7, UN CEDAW, July 2013, para 35(a)

¹⁸⁶ Ministry of Justice, Universal Periodic Review, United Kingdom, British Overseas Territories and Crown Dependencies, National Report, UK Government, February 2017, recommendation 134.43

¹⁸⁷ UK Parliament, Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017, UK Parliament, April 2017, Section 1

¹⁸⁸ *Ibid*, Section 2

¹⁸⁹ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, paras 51 and 52.

¹⁹⁰ Police Service of NI, Domestic Abuse Incidents and Crimes Recorded by the Police in NI: Quarterly Update to 31 March 2017 (Providing Final Figures for 1st April 2016 to 31st March 2017), Police Service of NI, 17 May 2017

*and accountability mechanisms to monitor the impact of these strategies, and ensure the provision of services for victims.*¹⁹¹

The UN CRPD Committee recommended in its 2017 Concluding Observations that the UK ‘*establish measures to ensure equal access to justice and to safeguard persons with disabilities, particularly, women, children, intersex people and elderly persons with disabilities from abuse, ill-treatment, sexual violence and/or exploitation*’.¹⁹²

The ‘Stopping Domestic and Sexual Violence and Abuse in NI Strategy’ was published in March 2016.¹⁹³ It included a ‘Year One Implementation Plan’¹⁹⁴. There have been some developments that reflect the implementation plan, which are identified below.

Domestic violence offences

In early 2016, the Department of Justice consulted on whether there should be a specific offence that captured patterns of coercive and controlling behaviour.¹⁹⁵ Following this consultation the Department of Justice began preparing a Domestic Abuse Bill, which it continues to develop¹⁹⁶. This Bill aims to provide for a new domestic abuse offence capturing patterns of psychological abuse, violence, and/or coercion of a partner, ex-partner or close family member. It also includes a statutory aggravation of domestic abuse, which may attract enhanced sentencing for other offences. The enactment of this Bill is subject to the legislative process, which is stalled due to the suspension of the NI Assembly.

Specialist Domestic Violence Courts

The UN CEDAW Committee in its 2013 Concluding Observations urged the UK ‘*to ensure effective access by women, in particular women victims of violence, to courts and tribunals*’.¹⁹⁷

A Magistrates’ Court pilot scheme was launched in Derry/Londonderry in November 2011. This provided for special listing arrangements for domestic violence cases, whereby domestic violence cases were clustered and heard by one judge on specifically designated days. This enabled the relevant agencies, including the support services, to concentrate their efforts and resources into those days in order to provide moral and practical support to victims. In September 2016, the then Minister for Justice indicated that the arrangements for the pilot scheme ‘*should be enhanced, before further consideration is given to rolling out the model across other areas of NI*’.¹⁹⁸

Protection initiatives

In early 2016, the Department of Justice consulted on the establishment of a Domestic Violence Disclosure Scheme in NI. The Department of Justice continues to progress the development of a Domestic Violence Disclosure Scheme.¹⁹⁹ This will allow a victim or a third party known to a potential victim who may have concerns, to apply to the police for information on a partner. The scheme aims to help ensure the safety of victims, allowing them to make an informed choice about whether they would wish to continue in their relationship.

191 UK National Human Rights Institutions Oral statement on the Special Rapporteur on violence against women country report on the United Kingdom and Northern Ireland, Human Rights Council, 29th Session, Item 3, 16 June 2015.

192 UN Committee on Rights of Persons with Disabilities, Concluding Observations on the Initial Report of the UK of Great Britain and NI, UN Committee on Rights of Persons with Disabilities, 29 August 2017, para 39(a)

193 Department of Health, Social Services and Public Safety and Department of Justice, Stopping Domestic and Sexual Violence and Abuse in Northern Ireland: A Seven Year Strategy, March 2016.

194 Department of Justice, Stopping Domestic and Sexual Violence and Abuse Strategy: Year One Implementation Plan, Department of Justice, May 2016

195 Department of Justice, Domestic Abuse Offence and Domestic Violence Disclosure Scheme, 2016.

196 Permanent Secretary of Department of Justice, COR-1076-2017: Letter from Department of Justice to NIHRC, Department of Justice, 22 September 2017

197 UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/7, UN CEDAW, July 2013, para 23(a)

198 AQO 268/16/21, Question from Mr McAleer to Minister of Justice on Domestic Violence: Court Listings, 20 September 2016

199 Permanent Secretary of Department of Justice, COR-1076-2017: Letter from Department of Justice to NIHRC, Department of Justice, 22 September 2017

The Department of Justice plans to introduce Domestic Violence Protection Notices and Domestic Violence Protection Orders.²⁰⁰ A Protection Notice is an emergency non-molestation and eviction notice which can be issued to a perpetrator by the police when attending a domestic abuse incident. It is effective from the point of issue, and can be issued without the victim's consent. Within 48 hours of a Protection Notice being served, the police can apply to the Magistrates' court of a Protection Order. This can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days.

The Department of Justice is developing a local Domestic Homicide Review Model, where a person has died as a result of domestic violence.²⁰¹ The Model will seek out and share opportunities for learning, identify what worked well and inform the development of practice to improve services. This is with a view to preventing domestic violence and abuse and domestic homicide happening in the future.

The introduction of these protection initiatives will depend on when the NI Assembly is reinstated.

Victim support

The UN CEDAW Committee in its 2013 Concluding Observations urged the UK *'to increase its efforts to protect women, including black and ethnic minority women, against all forms of violence, including domestic violence, and so-called "honour-killings"'*.²⁰² This included continuing *'public campaigns to raise awareness of all forms of violence against women'*²⁰³, *'stepping up efforts to train police officers in order to eliminate prejudices concerning the credibility of victims of domestic violence'*²⁰⁴, and continuing *'to provide training on gender-sensitive approaches in the treatment of victims of violence to officers who are in charge of immigration and asylum applications'*.²⁰⁵

The Department of Justice is developing a streamlined Advocacy Support Service across NI.²⁰⁶ This will standardise the level of support to be made available, and which will respond to the needs of both male and female victims of sexual violence and abuse and domestic violence and abuse. In February 2017, the Supporting People Programme provided 13 refuges throughout NI (with a total funding of over £4.6 million per year) and a 24-hour Domestic and Sexual Violence Helpline was in operation. Furthermore, a variety of places throughout NI, including all police stations are designated as "Safe Places". This is an initiative which provides support in a range of settings for people requiring information on domestic violence.²⁰⁷

The Police Service NI was presented with the Platinum Workplace Charter Award in 2014.²⁰⁸ This is recognition of the Police Service NI's workplace policy and training in supporting victims of domestic abuse. The Commission received correspondence from the Police Service NI following a meeting with the Chief Constable in May 2017, welcoming the support of the Commission in tackling violence against women.

200 *Ibid.*

201 *Ibid.*

202 UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/7, UN CEDAW, July 2013, para 35(b)

203 *Ibid.*, para 35(c)

204 *Ibid.*, para 35(d)

205 *Ibid.*, para 59(a)

206 Permanent Secretary of Department of Justice, COR-1076-2017: Letter from Department of Justice to NIHRC, Department of Justice, 22 September 2017

207 Police Service NI Website: Safe Places Campaign available at: <https://www.psn.police.uk/crime/domestic-abuse/safe-place-campaign/>

208 *Ibid.*

Non-nationals and domestic violence

The Commission recommended in its 2016 submission to the UN ICESCR Committee that the UK took steps to extend provision for victims of domestic violence to persons who enter the UK other than on a spousal visa.²⁰⁹

The no recourse to public funds rule prevents persons with insecure immigration status from accessing benefits, such as refuge support. The Destitute Domestic Violence concession was introduced on 1 April 2012. This concession aims to help non-nationals who are victims of domestic violence and on a spousal visa to leave their partner safely and secure their immigration status in the UK. The concession offers those who meet the eligibility criteria temporary leave for three months, enabling them to apply for access to public funds. During this three month period the person should make a separate application for indefinite leave to remain under the Domestic Violence rule.²¹⁰ There are strict eligibility criteria for the concession and so there are some groups who may not benefit.

UN Security Council Resolution 1325

The UN CEDAW Committee recommended in its 2013 Concluding Observations that the UK ensured *'the participation of women in the post-conflict process in NI, in line with Security Council resolution 1325 (2000)'*.²¹¹

Reporting on her 2014 mission to the UK, the Special Rapporteur on Violence Against Women noted concerns in NI regarding *'the exclusion of women from the peace-building processes and how their experiences of violence during and after the conflict have been mostly unrecognized'*.²¹² The Special Rapporteur recommended that the UK ensure the full implementation in NI of UN Security Council resolution 1325.²¹³ The Commission, along with the other UK national human rights institutions, made an oral intervention at the UN Human Rights Council in 2015 welcoming the publication of the Special Rapporteur's Report.

Recommendation

The Commission recommends that the Department of Justice introduce legislation to criminalise coercive and controlling behaviour in an intimate relationship. It further recommends provision for a domestic violence disclosure scheme and that the NI Executive commit the necessary resources to ensure adequate refuge places are available for victims escaping domestic violence. The Commission calls upon the UK government to move from signatory to ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). It encourages the NI Executive to engage with the UK government in this regard and ensure the full implementation of the Convention in NI.

209 NIHRC, Submission to the UN Committee on Economic, Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom's Compliance with ICESCR, 2016, pp. 38-40.

210 No Recourse to Public Funds Network, The Destitution Domestic Violence (DDV) Concession, 2013.

211 UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/7, UN CEDAW, July 2013, para 43(b)

212 Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo Addendum, Mission to the United Kingdom of Great Britain and Northern Ireland, 19 May 2015.

213 *Ibid*, para 106 (c) (x).



Female genital mutilation

Statistics

The CRC Committee stated in its 2016 Concluding Observations on the UK that it was 'concerned at the significant number of children who are affected by harmful practices, including female genital mutilation'.²¹⁴ There are no systematic estimates of the prevalence of female genital mutilation in NI. Nevertheless, there is anecdotal evidence from the Royal College of Nursing and non-governmental organisations that female genital mutilation is present in NI. The Stopping Domestic and Sexual Violence and Abuse in NI, A Seven Year Strategy states:

*It has been estimated that over 60,000 girls under the age of 15 could be at risk of FGM in the UK each year. While the number of women and girls potentially at risk in NI is not thought to be large, health professionals have a duty to be aware of the guidance, alert to indications that a girl may be at risk and to comply with extant child protection policy and procedures.*²¹⁵

The National Society for the Prevention of Cruelty against Children is working with the Safeguarding Board NI's 'Female Genital Mutilation Sub-group' to develop statistics and data collection on female genital mutilation in NI.²¹⁶ Furthermore, the NI Maternity Information System has been adapted to capture cases where female genital mutilation is identified during pregnancy and childbirth. There are no exact figures available, but the Department of Health reported a small number of cases have been identified by this process.²¹⁷

Prevention

Female genital mutilation is illegal under the Female Genital Mutilation Act 2003. The Serious Crime Act 2015 provides for Female Genital Mutilation Protection Orders. The NI Executive published the Multi-Agency Practice Guidelines on female genital mutilation in July 2014.²¹⁸ Health and Social Care professionals should operate in accordance with these guidelines. The Commission welcomed the robust measures initiated to combat this ongoing human rights abuse.

In August 2015, a cross-departmental Senior Officials Group was established, led by the Department of Health.²¹⁹ This group has agreed a number of initiatives to progress the regional response on female genital mutilation. This includes reviewing the 2014 guidelines, exploring opportunities for data collection and analysis, the development of care pathways, and the production of regional training resources for health and social care professionals. The Safeguarding Board for NI's 'Female Genital Mutilation Sub-group' leads the implementation of a number of these actions.²²⁰

Additionally, the Safeguarding Board NI's 'Child Safeguarding Learning and Development Strategy and Framework 2015-2018' sets out that inter-agency training and learning outcomes should be developed regarding female genital mutilation by 2018.²²¹ The Safeguarding Board NI's Policies and Procedure Committee has developed safeguarding practice guidance on female genital mutilation.²²² The Board has also established a specific Committee that undertakes and oversees the Board's

214 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 46.

215 Department of Health, Social Services and Public Safety and Department of Justice, Stopping Domestic and Sexual Violence and Abuse in Northern Ireland: A Seven Year Strategy, Department of Health, Social Services and Public Safety and Department of Justice, March 2016, para 2.9

216 Department of Health, Email from Department of Health to NIHRC, Department of Health, 6 October 2017

217 *Ibid.*

218 Multi-Agency Practice Guidelines: Female Genital Mutilation, January 2014

219 Department of Health, Email from Department of Health to NIHRC, Department of Health, 6 October 2017

220 *Ibid.*

221 Safeguarding Board NI, Child Safeguarding Learning and Development Strategy and Framework 2015-2018, Safeguarding Board NI, April 2016

222 Safeguarding Board NI, Female Genital Mutilation Guidance, Safeguarding Board NI, Unknown

work on female genital mutilation. The Committee's membership is representative of the breadth of agencies working with children and young people in NI.²²³

In August 2016, the Commission published a report on female genital mutilation in the UK.²²⁴ This report clarified the obligations that the UK has under international and regional human rights law regarding the effective eradication of female genital mutilation within the UK. It was submitted to the Home Affairs Committee's 'Female Genital Mutilation Follow-up Inquiry'. The Inquiry's report, published in September 2016, called for greater awareness of female genital mutilation and stressed the duty on frontline professionals to report incidences of female genital mutilation.²²⁵ There have been developments in this area in NI.²²⁶ The Safeguarding Board for NI and its member organisations (including the Public Health Agency and the Health and Social Care Board and Trusts) have prepared training resources and information packages, and held workshops and training sessions with healthcare professionals and within communities to raise awareness of the risks of female genital mutilation and training resources. Professional staff within the Department of Health are developing practice guidelines and care pathways, in consultation with the Health and Social Care service. Furthermore, the Health and Social Care Board has developed interim guidance, which has been issued to social work staff. This is reviewed and updated as necessary.

In November 2017 the African and Caribbean Support Organisation NI published a scoping study on female genital mutilation highlighting concerns relating to data collection, service provision and implementation of the guidelines.²²⁷

Recommendation

The Commission recommends that the NI Executive continues to implement and develop its work regarding training; awareness raising; research into the prevalence of female genital mutilation; implementation of regional guidance; the provision of care pathways; and actions which can be taken to identify and prosecute perpetrators.



Historical abuse of children and adults

On 8 July 2016, the Historical Institutional Abuse Inquiry concluded the programme of hearings which began in January 2014. The Inquiry report made broad ranging recommendations, including for the erection of a memorial and the establishment of a Commission for Survivors of Institutional Abuse. In addition, the Inquiry recommended the establishment of a publicly funded compensation scheme, to be administered by a Redress Board to make determinations relating to compensation for persons who have suffered abuse in the form of sexual, physical or emotional abuse, or neglect or unacceptable practices, between 1922 and 1995; and were resident in a residential institution in NI.

In responding to the publication of the Inquiry report the then Minister of Justice Claire Sugden MLA stated:

Although this abuse took place a long time ago, the Department of Justice operates zero tolerance around child abuse and continually reviews its policies in respect of child protection. The findings of the HIA enquiry report are being carefully examined and new lessons emerging from the work of the Inquiry will be acted upon. Caring properly for young people within the

223 *Ibid.*

224 NIHRC, Female Genital Mutilation in the United Kingdom, August 2016.

225 House of Commons Home Affairs Committee, Female Genital Mutilation: Abuse Unchecked, Ninth Report of Session 2016-17, HC 390, House of Commons, 15 September 2016.

226 Department of Health, Email from Department of Health to NIHRC, Department of Health, 6 October 2017

227 African & Caribbean Support Organisation NI 'Female Genital Mutilation Scoping Study' 9 November 2017

*justice system is at the heart of a civilised society and the Department of Justice does not hesitate to fulfil its role in this area.*²²⁸

Prior to the publication of the report the NI Executive emphasised that it would be inappropriate to pre-empt the findings of the Inquiry and that *'the nature or level of any potential redress, as stipulated in the inquiry's terms of reference, is a matter the Executive will discuss and agree following receipt of the inquiry's report'*.²²⁹ The NI Executive did not issue a formal substantive response to the Inquiry Report, prior to the suspension of the NI Assembly.

When officially closing the inquiry on 30 June 2017 Sir Anthony Hart, the Chairman of the Historical Institutional Abuse Inquiry, encouraged the Secretary of State for NI,

*Because of the wide welcome for, and support of the Report, expressed in the previous Assembly on 23 January, and the clear undertaking by the Prime Minister to the House of Commons on 8 February that the findings of the report will be "taken into account and acted upon" I feel justified in urging you to put in hand the necessary steps to implement the recommendations of the Inquiry in full as a matter of urgency and without delay.*²³⁰

In August 2017 a request from victims for the Secretary of State for NI to exercise powers within the NI Act 1998 to make an interim compensation payment to victims of institutional abuse was turned down.²³¹

The Commission has continued to advise the UK Government and NI Executive of the need to ensure thorough and effective investigations into all allegations of abuse.²³² The Commission notes that the Inquiry's remit did not extend to adult residents of Magdalene laundry type institutions or those abused in private settings. It has highlighted that the NI Executive should set out how the victims of such human rights violations and abuses, outside the remit of the current Inquiry, can access thorough and effective independent investigations.²³³ Furthermore, the Commission has advised that such processes must be open to public scrutiny and ensure the involvement of victims. They must be capable of leading to the identification and punishment of perpetrators, of establishing the truth, and of providing an effective remedy.

Legal proceedings which sought to have abuse in Kincora Boys Home heard at the Independent Inquiry into Child Sexual Abuse were dismissed in April 2016.²³⁴ Kincora was considered by the Historical Institutional Abuse Inquiry which found that employees of local authorities, health boards and Government departments were guilty of systemic failings in the Home, and due to a multitude of failings by officials the sexual abuse of residents was not stopped earlier. However the Inquiry did not find *'anything to show that the security agencies were complicit in any form of exploitation or sexual abuse in Kincora for any purpose'*.²³⁵

228 Department of Justice Press Release, Sugden pays tribute to HIA abuse victims, 20 January 2017

229 Belfast Telegraph, £300 million what it could cost to compensate residents of home, 1 November 2016

230 Historical Institutional Abuse Inquiry: Press Release 'HIA Inquiry comes to an end and the Chairman urges the Secretary of State to implement the recommendations of its Report' 30 June 2017

231 BBC News NI, Brokenshire criticised on historical abuse compensation, 18 August 2017

232 NIHRC Correspondence from Interim Chair John Corey to Home Secretary Rt. Hon. Theresa May MP June 2014.

233 NIHRC, 'Submission to the UN Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the ICCPR', May 2015, para 6.17-6.19.

234 BBC News NI, 'Kincora Boys Home to remain part of Historical Institutional Abuse inquiry', 8 April 2016.

235 Historical Abuse Inquiry, The Inquiry into Historical Abuse 1922 to 1995, 20 January 2017, p225

Recommendation

The Commission recommends that the NI Executive develop and publish an implementation plan to ensure full and effective implementation of the Inquiry Report recommendations. The Commission notes that the Inquiry's remit did not include those abused in private settings or adult residents of Magdalene laundry type institutions. The Commission recommends that the Executive Office set out how it will ensure full and effective investigations into allegations of abuse in such settings. Such processes must be open to public scrutiny and involve the victims. They must be capable of leading to the identification and punishment of perpetrators, of establishing the truth, and of providing an effective remedy.



Mechanisms to identify victims of torture detained in immigration facilities

In 2013, the UN CAT Committee recommended that the UK:

*conduct an immediate independent review of the application of Rule 35 of the Detention Centre Rules in immigration detention, in line with the Home Affairs Committee's recommendation and ensure that similar rules apply to short term holding facilities.*²³⁶

In NI, irregular migrants are detained at Larne House short term holding facility.²³⁷ Detainees are held for a maximum period of five days, or seven if removal directions have already been served. Detainees are then released, transferred to Immigration Removal Centres elsewhere in the UK, or removed (including to Ireland). The Immigration Detention Centre Rules make provision for the regulation and management of detention centres.²³⁸ The Rules provide for matters such as the welfare and health care of immigration detainees. Rule 35(3) of the Detention Centre Rules places an obligation on a medical practitioner to report to the manager of the Centre any detained person who he/she is concerned may have been the victim of torture.

The Detention Centre Rules do not apply to Larne House, due to its classification as a short term holding facility. Measures in place for the identification of victims of torture in Larne House appear to rely heavily on self-identification.

In January 2016, a review of the welfare of immigration detainees by Stephen Shaw, the former Prisoner and Probation Ombudsman for England and Wales, noted the absence of rules governing short term holding centres. It recommended that a discussion draft of the short term holding centre rules be published as a matter of urgency. It was also recommended:

*that the Home Office immediately consider an alternative to the current Rule 35 mechanism. This should include whether doctors independent of the IRC system (for example, Forensic Medical Examiners) would be more appropriate to conduct the assessments as well as the training implications*²³⁹.

In responding to the report Lord Bates, the Parliamentary Under-Secretary of State, Home Office stated that the Government will '*strengthen our processes for dealing with those cases of torture*'.²⁴⁰ However, substantive proposals around the application of Rule 35 or the rules governing short term holding centres have not yet been published.

236 UN Committee against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), CAT/C/GBR/CO/5, UN CAT, 2013, para 30.

237 The UK Border Agency has informed the Commission that at Larne House "The Detention Centre Rules do not apply." Email correspondence between UKBA and NIHRC dated 26 March 2013.

238 Immigration, The Detention Centre Rules 2001.

239 A Report to the Home Office by Stephen Shaw, Review into the Welfare in Detention of Vulnerable Persons, Cm 9186, January 2016, Recommendation 21.

240 Lord Bates (The Parliamentary Under-Secretary of State, Home Office), 'Immigration Detention: Response to Stephen Shaw's report into the Welfare in Detention of Vulnerable Persons: Written statement' - HLWS462, 14 January 2016.

On 6 February 2017, in responding to a parliamentary question Robert Goodwill, Minister for Immigration stated:

*the follow up to the review... will take place in late 2017. The timings and resources for his follow up review are to be agreed with Mr Shaw. Mr Shaw will be invited to assess the implementation of all his review recommendations.*²⁴¹

Recommendation

The Commission recommends that the UK government introduce rules governing short term holding centres, including specific provision around the identification of victims of torture. It calls on the Home Office to increase the effectiveness of inspections and oversight at Larne House.



Prison review and conditions

In 2015 the UN Human Rights Committee recommended robust measures:

*to prevent self inflicted deaths (suicides), including suicides and self-harm in custody, inter alia by: (a) Studying and addressing the root causes of the problem, continuing improving the identification of persons at risk of suicide and self-harm and operating effective early prevention strategies and programmes;(b) Providing adequate training to prison officials on suicide and self-harm prevention; (c) Ensuring adequate protection of, and appropriate mental health and other support services to, prisoners;(d) Combating bullying in custody facilities effectively.*²⁴²

In 2016 the Department of Justice and Department of Health consulted on a strategy to improve health within the criminal justice system. The draft strategy considered the health needs of prisoners. The Commission responded advising on the need to address the recommendation made by the UN Human Rights Committee and to ensure the strategy addresses both the health and social care needs of prisoners.²⁴³ In addition the Commission highlighted the need to ensure adequate social care provision within prisons. The Commission has engaged with officials throughout 2017 and understands that whilst the draft strategy and action plan were agreed by the Justice Minister and presented to the Committee for Justice on 8 December 2016, as the strategy was not presented to the Committee for Health before the suspension of the NI Assembly it is not possible for the strategy to be published and implemented.

In November 2015 a report on an independent inspection of Maghaberry Prison revealed that significant failures in local leadership combined with an ineffective relationship within senior management of the NI Prison Service, contributed to the prison becoming unsafe and unstable for prisoners and staff.²⁴⁴ Subsequent reports have identified a number of improvements. However on 22 August 2017 a report of an unannounced inspection of Maghaberry prison recorded:

there were major shortcomings in the care and support provided to the most vulnerable men in the population of Maghaberry and we were not confident that lessons were being learned from previous self-inflicted deaths in custody. There had been 11 self-inflicted deaths at the prison since 2012 and three in 2016. The death in custody action plan was not being effectively reviewed to drive improvements; minutes of the strategic safer custody meeting did not reflect meaningful discussions about the issues it raised; it was not clear what action had been

241 Hansard, Welfare in Detention of Vulnerable Persons Review Home Office written question – answered on 6th February 2017.

242 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 16.

243 NIHRC, Submission of the Northern Ireland Human Rights Commission to the Department of Justice and Department of Health consultation on improving health within criminal justice, 2016.

244 CJINI, 'Report on an unannounced inspection of Maghaberry Prison 11–22 May 2015', November 2015.

*taken and when; some actions were blank, some contradictory and it was not clear that all the recommendations had been clearly understood. This was a very concerning picture.*²⁴⁵

Previously the Commission recorded positively the commitment to transfer responsibilities for the education of children at Woodlands Juvenile Justice Centre from the NI Prison Service to the Department of Education NI. In year the Commission provided comments on the draft Memorandum of Understanding and Service Level Agreement for the provision of education and vocational services within Woodlands. In addition, the Commission conducted a visit to Woodlands to assess educational provision.

Throughout 2017 the Commission has been engaging with officials and stakeholders to consider the rights of older prisoners, an emerging issue in prisons which has been reported on elsewhere in the UK.²⁴⁶ The Commission visited Magilligan Prison in November 2017 to assess this issue in further depth.

Recommendation

The Commission recommends that the Department of Justice and Department of Health prioritise the publication of a strategy and its delivery to improve health and social care within the criminal justice system, in particular within prisons. This should include a commitment to implement robust measures aimed at preventing self inflicted deaths, suicides and self-harm in custody. The Commission calls on the Department of Health and Department of Justice to clarify and clearly set out the body responsible in NI for the social care of prisoners and ensure specific actions and appropriate resources are allocated to this service.



Strip searches

The Commission has previously acknowledged that the NI Prison Service is committed to the development of a modern approach to searching persons that is less intrusive than the current methods.²⁴⁷ A trial of millimetre wave scanning equipment had proved unsuccessful and preparation was being made to pilot an x-ray scanner. The pilot of the x-ray scanner was also delayed due to the need to obtain statutory approvals. The Commission has been informed that an alternative approach to strip searches has not yet been identified. However it is noted that the Department of Justice continue to consider options.

On 15 March 2016 the NI High Court granted an order of certiorari quashing the policy of the NI Prison Service by which forced strip search procedures were recorded on a video camera and then retained for a period of six years. The NI High Court found that *'a search involving the removal of clothing engages ECHR Article 8. Nakedness is inherently private and forcing it upon someone cannot but engage one's right to privacy'*. As such an interference with Article 8 must be *'in accordance with law'* with a sufficient basis in domestic law, the NI High Court considered *'the policy of video recording full searches of prisoners are manifestly insufficient to provide such a basis'*.²⁴⁸ In October 2017 in correspondence with the Commission the NI Prison Service confirmed that the procedure for the video recording of full searches of prisoners has ceased.

Recommendation

The Commission continues to call on the Department of Justice to develop and implement less intrusive methods of searching persons.

²⁴⁵ National Preventative Mechanism, Report of an unannounced visit to Maghaberry Prison 3-4 April 2017: to review progress against the nine inspection recommendations made in 2015., 22 August 2017, p. 11

²⁴⁶ Prisons and Probations Ombudsman Press Release, Prison Service needs strategy to deal with growing numbers of older prisoners, says Ombudsman, 20 June 2017

²⁴⁷ Committee for Justice, 'Prison Service Reform Programme: Update', Official Report (Hansard) Session: 2012/2013, 16 May 2013.

²⁴⁸ Flannigan's Application [2016] NIQB 27.



Refugee crisis: Syria and elsewhere

Vulnerable Persons Relocation Scheme

In 2016, the Commission raised concerns about the outstanding Refugee Integration Strategy to the UN ICERD Committee.²⁴⁹ The European Commission against Racism and Intolerance has also recommended that a refugee integration strategy is developed in NI *'to assist newly-arrived refugees, in particular as concerns housing, employment, access to welfare and learning English, and that refugee integration is systematically evaluated'*.²⁵⁰

In September 2015, the UK Government announced a significant expansion of the Vulnerable Persons Relocation Scheme to resettle up to 20,000 Syrian refugees over the course of the current UK Parliament.²⁵¹ This commitment has been criticised for not representing a *'fair and proportionate share of refugees, both those already within the EU and those still outside it'*.²⁵²

The scheme is limited to displaced refugees living in camps and countries neighbouring Syria, principally Turkey, Jordan and Lebanon. It does not extend to asylum seekers in Europe or in countries such as Libya.²⁵³ The scheme is based on need. It prioritises those who cannot be supported effectively in their region of origin, such as women and children at risk, people in severe need of medical care, and survivors of torture and violence. Individuals are assessed by the UN High Commissioner for Refugees in the camps and, if accepted under the scheme, are granted five years humanitarian protection status. After this period they are eligible to apply for resettlement in the UK.²⁵⁴ Those with humanitarian protection status will have access to employment, public funds and rights to family reunion. From 1 July 2017, all those admitted to the UK under the scheme were granted refugee status. This provides additional entitlements, such as swifter access to student support for those in higher education and an internationally recognised refugee travel document.

Between December 2015 and August 2017, 632 Syrian refugees were welcomed to NI via this scheme and 245 are of school age.²⁵⁵

Three government-level groups have been established to accommodate the arrival of Syrian refugees to NI.²⁵⁶ The Executive Office leads a Strategic Planning Group. The Department for Communities leads an Operational Planning Group and has established a Local Government Engagement Group.

The Vulnerable Syrian Refugee Consortium, a collective of local voluntary sector organisations appointed by the Department for Communities provide assistance to refugees on their arrival. These services are funded by the Home Office, which provides at least £11,120 per refugee to cover the first year's costs. The Home Office also provides reducing levels of financial support for the resettlement of the refugees for up to five years after their arrival. Additional money may be available to cover additional educational costs and medical costs for any complex needs cases.²⁵⁷ Furthermore, the Home Office provides £4,500 to each Syrian child's education costs for one year. However, the Department of Education has not received this money since August 2016. These funds are governed by a memorandum of understanding between the Home Office and the NI Executive Office. The

249 NIHRC, Submission to the United Nations Committee on the Elimination of Racial Discrimination: Parallel Report on the 21st to 23rd Periodic Reports of the United Kingdom under the International Convention on the Elimination of All forms of Racial Discrimination, July 2016, para 65.

250 ECRI, Report on the United Kingdom (fifth monitoring cycle), CRI(2016)38, Adopted on 29 June 2016, European Commission against Racism and Intolerance, 4 October 2016, para 116.

251 Department for Communities, Syrian Vulnerable Persons Relocation Scheme: Briefing Document, Department for Communities, August 2017, 5.

252 Lawyers Refugee Initiative, 'Refugee Crisis, Call from the Legal Community for Urgent Action', 12th October 2015.

253 Department for Communities, Syrian Vulnerable Persons Relocation Scheme: Briefing Document, Department for Communities, August 2017, 5.

254 Department for Communities, Syrian Vulnerable Persons Relocation Scheme: Briefing Document, Department for Communities, August 2017, 5.

255 Department for Communities, Syrian Vulnerable Persons Relocation Scheme: Briefing Document, Department for Communities, August 2017, 3.

256 Department for Communities, Syrian Vulnerable Persons Relocation Scheme: Briefing Document, Department for Communities, August 2017, 10-11.

257 Department for Communities, Syrian Vulnerable Persons Relocation Scheme: Briefing Document, Department for Communities, August 2017, 11.

memorandum is being revised and payments for 2017/2018 are to follow the final agreement.²⁵⁸ There is no indication as to when this will be.

The NI Housing Executive assists the refugees to identify appropriate permanent housing solutions under the standard homelessness procedures.²⁵⁹ The Department for the Economy has arranged formal English language classes in the Regional Colleges. The Vulnerable Persons Relocation Scheme has a sub-group with partners from the community, statutory and private sectors who actively run employability projects including work placements and training initiatives.²⁶⁰

A Good Practice Charter has been developed to *'ensure that the rights of Syrian families to privacy and family life are upheld and that best practice is adhered to by everyone while supporting these families to integrate into NI'*. This guidance is centred around five key principles: a rights-based approach; an empowering approach; a person-centred approach; a consent-driven approach; and a collaborative approach.²⁶¹

Vulnerable Children's Resettlement Scheme

The UK Government introduced the Vulnerable Children's Resettlement Scheme in April 2016.²⁶² This scheme is specifically tailored to support vulnerable and refugee children at risk and their families of any nationality (including Syrian), located in the Middle East and North Africa region (Turkey, Egypt, Lebanon, Iraq and Jordan). As of June 2017, 280 individuals had been resettled under this scheme in the UK, two of which were Syrian.²⁶³ The statistics on how many were resettled to NI are unavailable. It is intended that 3,000 will be resettled under this Scheme by 2020; this is in addition to those resettled under the Vulnerable Persons Relocation Scheme.

Unaccompanied refugee children

In 2015, 14,345 asylum applications by unaccompanied Syrian children were considered in the EU.²⁶⁴

Section 67 of the Immigration Act 2016 legislates for the Dubs Amendment Scheme. Section 67(1) of the Immigration Act 2016 commits the Secretary of State to *'make arrangements to relocate to the UK and support a specific number of unaccompanied refugee children from other countries in Europe'*. Under Section 67(2) of the 2016 Act, the number of children to be resettled *'shall be determined by the Government in consultation with local authorities'*. Section 67(3) of the 2016 Act confirms the determined number is in addition to the resettlement of children under the Vulnerable Persons Relocation Scheme. These provisions extend to NI.²⁶⁵

Lord Dubs, who introduced these provisions, had hoped 3,000 of the most vulnerable unaccompanied refugee children would benefit from section 67 of the 2016 Act. However, the UK government announced that the specific number of children to be transferred under section 67 will be 480.²⁶⁶ This number was determined by the capacity of local authorities. It includes those children already transferred under this scheme and is exclusive of children transferred under the family reunion criteria of the Dublin III Regulation. In February 2017, 200 children had been resettled by the scheme. No children have been resettled in NI under this scheme.²⁶⁷

258 <http://www.bbc.co.uk/news/uk-northern-ireland-41407320>

259 Department for Communities, Syrian Vulnerable Persons Relocation Scheme: Briefing Document, Department for Communities, August 2017, 12.

260 Department for Communities, Syrian Vulnerable Persons Relocation Scheme: Briefing Document, Department for Communities, August 2017, 13.

261 Department for Communities, Syrian Vulnerable Persons Relocation Scheme: Briefing Document, Department for Communities, August 2017, 15-16.

262 <https://www.gov.uk/government/news/new-scheme-launched-to-resettle-children-at-risk>

263 Home Office, National Statistics, Volume 7.4, as 19 q Refugees (and others) resettled, including dependants, by country of nationality, Home Office, 24 August 2017

264 Eurostat, Almost 90 000 unaccompanied minors among asylum seekers registered in the EU in 2015, Eurostat, 2 May 2016, 3.

265 <http://www.legislation.gov.uk/ukpga/2016/19/section/67/enacted>

266 Home Office, Policy Statement: Section 67 of the Immigration Act 2016, Home Office, July 2017

267 Correspondence with Home Office Officials, 18 September 2017

In November 2017, the English High Court dismissed a legal challenge from Help Refugees against the UK government over the number of unaccompanied child refugees accepted to the UK under section 67 of the Immigration Act 2016. Help Refugees has lodged an application for permission to appeal the judgement.²⁶⁸ Help Refugees submit that the Home Office adopted a seriously defective process to measure the capacity of local councils to take in child refugees on the basis that many local authorities were not properly consulted. This includes the fact that a consultation was not conducted in NI.

In October 2017, Home Secretary Amber Rudd in briefing the Home Affairs Select Committee confirmed 280 places that had been offered by local authorities were still unfilled. The Home Secretary also confirmed that no children from Italy or Greece, where over 8,000 unaccompanied asylum seeking children have registered under the scheme, had been transferred to the UK. The Home Secretary stated,

*We have made very clear offers to Greece and to Italy in order to do that. We remain committed to trying to fill those places... There have been 400 children who have moved around Europe and we have taken 200. Perhaps those numbers will give some indication to the Committee of the difficulties of moving children around within Europe, which is what we are trying to do. It is not straightforward. We remain absolutely committed nevertheless to making sure that we deliver on the legislation that was passed.*²⁶⁹

Racial Equality Strategy

The 'Racial Equality Strategy 2015-2025' was published in December 2015.²⁷⁰ It includes initiatives relevant to refugees and asylum seekers, such as their inclusion in the membership of the Racial Equality Subgroup, financial support, educational opportunities, and the development of a 'Refugee Integration Strategy'. At the time of writing officials are preparing a draft strategy for consultation.²⁷¹ Such a strategy would bring NI into line with Scotland and Wales. It is acknowledged that refugee integration is a particular issue for NI as '*integration is more difficult in a divided society, both in terms of acceptance in communities that have experienced conflict... [and] in terms of the newcomers being seen within the parameters of the conflict*'.²⁷²

Recommendation

The Commission calls on the UK Government to increase its commitment to receive 20,000 Syrian refugees by 2020, as this figure does not represent a fair and proportionate share of refugees in need of relocation. The Commission calls on the Home Office and NI Executive to put in place arrangements to ensure NI accommodates a proportionate number of unaccompanied asylum seeking children and refugees, such as joining the scheme set up under section 67 of the Immigration Act 2016. The Commission also calls on the Home Office and NI Executive to ensure that the resources are in place to effectively support all refugees resettled in NI. It further highlights the outstanding Refugee Integration Strategy in NI and recommends that implementation of this strategy is expedited to assist newly-arrived refugees.

268 Leigh Day Press Release, Help Refugees appeals High Court's judgment on Dubs Amendment' 2 November 2017 <https://www.leighday.co.uk/News/News-2017/November-2017/Help-Refugees-appeals-High-Courts-judgment-on-Dub>

269 Rt Hon Amber Rudd MP, Home Secretary, Home Affairs Committee Oral evidence: The work of the Home Secretary, HC 434, October 2017

270 NI Executive Office, Racial Equality Strategy 2015-2025, NI Executive, December 2015

271 NI Executive, Together: Building a United Community Update Report, June 2017, p.4

272 Michael Potter, Refugees and Asylum Seekers in NI, NI Assembly, 6 June 2014, p.14

Freedom from slavery

ICCPR	Article 8
ECHR	Article 4
CFREU	Article 5
CRC	Article 34 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Child, early and forced marriage

In May 2016 the UN CRC Committee recommended that *'the [UK] raise the minimum age of marriage to 18 years'*.²⁷³ The UN CRC Committee, General Comment No. 4, strongly recommends the review and, where necessary, reform of legislation and practice to increase the minimum age for marriage to 18 years, for both girls and boys.²⁷⁴ The UN CRC Committee, General Comment No. 20, of December 2016 reaffirmed *'that the minimum age limit should be 18 years for marriage'*.²⁷⁵

The Marriage (NI) Order 2003, which is a responsibility of the Department of Finance, permits the marriage of a child aged 16 or 17 years with the consent of their parents or legal guardians or the courts. In NI, 68 children were married in 2015 of these 49 were girls and 19 were boys.²⁷⁶

Throughout 2017 the Commission has chaired the Commonwealth Forum of National Human Rights Institutions. The Forum is an informal and inclusive body of Commonwealth National Institutions for the Promotion and Protection of Human Rights and other national accountability mechanisms with a human rights mandate. As a member of the Forum the Commission is a signatory to the Kigali Declaration on the elimination of child, early and forced marriage in the Commonwealth. The Declaration notes that National Human Rights Institutions are:

*Concerned by estimates that over the next decade 140 million girls under the age of 18 years will be forced to marry and that half of these girls live in Commonwealth member states.*²⁷⁷

Recommendation

The Commission recommends that the Department of Finance introduce legislation to repeal all legal provisions permitting the marriage of children in NI and increasing the minimum age for marriage to 18 years, for both girls and boys.

Children missing from care

In the course of its community engagements, the issue of children going missing from care facilities was raised on a frequent basis. During the period April 2015 to March 2016, there were 2,679

273 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 19.

274 UN Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, 1 July 2003, para 20.

275 UN Committee on the Rights of the Child, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence UN Doc. CRC/C/GC/20, 6 December 2016, para 40

276 Information provided to the NIHRC on request from the NI Statistics and Research Agency.

277 Commonwealth Forum of National Human Rights Institutions, 'Kigali Declaration Moving from aspiration to action to prevent and eliminate child, early and forced marriage in the Commonwealth', 6 May 2015.

missing person reports, in respect of 230 children, from Children's homes filed with the Police Service NI.²⁷⁸ Of those missing children, 1,247 of those reports related to children who were identified as being at risk of child sexual exploitation.

The Commission is aware that the Police Service NI has taken the lead in looking at this area and is working with the Health and Social Care Board to gain a better understanding of risk and with a view to agreeing a joint definition between the agencies. In October 2017 the Commission participated in a Multi-Agency Workshop on children and young people missing from care, to explore appropriate interventions to reduce missing incidents and manage risks for those who do go missing.

Recommendation

The Commission is concerned at the number of children who have regularly gone missing from care and continues to monitor this situation, working with all parties involved. The Commission recommends that the key agencies develop a strategic approach to address the factors contributing to the high number of children going missing from care.



Child sexual exploitation

An Independent Inquiry into Child Sexual Exploitation in NI was initiated by the Ministers for Health, Justice and Education in 2013 and published its report in November 2014. The Inquiry report includes 17 key recommendations and 60 supporting recommendations for improvement in combating child sexual exploitation, outlining measures for improved inter-agency working, education and awareness raising, training for professionals, funding of preventative services, engagement with communities, support for victims and the development of a regional strategy.²⁷⁹

The recommendations address the need for legislative reform in a number of areas, including addressing a gap in protection under the Sexual Offences (NI) Order 2008.²⁸⁰ Presently for a number of serious sexual offences against children aged between 13 and 18 years *'the defendant may claim that he/she believed the victim to be above 16 years'* thus requiring the prosecution to prove that the defendant did not reasonably believe this.

In its 2014 report on the compatibility of the UK with the Optional Protocol on the sale of children, child prostitution and child pornography the UN CRC Committee raised concerns that:

*the Sexual Offences (NI) Order 2008, for certain grave offences of sexual exploitation of children between 13 and 16 years of age, such as meeting a child following sexual grooming, engaging in sexual activity with a child, arranging or facilitating a child sex offence, the defendant may claim that he/she believed the victim to be above 16 years.*²⁸¹

The UN CRC Committee recommended reform to the 2008 Order to include *'a provision that for child victims, the burden of proof would be reversed'*.²⁸² The Commission reported to the UN CRC Committee on the issue of child sexual exploitation advising that *'no measures have been taken to ensure that all children up to 18 years of age are protected from all types of offences covered by the Optional Protocol'*.²⁸³ In its report the UN CRC Committee noted that *'the Sexual Offences Act (2003)*

278 Information provided by the PSNI.

279 Kathleen Marshall, 'Child Sexual Exploitation in Northern Ireland Report of the Independent Inquiry', November 2014, p. 149.

280 *Ibid*, Recommendation 14.

281 UN Committee on the Rights of the Child, Concluding observations on the report submitted by the United Kingdom of Great Britain and Northern Ireland under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, CRC/C/OPSC/GBR/CO/1, UN CRC, July 2014, para 27.

282 *Ibid*, para 29.

283 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016.

in England and Wales and the Sexual Offences (NI) Order (2008) have not been revised to provide full and equal protection to all children under 18 years of age'.²⁸⁴

In May 2016 the UN CRC Committee recommended:

that the State party fully implement the Committee's recommendations on the initial report of the State party... provided in its concluding observations on the Optional Protocol on the sale of children, child prostitution and child pornography in particular that the State party: (a) Ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol.

The Department of Justice 'Tackling Child Sexual Exploitation in NI Action Plan' contains a commitment to consider the 2008 Order and its compatibility with international standards.²⁸⁵ In September 2016 a progress report on implementation of the Action Plan was issued which recorded that,

[w]ork is continuing towards establishing possible provisions to bring forward for future consultation and presentation to the NI Assembly.

The progress report therefore did not indicate clear progress towards implementation of the UN CRC Committee's recommendation. Following publication of this report the Commission met with the then Minister of Justice who informed the Commission of the intention to consult on proposals for reform in April 2017. However no proposals have been published at the time of writing. The Commission has raised this issue of delay with officials who have informed the Commission that proposals will be published by the end of 2017. However this is dependent upon Ministerial approval.

Recommendation

The Commission remains concerned that a defendant charged under the Sexual Offences (NI) Order 2008 may claim that he/she believed the victim to be above 16 years thus requiring the prosecution to prove that the defendant did not reasonably believe this. It continues to call upon the Department of Justice to prioritise the fulfilment of its human rights obligations as required by the Convention on the Rights of the Child and to expedite the introduction of legislation in the NI Assembly to ensure the burden of proof is reversed to protect child victims of sexual offences.



Modern slavery and human trafficking

The National Referral Mechanism is a framework operated by the National Crime Agency for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support. During 2016, 33 potential victims of human trafficking were referred from NI, representing a decrease of 20 victims on 2015 referral figures. This figure included: 12 adult males; 15 adult females; four boys; and two girls.²⁸⁶ Labour exploitation was the primary reason for referral comprising 42 per cent of the referrals; while 30 per cent were referred for sexual exploitation; nine per cent for domestic servitude; and another 18 per cent referred as unknown exploitation type.²⁸⁷

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 places a requirement on the Department of Justice to produce an annual strategy to address offences related to slavery, servitude and forced or compulsory labour and human trafficking. In furtherance

²⁸⁴ *Ibid.*

²⁸⁵ Department of Justice, Tackling Child Sexual Exploitation in Northern Ireland: Action Plan, March 2015 (Revised – August 2015).

²⁸⁶ National Crime Agency, National Referral Mechanism Statistics - End of Year Summary 2016, 07/04/2017, See Annex B.

²⁸⁷ National Crime Agency, National Referral Mechanism Statistics - End of Year Summary 2015, 11/02/2016, see Annex B.

of this obligation in November 2016 the then Minister of Justice published the Human Trafficking and Exploitation Strategy 2016/17 for NI which ran until March 2017.²⁸⁸ In correspondence to the Commission the Permanent Secretary of the Department of Justice has indicated that work on the draft 2017/18 annual modern slavery strategy is being undertaken by officials in the absence of a Minister.

In December 2016 the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (NI) 2016 came into effect.²⁸⁹ The regulations make provision for the appointment of independent guardians to assist, represent and support children who are believed to be victims of trafficking. Throughout 2017 the Health and Social Care Board has been working towards identification and commissioning of a service provider.²⁹⁰

Recommendation

The Commission recommends that the NI Executive continues to take effective measures to address human trafficking and exploitation including through the appointment of independent guardians to assist, represent and support children who are believed to be victims of trafficking.

288 Department of Justice, Human Trafficking and Modern Slavery Strategy 2016/17, November 2016

289 The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2016

290 AQW 6475/16-21 Lord Morrow of Clogher Valley (DUP - Fermanagh and South Tyrone) 28/10/2016

Right to fair trial and the administration of justice

ICCPR	Article 14 Article 15 Article 16
ECHR	Article 6 Article 7
CFREU	Article 47

Access to justice

In August 2017 the UN CRPD Committee recommended that the UK Government and devolved administration,

*Ensure that all persons with disabilities are provided with the right and adequate procedural accommodation within the justice system, and enable in particular deaf persons through the use of sign language interpreters to fully and equally participate as jurors in court proceedings.*²⁹¹

A review and reference group chaired by Lord Justice Gillen to review separately civil justice and family justice, which the Commission was represented on, published its finding in August 2017. Both reports made extensive recommendations to improve civil and family justice. The review recommendations included,

*Developing the voice of the child and extending the use of special measures and support for child and vulnerable witnesses to the family courts...*²⁹²

Throughout 2017 the Commission and the Ulster University, School of Law have been conducting a research project on the needs of litigants in person including a human rights analysis of the circumstances in which representation is required in civil cases. As part of the project the Commission has provided advice to litigants in person on procedural requirements. The report will be published in the Autumn 2018 and followed up with a conference.

Recommendation

The Commission continues to seek to ensure access to justice is fully maintained in the current financial circumstances. In particular, the Commission wishes to ensure that the needs of unrepresented litigants are effectively catered for to ensure they are able to access justice.

Age of criminal responsibility

The age of criminal responsibility remains at ten years old in NI, as in England and Wales. Whilst it remains at eight in Scotland, the Criminal Justice and Licensing (Scotland) Act 2010 prohibits the prosecution of a child under twelve.²⁹³

In 2016 the UN CRC Committee once again recommended that the UK:

²⁹¹ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, para 33

²⁹² Review of Civil and Family Justice, Review Group's Report on Family Justice, Office of the Lord Chief Justice, September 2017, see recommendations

²⁹³ Criminal Justice and Licensing (Scotland) Act 2010, s. 52.

*Raise the minimum age of criminal responsibility in accordance with acceptable international standards.*²⁹⁴

The Commission has repeatedly advised that the minimum age of criminal responsibility should be raised to at least twelve in line with international human rights standards.²⁹⁵ In correspondence to the Commission in 2016 the then Minister of Justice, Claire Sugden indicated that due to a lack of cross party support any increase in the age of criminal responsibility was unlikely. However the Minister identified that removal of children from the formal criminal justice system was a matter of priority for the Department.

In February 2017 the UK Government, in its National Report for the Universal Periodic Review, stated that '*[t]he UKG's position on the minimum age of criminal responsibility remains that children aged 10 are able to differentiate between bad behaviour and serious wrongdoing and it is right that they should be held to account for their actions*'.²⁹⁶

In responding to recommendations made during the Universal Periodic Review Process relating to the age of criminal responsibility in NI the UK Government stated,

*Any change to the age of criminal responsibility would require cross-party support, and there is currently an absence of sufficient political support to implement such an increase. The progressive youth justice system in NI, underpinned by restorative justice principles, has meant that very few children under the age of 12 enter the formal criminal justice system. Those that do are almost always engaged in low-level offending and dealt with by diversionary measures. Criminal justice agencies continue to work in partnership with other statutory and voluntary organisations to divert children from crime and the criminal justice system.*²⁹⁷

On 1 December 2016 the Scottish Government announced its intention to raise the minimum age of criminal responsibility, Mark McDonald MSP Minister for Childcare and Early Years announced:

*... the low age of criminal responsibility in Scotland—and, indeed, the United Kingdom—has continued to attract the attention of the United Nations Committee on the Rights of the Child, including in its most recent concluding observations from August, when it again called on UK Administrations to raise the minimum age of criminal responsibility in accordance with acceptable international standards. I can announce today that we will raise the minimum age of criminal responsibility in Scotland from eight years to 12, and we will introduce a bill in this session to do so.*²⁹⁸

Recommendation

The Commission calls on the Department of Justice to raise the minimum age of criminal responsibility to at least twelve, in line with international human rights standards.

²⁹⁴ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 79.

²⁹⁵ UN Committee on the Rights of the Child, Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, UN CRC, 2008; UN Committee on the Rights of the Child, Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add 188, UN CRC, 2002; UN Committee on the Rights of the Child, Concluding Observations on the United Kingdom of Great Britain and Northern Ireland's initial report, CRC/C/15/Add 34, UN CRC, 15 February 1995.

²⁹⁶ UK Government, Universal Periodic Review, United Kingdom, British Overseas Territories and Crown Dependencies National Report, February 2017, para 38

²⁹⁷ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/36/9/Add.1, 7 September 2017, recommendation 134.205

²⁹⁸ Theyworkforyou, Minimum Age of Criminal Responsibility – in the Scottish Parliament on 1st December 2016

Avoidable delay

In 2015 the UN Human Rights Committee recommended the introduction of:

*concrete measures to reduce avoidable delays in the criminal justice system in NI, including by introducing custodial time limits.*²⁹⁹

Custodial time limits were first introduced to England and Wales in 1991.³⁰⁰ The Criminal Justice Inspector for NI has stated that failure to introduce statutory custodial time limits in NI 'consigns the justice process here to continuing unacceptable delay in processing cases'.³⁰¹

In 2016 the Department of Justice consulted on possible amendments to the Criminal Justice (NI) Order 2003 to strengthen the legislative basis for the introduction of a statutory time limit scheme. The consultation invited views on options for the length and trigger for the time limit. The Commission highlighted to officials the extent of delays within the criminal justice system and the need to address the recommendation of the UN Human Rights Committee.

In March 2017 prisoners held on remand accounted for just over 24 per cent of the overall prison population.³⁰² This is a decrease of four per cent from the previous year.³⁰³ In year statutory time limits have not been introduced.

Recommendation

The Commission continues to highlight the need to reduce avoidable delay in the criminal justice system in NI. It calls upon the Department of Justice to introduce statutory custodial time limits and other concrete measures, in order to reduce avoidable delay.

Closed material proceedings

The Justice and Security Act 2013 makes provision for closed material proceedings in civil cases allowing for the introduction of sensitive security evidence to proceedings involving the Government, without disclosure to the claimant.³⁰⁴

The UN Human Rights Committee has raised concerns regarding the 2013 Act and recommended that the UK:

*Ensure that any restrictions or limitation to fair trial guarantees on the basis of national security grounds, including the use of closed material procedures, are fully compliant with its obligations under the Covenant, particularly that the use of closed material procedures in cases involving serious human rights violations do not create obstacles to the establishing of State responsibility and accountability as well as compromise the right of victims to a fair trial and an effective remedy.*³⁰⁵

The Commission continues to monitor the use of closed material procedures. In the case of *Rahmatullah v Ministry of Defence and another (2017)* the High Court in England & Wales granted

299 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 22.

300 Fiona O'Connell, 'Statutory Time Limits', NI Assembly Research 125-12, 31 March 2012.

301 Official Report (Hansard) Session: 2013/2014 Date: 25 June 2014.

302 NI Prison Service, 'Analysis of NIPS Prison Population from 01/01/2016 to 31/03/2017', 14 April 2017

303 NI Prison Service, 'Analysis of NIPS Prison Population from 01/01/2015 to 31/03/2016', June 2016.

304 Section 12 (1) of the Justice and Security Act 2013 requires the Secretary of State to prepare an annual report on the use of the closed material procedure under section 6 of the Act. Report on use of closed material procedure (from 25 June 2014 to 24 June 2015), October 2015, records that 9 applications for a declaration that a CMP application may be made in proceedings during the reporting period were made by the Secretary of State and two were made by the Chief Constable of the PSNI.

305 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 22.

the Government's application for the use of the closed material procedure in a case regarding the treatment of detainees overseas.

Recommendation

The Commission advises that the UK Government must ensure the use of closed material procedures in cases involving serious human rights violations does not create obstacles to ensuring accountability for human rights violations and does not compromise the right of victims to a fair trial and an effective remedy.

Compensation for a miscarriage of justice

The Anti-social Behaviour, Crime and Policing Act 2014 redefined the test for a miscarriage of justice to require an applicant who has been wrongfully imprisoned to prove his or her innocence of a crime in order to obtain compensation.³⁰⁶ This new test applies for all offences in England and Wales and for offences related to national security in NI. The new test is contained within s.133(1ZA) of the Criminal Justice Act 1988.

The Commission had previously advised that this approach was a disproportionate limitation of the ICCPR, Article 14(6), which states:

*[w]hen a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributed to him.*³⁰⁷

Prior to the introduction of the 2014 Act Lord Phillips in a legal judgment observed that:

*The travaux [to the ICCPR] clearly demonstrate that the parties intended article 14(6) to cover the situation where a newly discovered fact demonstrated conclusively that the defendant was innocent of the crime of which he had been convicted. They were not, however, prepared to agree an interpretation which restricted the ambit of article 14(6) to this situation.*³⁰⁸

Noting that the UN Human Rights Committee General Comment on Article 14 does not define the term 'miscarriage of justice', the Commission updated the Committee on the 2014 Act and requested its views.³⁰⁹

The Committee recommended that the UK:

*Review the new test for a miscarriage of justice with a view to ensuring its compatibility with article 14, para. 6, of the Covenant.*³¹⁰

In April 2016 the England & Wales Court of Appeal considered an application that s.133(1ZA) was unlawful, as it was contrary to the presumption of innocence within article 6(2) ECHR. Rejecting the application the England & Wales Court of Appeal ruled:

³⁰⁶ The Anti-social Behaviour, Crime and Policing Act 2014 makes amendments to section 133 of the Criminal Justice Act 1988.

³⁰⁷ NIHR, 'The 2013 Annual Statement: Human Rights in NI', 2013, p. 29.

³⁰⁸ R (on the application of Adams) (FC) (Appellant) v Secretary of State for Justice (Respondent) [2011] UKSC 18, para 21.

³⁰⁹ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, 2007.

³¹⁰ UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 22 (b).

*The critical reason why section 133 is not incompatible with article 6(2) is that, as the Divisional Court said, it does not require the applicant to prove his innocence generally. The key issue for the purpose of establishing eligibility for compensation under section 133 is the effect of the new or newly discovered fact which led to the conviction being quashed on appeal. ... The fact that the Secretary of State is not persuaded beyond reasonable doubt by a new or newly discovered fact that an applicant is innocent does not entail that the Secretary of State casts doubt on his innocence generally. He is merely saying that the applicant's innocence has not been proved by the new or newly discovered fact.*³¹¹

On 13 April 2017 the applicants in the above case were granted permission to appeal to the UK Supreme Court and a hearing is to be scheduled.³¹²

Recommendation

The Commission calls on the UK Government to review the test for a miscarriage of justice, in line with the UN Human Rights Committee's concluding observation, to ensure its compatibility with the ICCPR, Article 14(6).



Non-jury Trials

In 2013 the UN CAT Committee recommended that the UK Government should:

*take due consideration of the principles of necessity and proportionality when deciding the renewal of emergency powers in Northern Ireland, and particularly non-jury trial provisions. It encourages the State party to continue moving towards security normalisation in Northern Ireland and envisage alternative juror protection measures.*³¹³

The Justice and Security (NI) Act 2007 makes provision for non-jury trials in NI. The provisions relating to non-jury trials are temporary and must be renewed every two years by way of an order approved in both Houses of Parliament for a period of two years. The relevant provisions have been extended on four occasions since their establishment in 2007. In 2017 the Secretary of State for NI, noting that the Government continued to assess the threat level from NI related terrorism in NI to be severe, once again extended the provisions on 18 July 2017.³¹⁴

Prior to the extension the Secretary of State held a public consultation seeking views on the extension and on potential changes to the statutory test applied by the Director of Public Prosecution when considering whether to issue a certificate for non-jury trial.³¹⁵

The Commission advised that in line with the UN CAT Committee recommendation the NI Office should consider the development of alternative juror protection measures which may be put in place to avoid the necessity of the non-jury trial provisions.³¹⁶ Furthermore an amendment should be made to the 2007 Act requiring an authorising judge to determine that a non-jury trial is absolutely necessary in the interests of justice before granting authorisation.

In its response on the consultation exercise the NI Office reported that on the recommendation that alternative juror protection measures be developed, the Police Service NI's written evidence outlined:

311 The Queen, on the applications of Sam Hallam and Victor Nealon - and - the Secretary of State for Justice [2016] EWCA Civ 355.

312 The UK Supreme Court website, 'Permission to appeal decision', 13 April 2017

313 UN Committee against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), CAT/C/GBR/CO/5, UN CAT, 2013

314 Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2017 - Motion to Approve – in the House of Lords at 7:40 pm on 18th July 2017

315 Northern Ireland Office, Consultation paper: Non Jury Trial Provisions Justice and Security Act (NI) 2017, 16 November 2016

316 Correspondence from the Chief Commissioner to the Secretary of State for Northern Ireland, January 2017

*that the risks posed to administration of justice by suspected members or associates of paramilitary groupings makes the application of available jury measures ineffective in the majority of cases that are considered at risk.*³¹⁷

On the Commission proposal to amend the interests of justice test the NI Office stated:

*While it is the NIO's position that the DPP and the PSNI will routinely consider these factors under the current system for each individual case before deciding on a non - jury trial certificate, we recognise that having this on a statutory footing may introduce greater clarity and assurance for those affected. If we ultimately pursue this option, this would of course require primary legislation to amend the Act and could not be achieved with secondary legislation used to extend the current provisions. We will seek to explore this possibility after July 2017.*³¹⁸

In October 2017 the NI Office informed the Commission that David Seymour, Independent Reviewer of the Justice and Security (NI) Act 2007 was appointed to review the effectiveness of the procedures currently in place to issue a Non-Jury Trial certificate. The Commission has met with Mr Seymour and continues to advocate for the introduction of a proportionality assessment to the interests of justice test.

Recommendation

In light of the Government's assessment of the continuing severe threat from terrorism in NI, continued provision for non-jury trials appears appropriate. However consideration should be given to ensuring the principles of necessity and proportionality are fully reflected within the arrangement for authorising non-jury trials.



Witness Charter

In 2016 the Department of Justice consulted on a Charter setting out the entitlements, services and support that a witness to a crime should expect from the criminal justice system.³¹⁹ In its response the Commission welcomed the publication of the draft Witness Charter. The Commission advised that the Charter should make further reference to the provision of support to vulnerable witnesses, in particular those at risk. The Commission further advised that the Charter should recognise the obligation to ensure the best interests of any child witness is given paramount consideration and to ensure witnesses with a disability are able to access justice on an equal basis to anyone else, in line with CRPD Article 13.

A draft Order providing for a Witness Charter was laid before the NI Assembly in 2017. However as the Order was subject to the affirmative resolution procedure and an affirmative resolution was not passed before the suspension of the NI Assembly, the Charter did not become law.

Recommendation

The Commission advises that the Department of Justice and NI Assembly ensure the Witness Charter is brought into law at the first available opportunity.

³¹⁷ Northern Ireland Office, Outcome of the public consultation on non - jury trial provisions Justice and Security (Northern Ireland) Act 2007 , June 2017, Para 4.10

³¹⁸ *Ibid*, para 4.12

³¹⁹ Department of Justice, Draft Witness Charter Consultation, July 2016

Right to private and family life

ICCPR	Article 17 Article 23
CRPD	Article 19 Article 22
ECHR	Article 8 Article 12
CFREU	Article 7 Article 8 Article 9
CRC	Article 16 Article 20 Article 21
ICESCR	Article 10 (1)

Alternative care arrangements for children

In 2016 the UN CRC Committee raised concern at the increase in the number of children in care throughout the UK:

*Cases where early intervention measures have not been carried out in a timely manner, parents have not been provided with adequate family support and the best interests of the child have not been properly assessed in the decision of taking a child into care. Children have reportedly been removed from their biological families owing to the family's economic situation or because a foster family may provide a more beneficial environment for the child.*³²⁰

The Commission published a report in 2015 entitled 'Alternative Care and Children's Rights in NI'.³²¹ This report made 29 recommendations and highlighted shortcomings in the provision of suitable and stable care placements for children in care.

In September 2017 the Department of Health published a statistical bulletin on the experiences of children in care in the financial year 2015/16. The bulletin indicates a reduction in the proportion of children in care who had experienced a placement change in year; with 81 per cent experiencing no placement change, down from 82 per cent in 2014/2015.³²² However in terms of outcomes for children in care only 54 per cent of children in care achieved one or more GCSEs (at A*-C grade) compared to 83 per cent of the general school population in 2015/16. Furthermore of children looked after aged ten and over at 30 September 2016, six per cent (77) had been cautioned or convicted of an offence whilst in care during the year.³²³ The equivalent proportion for England was one percentage point lower.

³²⁰ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016.

³²¹ NIHRC, 'Alternative Care and Children's Rights in Northern Ireland', August 2015.

³²² Department of Health, Publication of the statistical bulletin 'Children in Care in Northern Ireland 2015-16', 1 September 2017

³²³ Department of Health Social Services and Public Safety, Children in Care in NI 2014/15: Statistical Bulletin, 28th July 2016, para 8.1.

The Children's Services Co-operation Act (NI) 2015 received royal assent in December 2015. The Act places a statutory obligation on certain public authorities and other persons to contribute to the well-being of children and young persons and requires the NI Executive to adopt a children and young persons strategy. In 2017 the Department of Education consulted on a ten year Children and Young People's Strategy. The Commission provided its views on the draft strategy welcoming the alignment of the draft strategy's outcomes and implementation with international human rights standards. The Commission recommended that the strategy be structured in line with the UN CRC and the recommendations of the UN CRC Committee to ensure effective implementation. In addition, the Commission recommended that the Department should ensure continuous engagement with children and young people and rigorous monitoring of the implementation of the strategy.

In 2016 the UN CRC Committee recommended that the NI Executive and Assembly:

Expedite the approval and enactment of the Adoption and Children Bill in NI.

In 2017 the Department of Health published and consulted on a draft Adoption and Children (NI) Bill.³²⁴ The Commission responded to the consultation broadly welcoming the Bill, in particular welcoming the emphasis placed within the Bill on the best interests of the child, the Commission recommended that in all decisions relating to adoption, including arrangements for post adoption contact, the best interests of the child should be the paramount consideration.

Secure accommodation

The Children (NI) Order 1995 makes provision for a child to be held in secure accommodation, meaning accommodation provided for the purpose of restricting liberty, under strict circumstances.³²⁵ The Commission's 2015 Report identified that whilst Children Order Guidance and Regulations emphasise that secure accommodation should be used only as a measure of last resort concerns were raised as to whether, this is always applied in practice.

In 2016 the UN CRC Committee recommended that the State Party:

*Ensure that secure accommodation in Northern Ireland is only used as a measure of last resort and for the shortest possible period of time, address the reasons for repeated or lengthy stays in such accommodation and develop alternatives to secure accommodation.*³²⁶

In year the Commission conducted a visit to a secure accommodation unit in NI.

Recommendation

The Commission recommends that the Department of Health expedite the approval and enactment of the Adoption and Children Bill in NI. In doing so, the Commission calls on the Department of Health to ensure that the Bill introduces a framework for adoption which is modelled on the UN CRC and places the best interests of the child as the paramount consideration in all decisions. In addition a Children and Young Persons Strategy modelled on the UN CRC should be introduced by the Department of Education, in line with the requirements of the Children's Services Co-operation Act (NI) 2015. The Commission further recommends that the Department of Health guarantees that secure accommodation is used as a measure of last resort and for the shortest possible period of time in practice.

³²⁴ Department of Health, 'Adoption and Children (Northern Ireland) Bill' 16 January 2017

³²⁵ The Children (NI) Order 1995, Article 44.

³²⁶ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 53.

Environmental regulation

The Environmental Better Regulation (NI) Act 2016, inter alia, provides for a review of powers of entry and associated powers relating to the protection of the environment and for the repeal or rewriting of such powers and for safeguards in relation to them.³²⁷ The Act is an enabling piece of legislation which grants the Department of Agriculture, Environment and Rural Affairs the power to introduce secondary legislation which may amend primary legislation.³²⁸ Legislation amending powers of entry and associated powers interfere with the right to private and family life and must be formulated with sufficient precision to afford adequate legal protection against arbitrariness.³²⁹

In correspondence with the Commission, officials confirmed that a review of powers of entry under section 10 of the Act has been carried out, and a copy of the report will be laid before the Assembly in due course. A code of practice in relation to powers of entry under section 13 of the Act was, at the time of writing, also being finalised. A draft of the code will also be laid before the Assembly in due course.

There is an intrinsic link between the environment and the realisation of human rights. The rights to health, water, food, housing, life and privacy, all place obligations on the NI Executive and Departments to take actions to prevent adverse environmental impact on the individual. The Commission remains concerned that NI is the only part of the UK not to have an independent environmental regulator.

Recommendation

The Commission recommends that the NI Executive ensure that secondary legislation enacted under the Environmental Better Regulation (NI) Act 2016 is fully compliant with international human rights obligations.

Health and Social Care (Control of Data Processing) Act 2016

The Health and Social Care (Control of Data Processing) Act 2016 provides a statutory framework, including safeguards, which provides for the use of health and social care information for the benefit of health and social care research.³³⁰

During passage of the then Bill the Commission advised that the ECt.HR has held that the protection of medical data falls within the ambit of the right to private and family life, protected by Article 8 of the ECHR. Legal provisions which interfere with the right to private and family life must be formulated with sufficient precision to afford adequate legal protection against arbitrariness and indicate with sufficient clarity the scope of discretion conferred on the competent authorities.³³¹

327 The Environmental Better Regulation (2016 Act) (Commencement No. 1) Order (Northern Ireland) 2016, Made 15th April 2016, available at <http://www.legislation.gov.uk/nisr/2016/212/contents/made>

328 Committee for the Environment, Report on the Environmental Better Regulation Bill, (NIA 55/11-16), Report: NIA 277/11-16 Committee for the Environment, November 2015, available at <http://www.niassembly.gov.uk/globalassets/committee-blocks/environment/final-agreed-report-on-environmental-better-regulation-bill.pdf>. See further Explanatory Notes Environmental Better Regulation Act 2016, Clause 13, available at <http://www.legislation.gov.uk/nia/2016/13/notes/division/4/2>.

329 S. and Marper v. the United Kingdom [2008] ECHR 1581

330 Health and Social Care (Control of Data Processing) Act (Northern Ireland) 2016, s 2(1).

331 NIHR, 'Advice on the Health and Social Care (Control of Data Processing)' NIA Bill 52/11-16, para 14.

The 2016 Act makes provision for a committee to authorise the processing of confidential information, the committee is a key safeguard against arbitrariness. In year the Commission has engaged with Departmental officials who confirmed that due to the suspension of the NI Assembly and lack of an Executive, that the regulations to establish the committee have not been made. It is anticipated that the committee will not be in place until at least 2019/2020.

Recommendation

The Commission advises that the Department of Health urgently establish a committee to authorise the processing of confidential information under the Health and Social Care (Control of Data Processing) Act 2016 to ensure adequate legal protection against arbitrariness.



Stop and search

The Commission has previously referred to the NI Policing Board recommendation of 2013 that the Police Service NI, as soon as reasonably practicably, consider how it records the community background of all persons stopped and searched under powers contained within the Terrorism Act 2000 and within the Justice and Security (NI) Act 2007.³³²

In 2015 the UN Human Rights Committee called for implementation:³³³

as a matter of priority [of], the recommendation of the Policing Board to the Police Service of NI concerning the inclusion in the Police Service NI's recording form of community background of persons stopped and searched under the Justice and Security (NI) Act 2007.

The Police Service NI developed a methodology for recording the community background of persons stopped and searched under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007. This methodology was piloted for three months in Derry/Londonderry and Strabane from December 2015 to February 2016. The results of the project were set out by the Independent Reviewer of the 2007 Act in his annual report 2015/16. David Seymour stated,

*Using this method 499 people were stopped and searched in the 3 month period beginning 1st December 2016. in Derry City and Strabane (including repeat stops). Of these 499, 321 had postcodes recorded on the data base. The overall result showed that 87 per cent of those stopped and searched were Catholic and 13 per cent were Protestant. This pilot showed that the powers in that District were used predominantly in areas where those posing the greatest threat reside. This result is not unexpected and consistent with briefings that the PSNI had given in the past. However, the PSNI will not continue with this methodology because (a) the 2011 census is out of date; and (b) there was no guarantee that the address given was correct or that it had been recorded properly. The PSNI are currently engaging an academic to research the most appropriate method of gathering this information.*³³⁴

The Independent Reviewer went on to note that the Police Service NI are clearly committed to identifying a suitable method of recording community background of individuals stopped and searched.

332 NI Policing Board, 'Human Rights Thematic Review on the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007', October 2013.

333 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para. 11(b).

334 David Seymour CB, 'Report of the Independent Reviewer of the Justice and Security Act 2007 Ninth Report, 1 August 2015 - 31 July 2016, p. 32

The Commission continues to meet regularly with the Independent Reviewer to discuss the use of stop and search powers contained within the Justice and Security (NI) Act 2007.

In year research by Dr John Topping has highlighted that most recent statistics indicate that in NI there are 19 persons per 1,000 stopped and searched by the police whilst in England & Wales the figure is seven persons per 1,000.³³⁵

Recommendation

The Commission calls upon the Police Service NI to expedite the development and implementation of a suitable methodology for recording the community background of individuals stopped and searched under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007 throughout NI.

³³⁵ Data provided by Dr John Topping as part of the Advisory Group of Y-Stop, a project arm of StopWatch, related to education, training and rights of young people in relation to police stop and search powers <http://www.stop-watch.org>

Freedom of religion and belief, expression, association right to participate in public and political life

ICCPR	Article 18 Article 19 Article 20 Article 21 Article 22 Article 25
ECHR	Article 9 Article 10 Article 11 Protocol 1 Article 3
CFREU	Article 10 Article 11 Article 12
CRC	Article 13 Article 14 Article 15
CEDAW	Article 3
CRPD	Article 19 Article 21 Article 29



Blasphemy

In its 2008 report on the UK the UN Human Rights Committee welcomed the introduction of the Criminal Justice and Immigration Act 2008 abolishing the common law offence of blasphemy in England and Wales as a positive measure to ensure compliance with the ICCPR, Article 19 on the right to freedom of expression and opinion.³³⁶ The common law offences of blasphemy and blasphemous libel were recorded in the Booklet of Criminal Offences in NI 2016 and whilst a prosecution has not occurred since 1855 an individual may be subject in law to prosecution for committing either of these offences.³³⁷ If such a prosecution were to occur it would be in breach of ICCPR, Article 19.

Recommendation

The Commission recommends that the NI Executive introduce legislation to the NI Assembly to abolish the common law offence of blasphemy and blasphemous libel to ensure compatibility with the ICCPR, Article 19.

³³⁶ UN Human Rights Committee, General Comment 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011.

³³⁷ BJAC Valentine, Booklet of Criminal Offences in Northern Ireland, LSNI 2016

Defamation

In 2008 the UN Human Rights Committee raised concerns that the:

*practical application of the law of libel [in the UK] has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work, including through the phenomenon known as 'libel tourism.' ... The State party should re-examine its technical doctrines of libel law, and consider the utility of a so-called 'public figure' exception, requiring proof by the plaintiff of actual malice in order to go forward on actions concerning reporting on public officials and prominent public figures...*³³⁸

The Defamation Act 2013, elsewhere in the UK to some extent, addressed this recommendation. However the Act does not include NI.

In July 2016 the Department of Finance published the report of Dr Andrew Scott on reform to the law of defamation in NI. The Report recommends that,

*to a significant extent, measures equivalent to the provisions of the Defamation Act 2013 should be introduced into NI law.*³³⁹

The Report, in particular, recommended the introduction of a new defence of honest opinion, similar to section 3 of the Defamation Act 2013 with some additions.³⁴⁰

The then Minister of Finance welcomed the publication of the report and stated:

*This will help to inform the policy development process as we seek to ensure that a fair balance is maintained between the right to free speech and the right of the ordinary man and woman in the street, to protect their reputation.*³⁴¹

In year proposals for reform of defamation law in NI have not been brought forward. The review of Civil and Family Justice in NI conducted in 2017, inter alia, made recommendations for reform of the 2011 Pre-Action Protocol on Defamation.³⁴²

Recommendation

The Commission recommends that the NI Executive introduce legal measures to ensure the law of NI strikes a fair balance between the right to freedom of expression and the right to private life.

Parades and protests

The Commission has previously referred to the call by the UN Special Rapporteur on Peaceful Assembly, Parades and Association for '*political resolution of the issues – such as parades, flags and emblems – that still make the enjoyment of freedom of peaceful assembly problematic in NI*'.³⁴³ The Stormont House Agreement proposed that responsibility for parades and related protests should, in principle, be devolved to the NI Assembly.³⁴⁴ It also proposed that the Office of Legislative Counsel,

338 UN Human Rights Committee, Concluding Observations of the Human Rights Committee on the sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/6, UN HRC, July 2008.

339 Dr Andrew Scott, 'Reform of Defamation Law in Northern Ireland: Recommendations to the Department of Finance', Department of Law, London School of Economics and Political Science, June 2016.

340 *Ibid.*

341 Department of Finance: Press Release, 'Ó Muilleoir announces publication of defamation report', 19 July 2016.

342 Office of the Lord Chief Justice, 'Review of Civil and Family Justice in Northern Ireland: Review Group's Report on Civil Justice', September 2017

343 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to the United Kingdom (14-23 January 2013) A/HRC/23/39/Add.1, para 96.

344 Stormont House Agreement, 2014, para 17.

working in conjunction with the Office of the First Minister and Deputy First Minister (now the NI Executive Office), should produce a range of options on how the remaining key issues which include a Code of Conduct, criteria and accountability could be addressed in legislation. The Office of the First Minister and Deputy First Minister (now the NI Executive Office) was to bring forward proposals to the NI Executive by June 2015.³⁴⁵

In 2016/17 the Parades Commission were notified of 2,598 loyalist/unionist, 140 nationalist/republican and 1,905 other parades.³⁴⁶

In January 2017 the Supreme Court gave judgement in a judicial review challenging the Police Service NI on its understanding of its powers under the Public Processions (NI) Act 1998 in that the police failed to recognise and make use of their powers to prevent parades taking place during the flag protests of December 2012 and January 2013. The UK Supreme Court found that,

*in their handling of the flags protest in Belfast during the months of December and January, PSNI misconstrued their legal powers to stop parades passing through or adjacent to the Short Strand area.*³⁴⁷

In responding to the judgement the Chief Constable stated,

We accept and respect the ruling of the Supreme Court and are grateful for this judicial clarity which will help guide us in how we consider and use our legal powers in the future.

The Commission has consistently advised all those participating or responsible for the regulation of parades and protests that a broad range of human rights and state obligations are engaged. Human rights law, in particular the jurisprudence of the ECt.HR, is a valuable resource for resolving disputes relating to parades, protests and related adjudicative processes. Furthermore, it is sufficiently flexible to accommodate alternative mechanisms for resolution which seek to develop innovative compromise agreements.³⁴⁸

Recommendation

The Commission recommends that responsibility for parades and protests be devolved to the NI Assembly in line with the Stormont House Agreement. In addition the NI Executive should work in conjunction with the Office of Legislative Counsel to produce a range of options on how issues relating to parades and protests, including a Code of Conduct, could be addressed in legislation.



Participation of women in public and political life

Public life

Within its 2016 Concluding Observations on the UK, the UN ICESCR Committee noted its concern at the persistent under-representation of women in decision-making positions in the public and private sectors. The UN ICESCR Committee recommended that the State party '*intensify its efforts to increase the level of representation of women in decision-making positions, in both the public and private sectors*'.³⁴⁹

³⁴⁵ Stormont House agreement, 2014, para 18.

³⁴⁶ Parades Commission, Annual Report and Financial Statements for the year ended 31 March 2017, HC283, 03/08/2017, p. 8

³⁴⁷ DB (Appellant) v Chief Constable of Police Service of Northern Ireland (Respondent) (Northern Ireland) [2017] UKSC 7 (1 February 2017)

³⁴⁸ NIHRC, Parades and Protests in Northern Ireland, 2013, p. 2.

³⁴⁹ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 17(d).

The UN CRPD Committee in its 2017 Concluding Observations recommended the UK:

*adopt inclusive and targeted measures, including disaggregated data, to prevent multiple and intersectional discrimination of women and girls with disabilities, in particular those with intellectual and/or psychosocial disabilities, in education [and] employment.*³⁵⁰

The UN CRPD Committee further recommended the UK *'in close consultation with organisations of women and girls with disabilities, mainstream the rights of women and girls with disabilities into disability and gender-equality policies'*.³⁵¹ Additionally, in 2015 the UN Human Rights Committee recommended:

*that all existing and future gender equality strategies and policies, including the Gender Equality Strategy for NI, identify and address effectively the barriers hindering women's access to high positions in the civil service and in the judiciary.*³⁵²

In October 2014, it was found that there was *'a significant degree of inequality in the gender composition at executive level of the NI public sector: males and females holding 70.8 per cent and 29.2 per cent of all executive positions respectively'*.³⁵³ A number of barriers to career progression amongst women in the civil service were identified, including: those related to caring responsibilities, a lack of recognition of work life balance, long hours' culture and exclusion from informal networks of communication.³⁵⁴ As of 31 March 2016, 41 per cent of public appointments and 24 per cent of chair appointments were held by women. In the year 2015-16, 37 per cent of applications received for public appointments were from women and 42 per cent of appointments made were women. In the year 2015-16, 37 per cent of applications for chair appointments were from women and 27 per cent of chair appointments were women.³⁵⁵

Judicial appointments

The UN CEDAW Committee in its 2013 Concluding Observations called on the UK:

*to continue to take specific targeted measures to improve the representation of women, in particular black and ethnic minority women and women with disabilities, in... the judiciary.*³⁵⁶

In 2016/2017, 51 per cent of applicants for judicial appointments (including legal, lay and medical appointments) were female. Of those that applied, 26 female applicants (46 per cent) were recommended for appointment.³⁵⁷ In September 2017, 46 per cent of those holding judicial office and 31 per cent of those holding substantive court roles were female.³⁵⁸ According to NIJAC, *'progress is steadily being made in the representation of women in [NI's] courts, near or actual equality has been achieved in tribunals and Lay Magistrates'*.³⁵⁹ For the first time in the history of the NI judiciary two women, Denise McBride QC and Siobhan Keegan QC, were appointed in 2015 as NI High Court judges.³⁶⁰ In September 2017, Lady Hale became the first female President of the UK Supreme

350 UN Committee on Rights of Persons with Disabilities, Concluding Observations on the Initial Report of the UK of Great Britain and NI, UN Committee on Rights of Persons with Disabilities, 29 August 2017, para 19

351 *Ibid.*

352 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 12.

353 Professor Joan Ballantine, Dr Graeme Banks, Professor Kathryn Haynes, Dr Melina Manochin, Mr Tony Wall, 'An Investigation of Gender Equality Issues at the Executive Level in Northern Ireland Public Sector Organisations', October 2014.

354 *Ibid.*, p. 118.

355 The Executive Office, Public Appointments Annual Report for Northern Ireland 2015/16, NI Statistics and Research Agency, May 2017

356 UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/7, UN CEDAW, July 2013, para 43(a)

357 NI Judicial Appointments Commission, Email from NI Judicial Appointments Commission to NIHRC, NI Judicial Appointments Commission, 28 September 2017

358 *Ibid.*

359 *Ibid.*

360 Prime Minister's Office Press Release, Press release 'Damehoods conferred: Siobhan Keegan and Denise McBride' 23 November 2015

Court.³⁶¹ Lady Justice Black was appointed on 1 October 2017 as the second female Justice of the UK Supreme Court.³⁶²

Political life

The UN CEDAW Committee in its 2013 Concluding Observations called on the UK:

*to continue to take specific targeted measures to improve the representation of women, in particular black and ethnic minority women and women with disabilities, in Parliament*³⁶³.

The Sex Discrimination (NI) Order 1976, section 43A allows political parties to take positive measures to reduce inequality between men and women elected to Parliament, the NI Assembly, District Councils and the European Parliament.³⁶⁴ The Commission notes, however, that this provision has not been utilised in NI and women continue to be under-represented in political life (albeit there are variations in the patterns of representation depending on the particular office concerned).

There have been some positive steps forward. Elected female representation within the UK Parliament rose from 191 (29 per cent) in May 2015 to 208 (32 per cent) in June 2017.³⁶⁵ The NI Assembly saw an increase of 50 per cent in the number of women MLAs, from 20 (19 per cent) in 2011 to 30 (28 per cent) in 2016 elections.³⁶⁶ This rose further following the March 2017 snap election. The actual number of seats that women held following this election fell to 27, but with the reduction in the number of seats available (90 instead of 108), this represented an increase to 30 per cent.³⁶⁷ In terms of leadership, in January 2016, Arlene Foster, MLA became the First Minister of NI, the first woman to hold this office.³⁶⁸ Since January 2017, three of the five main parties have female leaders and the last NI Executive was 41 per cent female. At a local government level, 25 per cent of councillors elected in 2014 were women.³⁶⁹

Recommendation

Recognising recent progress, nonetheless, the Commission remains concerned over the continued under-representation of women in public and political life. It recommends that all existing and future gender equality strategies and policies identify and address effectively the barriers hindering women's access to high positions in the civil service and in the judiciary. It acknowledges the increase in female political representation and recommends efforts continue to encourage political representation that is reflective of society.

361 The Supreme Court News Release, 'Lady Hale appointed next President of Supreme Court, alongside three new Justices' 21 July 2017

362 *Ibid.*

363 UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/7, UN CEDAW, July 2013, para 43(a)

364 The Sex Discrimination (Northern Ireland) Order 1976, section 43A. The provisions have been extended to 2030 by section 105(3) of the Equality Act 2010.

365 HM Parliament Website, Parliament and Women. <http://www.parliament.uk/women>

366 BBC News NI, 'NI Assembly election: Number of women MLAs increases by 50%' 9 May 2016

367 Irish News, 'Poll returns most female MLAs in assembly's history' 06 March 2017

368 The Guardian, Arlene Foster becomes Northern Ireland's First Minister, 11 January 2016.

369 North South Inter-parliamentary Association, Briefing Paper for the Seventh Meeting of the North-south Inter-Parliamentary Association: Women in Public Life, North South Inter-parliamentary Association, 27 November 2015.

Right to work and to just and favourable conditions of work

ICESCR	Article 6 Article 7
CEDAW	Article 11
ESC	Article 1 Article 2 Article 3 Article 4 Article 5 Article 6 Article 19
CFREU	Article 15

Accessible childcare

In 2016 the UN ICESCR Committee recommended that the State party increase its efforts to ensure the availability, accessibility and affordability of childcare services throughout the State party. The Committee also recommended that the State party review the system of shared parental leave and modify it with a view to improving the equal sharing of responsibilities within the family and in society.³⁷⁰ In addition, in 2017 the UN CRPD Committee recommended that the UK Government and devolved administrations develop and implement policies,

*securing sufficient and disability-sensitive childcare as a statutory duty across the State party.*³⁷¹

The Equality Commission NI reported in 2016 that although there has been an increase in the number of childcare places in NI over the last decade *'the cost of childcare remains high and it is higher than other parts of the UK'*.³⁷²

In 2016 the NI Executive consulted on a draft strategy.³⁷³ The Commission provided advice and recommended that the NI Executive introduce an adequately funded Childcare Strategy which ensures affordable and accessible childcare is available throughout NI.³⁷⁴ Responsibility for the development of a childcare strategy was allocated to the Department of Education under the transfer of functions.³⁷⁵ In January 2017 in response to an Assembly question the then Minister for Education, Peter Weir stated:

The Childcare Strategy is being delivered on a phased basis. The first phase was published in 2013 and contained a number of Key First Actions to address childcare needs which had been identified through consultation and research as priority issues. These Actions are continuing to be implemented and included the establishment of the Bright Start School Age Childcare Grant Scheme, which financially supports low cost childcare places and has, to date, supported some 3,000 low cost childcare places across NI. A draft Childcare Strategy was launched for

370 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para. 44.

371 UN Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, para 21

372 Equality Commission NI, Gender Equality: Policy Priorities and Recommendations, 30 November 2016, pg 29.

373 OFMDFM, 'A Ten Year Strategy for Affordable and Integrated Childcare 2015-2025', September 2015.

374 NIHRC, 'Response to the OFMDFM Consultation on a Ten Year Strategy for Affordable and Integrated Childcare 2015-2025', November 2015.

375 Briefing by OFMDFM officials to the Committee for OFMDFM, 2 March 2016, <http://niassembly.tv/video/committee-office-first-minister-deputy-first-minister-meeting-02-march-2016/>.

*consultation in the latter half of 2015 by the former Office of the First Minister and Deputy First Minister. Some 300 consultation responses were received in addition to the views expressed during the formal consultation and stakeholder events. This is indicative of the extent of public interest in this policy area and I want to ensure that the revised version of the Strategy fully reflects the outcome of the consultation and the existing research and evidence which highlights the importance of high quality childcare in promoting positive early childhood development. The transfer of policy responsibility for childcare to my Department in May 2016 has also created opportunities to ensure that childcare is better aligned with DE Early Years initiatives. I want to ensure that I have fully considered the opportunities for integrating these services in line with the Strategy's objectives. The Strategy is at an advanced stage of development.*³⁷⁶

The Commission has engaged with officials throughout 2017 who have confirmed that the strategy remains at an advanced stage, its publication is subject to Ministerial approval.

Recommendation

The Commission calls on the NI Executive to publish the final Childcare Strategy as soon as possible and to clarify the availability of necessary resources. The Commission further recommends the Childcare Strategy for NI ensures a model that operates outside traditional working hours to meet the needs of those working shift patterns, as is the case for many parents in NI.



Armed Forces Covenant

In 2013 the NI Select Affairs Committee reported that it had received mixed evidence about the level of progress on implementing the Armed Forces Covenant in NI, compared to other parts of the UK.³⁷⁷ In particular, certain benefits were not available in NI, including improved access to in-vitro fertilisation treatment, priority in accessing healthcare, additional priority in accessing social housing, schools and other educational entitlements.³⁷⁸ However, the NI Affairs Committee also received evidence that indicated that local solutions could be found in most cases where the above differences affected the armed forces community and that there was no significant disadvantage to veterans who chose to settle in NI.

On 15 December 2016 the Ministry of Defence presented a report to HM Parliament relating to the Armed Forces Covenant. The report set out a number of measures taken to support the implementation of the Covenant in NI, in particular the report highlighted measures taken with respect to social housing, education and waiting times for health services to support armed forces personnel and their families.³⁷⁹

The Report set out activities funded under the Covenant, it stated:

*Combat Stress received one of the Covenant Fund's largest awards with £467,000 to run a three year programme of work in Northern Ireland. They aim to support the integration of Veterans and Service leavers experiencing mental health problems back into the civilian community through one-to-one work, counselling, and activities to promote wellbeing and life skills.*³⁸⁰

376 AQO 955/16-21 Mrs Jenny Palmer (UUP - Lagan Valley) 12/01/2017

377 Northern Ireland Affairs Committee, 'Implementation of the Armed Forces Covenant in Northern Ireland', First Report of session 2013/14 HC 51, 17th July 2013, p. 7.

378 *Ibid.*, p. 3.

379 Ministry of Defence, 'Armed Forces Covenant: Proudly Supporting those who serve', MoD, December 2016

380 *Ibid.*, p. 53

The Report further stated:

*We are much encouraged by the recent decision by the NI Government to send a representative to future meetings of the Covenant Reference Group. [The Confederation of Service Charities] is already committed to helping to develop and support the NI Veterans Support Committee to enhance the level of cooperation and collaboration across the Service charity sector in the Province.*³⁸¹

The nomination of a representative of NI to the Reference Group was positively acknowledged by the Defence Select Committee which reported:

*that implementation of the Covenant is not as developed in Northern Ireland as it is in the rest of the United Kingdom. This was recognised in oral evidence and a commitment was made to place a particular focus on Northern Ireland in 2017.*³⁸²

However, whilst the NI Assembly appointed a nominee to the Reference Group, the appointment has not been finalised due to the suspension of the NI Assembly.³⁸³

The Confidence and Supply Agreement between the Conservative Party and the DUP states,

*Both parties are committed to the Armed Forces Covenant and to its implementation throughout the United Kingdom.*³⁸⁴

Research published by Ulster University in 2017 highlighted that through both the statutory and voluntary sectors, there is a fairly well established support infrastructure for veterans in NI, however there are no veteran specific services in the statutory sector. The report noted that organisations do not collect data to allow for the monitoring of outcomes for veterans, nor to assess the level of discrimination which may or may not be faced by this population.³⁸⁵ The report also notes that there is a deficit of evidence available about the mental health of veterans, however preliminary findings from the research indicate that mental health was a significant concern for this group.³⁸⁶ The report concluded:

*There is a need for a well resourced forum, formally recognised in NI where key stakeholders in the region can meet to develop recommendations, provide responses to consultations and engagement exercises and support key agencies in developing guidance and protocols which affect veterans.*³⁸⁷

Recommendation

The Commission advises the NI Executive to commit to reviewing the needs of armed forces personnel in NI in the areas of health, housing and education to ensure, as is the case in the UK, that they do not suffer disadvantage compared to the rest of the population.

381 Ministry of Defence, Armed Forces Covenant: Proudly Supporting those who serve, MoD, December 2016, p. 16

382 HM Defence Select Committee, Armed Forces Covenant Annual Report 2016, HC 492, 1 May 2017, p. 4

383 Ulster University, Northern Ireland Veterans Health and Wellbeing Study: Supporting and Serving Military Veterans in Northern Ireland, June 2017, at pg 50.

384 Policy paper Prime Minister's Office, Confidence and Supply Agreement between the Conservative and Unionist Party and the Democratic Unionist Party, 26 June 2017

385 Ulster University, Northern Ireland Veterans Health and Wellbeing Study: Supporting and Serving Military Veterans in Northern Ireland, June 2017, at pg 21

386 *Ibid*, p. 19.

387 *Ibid*, p. 21.



Children in the armed forces

The law of the UK permits the recruitment to the Armed Forces of children between the ages 16-18 provided it is voluntary and there are safeguards in place.³⁸⁸ The UK is the only country in Europe which routinely recruits minors into the armed forces. In 2009 the Joint Committee on Human Rights recommended the raising of the minimum age of recruitment to age 18.³⁸⁹ In July 2016, the UN CRC Committee raised concerns over the UK's current recruitment of children in the armed forces, the Committee stated:

The State party maintains the wide scope of its interpretative declaration on article 1 of the Optional Protocol, which may permit the deployment of children to areas of hostilities and their involvement in hostilities under certain circumstances;³⁹⁰ The minimum age for voluntary recruitment as 16 years has not been changed and child recruits makes up 20 per cent of the recent annual intake of United Kingdom Regular Armed Forces;³⁹¹ The Army Board endorsed increasing the recruitment of personnel under 18 years old to avoid undermanning, and children who come from vulnerable groups are disproportionately represented among recruits;³⁹² Safeguards for voluntary recruitment are insufficient, particularly in the light of the very low literacy level of the majority of under-18 recruits and the fact that briefing materials provided to child applicants and their parents or guardians do not clearly inform them of the risks and obligations that follow their enlistment;³⁹³ In the army, child recruits can be required to serve a minimum period of service up to two years longer than the minimum period for adult recruits.³⁹⁴

With reference to their concerns, the UN CRC Committee recommended that the UK:³⁹⁵

Consider reviewing its position and raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard;³⁹⁶

Recommendation

The Commission raises concern over the UK's recruitment of children to the armed forces. In particular, it highlights the disproportionate representation of children from vulnerable groups in the armed forces. The Commission recommends the UK raise the minimum age of recruitment to the armed forces from 16 to 18 to ensure the protection of children.

388 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; see Article 3.

389 Joint Committee on Human Rights, Children's Rights, Twenty-fifth Report of Session 2008–2009, HL Paper 157, 30 November 2009, para 143

390 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 84 (a).

391 *Ibid.*, para 84 (b).

392 *Ibid.*, para 84 (c).

393 *Ibid.*, para 84 (d).

394 *Ibid.*, para 84 (e).

395 *Ibid.*, paras 85 (a)-(d).

396 *Ibid.*, para 85 (a).

Gender pay gap

In 2016 the UN ICESCR Committee, in their Concluding Observations on the UK, recommended that the UK '[a]dopt effective measures to eliminate the persistent gender pay gap'.³⁹⁷

In December 2016 the NI Statistics and Research Agency highlighted that at April 2016 although 'female full-time hourly earnings as a percentage of male hourly earnings continue to be higher in NI (103.2%)' the 'median gross weekly wage for full-time females in NI was £475.1 while for full-time males the figure was higher at £505.9'.³⁹⁸

In March 2017 the Equality Commission NI noted that:

*While there is a small gender pay gap in favour of women in Northern Ireland, when looking at overall gross weekly earnings. [However] for all employees (full time and part time), including overtime, in 2016 there is a pay gap (71.2%), as men are more likely to work full time and work overtime.*³⁹⁹

The Equality Commission NI made a number of recommendations to reform sex equality and/or equal pay legislation. Recommendations include: Permit hypothetical comparators in equal pay cases and introduce mandatory equal pay audits; Introduce new protections for employees against pay secrecy clauses aimed at prohibiting employers from preventing or restricting their employees from having discussions about their pay, where such discussions are aimed at establishing whether or not there is pay discrimination; Require tribunals to order a respondent who has been found by the tribunal to have committed an equal pay breach to carry out an equal pay audit; and Introduce Regulations requiring large private and voluntary sector employers to publish information about the differences of pay between their male and female employees.⁴⁰⁰

The Employment Act (NI) 2016 seeks, inter alia, the elimination of the gender pay gap, creating reporting requirements and requiring the adoption of action plans by employers with a gender pay gap and by the former Office of the First and Deputy First Minister (now the NI Executive Office).

Regulations are required to give effect to the relevant provisions of the 2016 Act stipulating which employers it is applicable to and the scope of their reporting requirements. The necessary regulations were not published prior to the suspension of the NI Assembly.

Recommendation

The Commission recommends that regulations are introduced to give effect to the protections contained within the Employment Act (NI) 2016.

³⁹⁷ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 27(b)

³⁹⁸ NI Statistics & Research Agency, Women in Northern Ireland 2016, 7 December 2016, p4

³⁹⁹ NI Equality Commission, Gender equality must be a priority, 8 March 2017

⁴⁰⁰ Equality Commission NI, Gender Equality: Policy Priorities and Recommendations, 30 November 2016, pgs 53-54.

Right to an adequate standard of living and to social security

ICESCR	Article 7 Article 9 Article 11
CRC	Article 26 Article 27
CEDAW	Article 14
CRPD	Article 28
ESC	Article 12 Article 13 Article 14
CFREU	Article 15

Anti-poverty strategy

In June 2015 the NI High Court ruled that the NI Executive had failed to adopt an identifiable strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need in furtherance of its obligation to do so under the NI Act 1998 Section 28E. Mr. Justice Treacy ruled:

The Oxford English Dictionary defines a 'strategy' as a 'plan of action designed to achieve a long term or overall aim'. In adopting only the 'architecture and principles', the NI Executive adopted something that was inchoate. There is no evidence before me that this inchoate strategy was ever finalised. There is no evidence that it was ever crafted into a road map designed to tackle the issues referred to in the section.⁴⁰¹

The Commission informed the UN ICESCR Committee in April 2016 that an Anti Poverty Strategy based on objective need remains outstanding, despite the NI High Court ruling in 2015.⁴⁰² This remains the case to date. The UN ICESCR Committee in its 2016 Concluding Observations expressed its concern about the disproportionate, adverse impact that austerity measures introduced in 2010 are having on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups. The Committee recommended that the State party introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty, in particular persons with disabilities, persons belonging to ethnic, religious or other minorities, single parent families and families with children and adopt an anti-poverty strategy in NI.⁴⁰³

The Households Below Average Income Report published in 2017 outlined a number key findings with regard to poverty in NI:

- *In 2015/16 the average (median) income before housing costs in NI increased by four percent from £420 in 2014/15 to £436 in 2015/16.*
- *The proportion of individuals in relative poverty (before housing costs) was 17 percent. This compares to 22 percent in 2014/15.*

401 NI Courts Service 'Press Release, 'Court Finds Executive Failed to Adopt Strategy on Poverty and social Exclusion: Summary of Judgment', 30th June 2015.

402 NIHRC, Submission to the UN Committee on Economic, Social and Cultural Rights on the 6th Periodic Report of the UK's compliance with ICESCR, April 2016, paras 26.1-26.5.

403 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 48.

- *The proportion of children living in relative poverty (before housing costs) fell by four percentage points to 21 percent, down from 25 percent the previous year. The proportion of children living in absolute poverty (before housing costs) has decreased to 18 percent, down by five percentage points from the previous year.*
- *The proportion of working age adults in relative poverty (before housing costs) decreased by five percentage points to 16 percent from 21 percent the previous year. The proportion of working age adults in absolute poverty decreased by five percentage points to 14 percent (before housing costs) from 19 percent the previous year.*
- *The proportion of pensioners living in relative poverty (before housing costs) decreased by 3 percentage points to 17 percent in 2015/16 from 20 percent the previous year.*

The decreases in both relative and absolute poverty are explained by a number of factors: higher earnings growth in NI than in the UK, particularly at the lower end of earnings distribution for 2015/16; increases to personal tax allowance; and increases to the minimum wage may have had a bigger impact in NI than the UK as a whole.⁴⁰⁴ However, the findings do not reflect the impact on household incomes in 2015/16 as a result of changes to social security reform as a number of these reforms only began to be introduced during 2016/17.⁴⁰⁵

In 2016, the Minister for Communities indicated that poverty would be tackled within a wider Social Strategy.⁴⁰⁶ To date, this strategy has not been published for consultation.

Recommendation

The Commission remains concerned at the continued failure of the NI Executive to introduce an anti-poverty strategy in NI based on objective need. It also continues to highlight the disproportionate, adverse impact that austerity measures introduced between 2010 and 2016 are having on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups. It recommends that an Anti Poverty Strategy is introduced as a matter of urgency and that the NI Executive introduce measures to guarantee targeted support to all those living in poverty or most at risk of poverty, including persons with disabilities, persons belonging to ethnic minorities, single parent families and families with children.

Carers

In November 2014 the Commission published a report into the human rights of carers, the report measures the recorded experiences of carers set against the international human rights obligations of the NI Executive and other relevant public authorities.⁴⁰⁷ The report specifically focused on the experiences of younger carers and older carers. The Commission made fifteen targeted recommendations relating to the rights of carers directed to the Departments of the NI Executive.

In February 2017 the Department for Communities published statistics indicating at November 2016 there were 38,000 working age carers in NI in receipt of social security benefits, an increase of 1,670 on the total number in November 2015.⁴⁰⁸ In June 2017 the NI Assembly Research and Information Service published research highlighting that,

404 Department for Communities 'Households Below Average Income: NI 2015/16' August 2017, p 5.

405 *Ibid.*

406 AQO 431/16-21, Mr Declan McAleer, MLA

407 NIHRC, 'The Human Rights of Carers in Northern Ireland', November 2015.

408 Department for Communities, Northern Ireland Benefits Statistics Summary, November 2016

*NI is lagging behind the rest of the UK in addressing carers' issues, in terms of both strategy and law development. Caring for Carers (2006) is the most recent NI strategy, whereas more recent strategies have been published in Scotland in 2010, in Wales in 2013, and in England in 2014.*⁴⁰⁹

Throughout 2017 the Department of Health has been taking forward a process to reform adult care and support, which will include consideration of support for informal carers.

Recommendation

The Commission continues to monitor the implementation of fifteen targeted recommendations it has made relating to the rights of carers in NI. The Commission remains concerned that progress is not being made in a sufficiently timely manner. It calls upon the Department of Health to conduct a review of the Carers Strategy and develop a new strategy.



Child poverty strategy

In 2016, the Commission recommended that the eradication of child poverty in NI was analysed against the (now former) targets set by the UK Government to eliminate Child Poverty by 2020.⁴¹⁰ The UN ICESCR Committee subsequently expressed concern that the UK:

*does not have a specific definition of poverty and that the new Life Chances Strategy, as contained in the Welfare Reform and Work Act 2016, has repealed the duty to meet time-bound targets on child poverty, which remains high and is projected to increase in the future, especially in NI (art. 11).*⁴¹¹

The UN ICESCR Committee urged the UK to develop a comprehensive child poverty strategy and to reinstate the targets and reporting duties on child poverty.⁴¹² The UN CRC Committee also reviewed the UK's performance in 2016. The UN CRC Committee noted that *'the rate of child poverty remains high... and affects children in Wales and NI the most'*.⁴¹³ The UK was urged by the UN CRC Committee to:

- (a) *Set up clear accountability mechanisms for the eradication of child poverty, including by re-establishing concrete targets with a set time frame and measurable indicators, and continue regular monitoring and reporting on child poverty reduction in all parts of the State party;*
- (b) *Ensure clear focus on the child in the State party's poverty reduction strategies and action plans, including in the new 'Life Chances Strategy', and support the production and implementation of child poverty reduction strategies in the devolved administrations;*
- (c) *Conduct a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 and 2016 on children, including children with disabilities and children belonging to ethnic minority groups;*
- (d) *Where necessary, revise the mentioned 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 impacts of the reform on different groups of children, particularly those in vulnerable situations.*⁴¹⁴

409 Research Matters, Carers in Northern Ireland: Where are we with legislation and policy to support them?, 7 June 2017

410 NIHR, Submission to the UN Committee on Economic, Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom's Compliance with ICESCR, April 2016, p. 44.

411 UN Committee on the Rights of the Child, Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and NI, E/C.12/GBR/CO/6, UN CRC, 24 June 2016, para 48.

412 *Ibid.*

413 UN Committee on the Rights of the Child, Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and NI, E/C.12/GBR/CO/6, UN CRC, 24 June 2016, para 70(a).

414 UN Committee on the Rights of the Child, Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and NI, E/C.12/GBR/CO/6, UN CRC, 24 June 2016, paras 71(a)-71(d).

In 2015/16, 93,000 children (21 per cent) were living in relative poverty and 78,000 children (18 per cent) were living in absolute poverty in NI. This was a reduction from 25 per cent and 23 per cent respectively in 2014/15.⁴¹⁵ The Welfare Reform and Work Act 2016 repealed the duty to meet time-bound targets on child poverty as originally set out in the Child Poverty Act 2010 (now Life Chances Act 2010). These targets have been replaced by a statutory duty to publish an annual report on the extent and educational attainment of children in poverty. These changes extend to NI.

The revised 'NI Child Poverty Strategy' and its initial action plan were published in March 2016.⁴¹⁶ The strategy adopts an outcomes based approach. It sets out the indicators that will be used to measure its achievements, including two headline indicators, which are two of the measures set out in the Child Poverty Act 2010, absolute child poverty and relative child poverty. In line with the Life Chances Act, the 2015/2016 annual report on the strategy was published in November 2016.⁴¹⁷ There is to be cross-over between the 'Child Poverty Strategy' and the proposed new 'Social Strategy', which aims to tackle poverty, social exclusions and patterns of deprivation.⁴¹⁸ The publication of the 'Social Strategy' has yet to occur.

Recommendation

The Commission is concerned about the implementation of the Welfare Reform and Work Act 2016 which repealed the statutory duty to meet time-bound targets on child poverty. It is particularly concerned about the social security and tax credit reforms introduced from 2010 onwards and how these have and will affect children. Child poverty remains high and is projected to increase in NI. In the Commission's view the new reporting mechanisms on child poverty are less effective than their predecessors. It calls on the UK Government to introduce clear accountability mechanisms for the eradication of child poverty, including the re-establishment of concrete targets with set time frames and measurable indicators. It recommends that the NI Executive analyse the eradication of child poverty in NI against (former) targets set by the UK Government to eliminate child poverty by 2020. It further recommends the UK Government conduct a comprehensive assessment of the cumulative impacts social security and tax credit reforms from 2010 onwards have had on children. Where required, necessary changes should be made in order to fully respect the right of the child to have his or her best interests reflected as a primary consideration.



Crisis fund

In July 2016 the UN ICESCR Committee called on the UK to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty, including persons belonging to ethnic, religious or other minorities.⁴¹⁹

In January 2016 NI Community of Refugees & Asylum Seekers published a series of case studies outlining the impact of destitution on refugees and their families.⁴²⁰ The report found that Home Office, Jobs and Benefits Office and Her Majesty's Revenue and Customs practices make refugees extremely vulnerable in the transition from asylum support '*as they have to negotiate a confusing range of government agencies that do not always consult with each other*'.⁴²¹

415 Department for Communities NI, Poverty Bulletin: NI 2015/16, Department for Communities NI, 2017

416 NI Executive, The Executive's Child Poverty Strategy, March 2016.

417 Department for Communities, Annual Report on Child Poverty 2015-2016, Department for Communities, November 2016

418 *Ibid.*, p.59

419 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 48.

420 NI Community of Refugees & Asylum Seekers, 'The Effects of Destitution on Refugees in Northern Ireland', January 2016

421 *Ibid.*, p. 6.

From September 2016 to March 2017 the NI Executive once again opened a Crisis Fund 'to help minority ethnic individuals with no other means of support through emergency situations, such as vulnerable migrants, refugees and asylum seekers and other vulnerable groups'.⁴²² In this period the Crisis Fund made 2125 interventions, supporting people from over 55 countries and 2032 dependents in total, of which 2020 were children under 18. The main reasons for accessing support were no recourse to public funds (29 per cent) and benefits issues (22 per cent). The Crisis Fund opened again in September 2017. It is planned that the Fund will be operate until March 2018.

Recommendation

The Commission continues to recommend that the UK Government and NI Executive address the causes of destitution in the first instance, rather than rely on a discretionary fund to address destitution when it emerges. It calls on the UK Government and NI Executive to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty, including asylum seekers, refugees, migrants and other vulnerable groups.



Homelessness

Statistics

The UN ICESCR Committee in its 2016 Concluding Observations urged the UK:

*to take immediate measures, including by allocating appropriate funds to local authorities, to reduce the exceptionally high levels of homelessness, particularly in England and NI, and to ensure adequate provision of reception facilities, including emergency shelters, hostels and reception, as well as social rehabilitation centres.*⁴²³

The UN ICESCR Committee also urged the UK to:

*take specific measures to deal with the inability of renters in the private rental sector to pay rents on account of the limits imposed on housing allowance and to effectively regulate the private rental sector, including through security of tenure protection and accountability mechanisms.*⁴²⁴

The Commission raised these issues with the UN ICESCR Committee in June 2016⁴²⁵ and the Special Rapporteur on Adequate Housing in July 2016.⁴²⁶

In 2015/16, 18,628 households presented as homeless to the NI Housing Executive with 11,202 being accepted as full duty applicants.⁴²⁷ There are concerns for the 'hidden homeless' – those whose applications were rejected (7,426 in 2015/16) and the unknown number of homeless who do not apply in the first place.

Research has shown that the rates for statutory homeless acceptances are higher in NI than anywhere in the UK. In 2015/16, statutory acceptances per 1,000 households in NI ran at 14.8 per cent compared to 11.7 per cent in Scotland, 3.6 per cent in Wales and 2.3 per cent in England.⁴²⁸

⁴²² NI Executive, 'Junior Ministers Jennifer McCann and Jonathan Bell today outlined the benefits of the new Crisis Fund for vulnerable minority ethnic people,' 4 February 2015.

⁴²³ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 52.

⁴²⁴ *Ibid*, para 50(b).

⁴²⁵ NIHR, Submission to the UN Committee on Economic, Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom's Compliance with ICESCR, April 2016, pp. 49-50.

⁴²⁶ NIHR, Submission to the Special Rapporteur on Adequate Housing Regarding the Link Between the Right to Life and the Right to Adequate Housing, 2016.

⁴²⁷ NI Housing Executive Website: Homelessness Information available at: http://www.nihe.gov.uk/homelessness_information

⁴²⁸ Suzanne Fitzpatrick et al, The Homelessness Monitor: Northern Ireland 2016, Crisis, 2016, p.52.

Homelessness arises due to a combination of factors. The primary reasons cited by the NI Housing Executive are *'sharing breakdown/family dispute, accommodation not reasonable and loss of rented accommodation'*.⁴²⁹ Economic pressures, mental health and addiction can also have an impact.⁴³⁰

The 'Ending Homelessness Together - the Homelessness Strategy for NI 2017-2022' was published in April 2017.⁴³¹ It aims to prevent homelessness, to ensure that households experiencing homelessness are supported to find suitable accommodation and support solutions as quickly as possible, and to ensure a cross-departmental and inter-agency approach to ending homelessness. It acknowledges *'how failing to prevent homelessness costs the public purse thousands of pounds more per individual than would be the case were timely interventions to take place'*.⁴³² The strategy includes a NI Housing Executive led action plan with a number of short term (year one), medium term (year two/three) and long term (year four/five) actions.⁴³³

Preventing rough sleeping

The UN ICESCR Committee in its 2016 Concluding Observations on the UK urged the UK:

*to adopt all necessary measures to avoid the criminalisation of 'rough sleeping' in the State Party and to develop appropriate policies and programmes to facilitate the social reintegration of homeless persons. In this respect, the Committee draws the attention of the State Party to its General Comment No 4 (1991) on the right to adequate housing.*⁴³⁴

A Belfast Street Needs Audit conducted by the NI Housing Executive in 2015, identified an average of six people per night were rough sleeping in Belfast.⁴³⁵ A small, unidentified number are also rough sleeping in Londonderry/Derry.⁴³⁶ It is believed that if services were not available that this figure would rise to 100 individuals.⁴³⁷

Homelessness and health

The average age of life-expectancy for homeless people sleeping rough or residing in shelters and homeless hostels is 43 years of age for women and 48 for men. This is on average at least 30 years lower than the average age of life-expectancy across the general population.⁴³⁸ A number of homeless persons died on the street in Belfast in early 2016,⁴³⁹ some of these individuals were to varying degrees users of homelessness services.⁴⁴⁰

The NI Housing Executive's 'Housing and Health Strategy' recognises the need for partnership working with the health sector and also statutory, voluntary and community sectors.⁴⁴¹ It also recognises a link between inadequate housing and health. Similarly, the *'Ending Homelessness Together - the*

429 NI Housing Executive Website: Homelessness Information available at: http://www.nihe.gov.uk/homelessness_information

430 Patient and Client Council, Issues faced by People who are Homeless in Accessing Health and Social Care Services – Report of an Initial Scoping Exercise, HSCNI, 2015, p. 5; Suzanne Fitzpatrick et al. The Homelessness Monitor: Northern Ireland 2013, Crisis, 2013, p. ix.

431 Northern Ireland Housing Executive, Ending Homelessness Together: Homelessness Strategy for Northern Ireland 2017-22, Northern Ireland Housing Executive, 2016

432 *Ibid*, p.17

433 *Ibid*, para 5.0-5.5

434 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para. 52.

435 NI Housing Executive, Ending Homelessness Together: Homelessness Strategy for Northern Ireland 2017-22, NI Housing Executive, 2016, para 4.3.1

436 NI Housing Executive, Ending Homelessness Together: Homelessness Strategy for NI 2017-22, Northern Ireland Housing Executive, 2016, para 4.3.1

437 NI Housing Executive, Homelessness Strategy for NI 2012-2017, 2012, p. 22.

438 Patient and Client Council, Issues faced by People who are Homeless in Accessing Health and Social Care Services – Report of an Initial Scoping Exercise, HSCNI, 2015, p. 5.

439 BBC News NI, 'Belfast city centre: Homeless man found dead 'loveable rogue'', 8 February 2016; Allan Preston, 'City homelessness summit after three deaths in fortnight', Belfast Telegraph, 19 February 2016.; Angela Rainey, 'Homeless action call as fourth man dies in Belfast', Belfast Telegraph, 26 February 2016; BBC News NI, 'Belfast: Homeless woman dies in shop doorway', 19 March 2016.

440 NI Assembly Meeting of Committee for Social Development, 3 March 2016. Available at <https://niassembly.tv/video/committee-social-development-meeting-03-march-2016/>.

441 NI Housing Executive, Homelessness Strategy for NI 2012-2017, 2012, p. 7.

Homelessness Strategy for NI 2017-2022 acknowledges the 'catastrophic effect... with far reaching and long term implications for health and well being' that homelessness can have on a household.⁴⁴²

Repossession and mortgages

In September 2017, research from the Joseph Rowntree Foundation reported that 'twice as many of NI's mortgaged households are behind with their mortgage payments (14 per cent) compared to the whole of the UK (7 per cent)'.⁴⁴³ NI's households with mortgages also 'had more than three times the incidence of negative equity (11 per cent) than those across the UK (3 per cent)'.⁴⁴⁴

The Mortgage Repossession Taskforce's final report investigating the impact of negative equity, repayment arrears and possessions in NI was published in May 2015.⁴⁴⁵ A number of recommendations made by the Taskforce have been implemented. The Housing Rights also hosts an online mortgage interest rate calculator that enables clients to stress-test themselves for higher interest rates. The NI Housing Executive's Housing Solutions model assists households affected by repossession to access homelessness assessments. Furthermore, the Behavioural Insights Team has published a report on how to encourage borrowers facing mortgage arrears to take action earlier.⁴⁴⁶

The waiting time for the financial support for new claimants on certain means tested benefits, the Support for Mortgage Interest, was reinstated as 39 weeks in April 2016.⁴⁴⁷ From April 2018, the Support for Mortgage Interest is being ended and replaced by a system of loans. These loans will be repaid when a claimant transfers ownership or sells the home.⁴⁴⁸

Recommendation

The Commission recommends that a collaborative approach is taken between statutory, voluntary and community sectors to eliminate all forms of homelessness. The Commission urges that all reasonable steps should be taken to prevent any further deaths of rough sleepers in NI. It recommends that the Ministerial High-Level Group actively engage with practitioners working in organisations dealing with homelessness to develop practical and comprehensive measures to address the complex needs of individuals who find themselves homeless. The Commission calls on the Department for Communities to implement the Mortgage Repossession Taskforce's recommendations by considering introducing a Mortgage Rescue Scheme in NI. The Commission welcomes the Department of Communities proposals to protect against homelessness within the private rental sector and recommends their expedited implementation.

442 NI Housing Executive, *Ending Homelessness Together: Homelessness Strategy for Northern Ireland 2017-22*, NI Housing Executive, 2016, para 4.1

443 Alison Wallace, David Rhodes and Firona Roth, *Home-owners and Poverty in NI*, Joseph Rowntree Foundation, September 2017

444 *Ibid.*

445 Department for Social Development, *Housing Repossession Taskforce: Final Report*, February 2015.

446 The Behavioural Insights Team, *Applying Behavioural Insights to Encourage Earlier Engagement from Borrowers in Mortgage Arrears*, Behavioural Insights Team, 20 May 2015

447 Details of the scheme are available at: <https://www.nidirect.gov.uk/articles/getting-help-make-your-mortgage-interest-payments>.

448 Details of the new arrangement are available at: <https://www.gov.uk/support-for-mortgage-interest>.



Reduction in asylum financial support

The Immigration and Asylum Act 1999, section 95 (section 95 support) provides for support for asylum seekers and their dependents who appear to the Home Secretary to be destitute or who are likely to become destitute. In July 2015, the UK Government introduced a flat rate in asylum support. From August 2015, the standard rate is £36.95 per week provided to each person supported of all ages.⁴⁴⁹ The Immigration Act 2016 amended the Asylum and Immigration Act 1999 by creating a new power to support failed asylum seekers who can demonstrate that they are destitute and face a genuine obstacle to leaving the UK at the point their appeal rights have been exhausted.⁴⁵⁰ The 2016 Act amended the 1999 Act so that persons who have children in their household at the time their asylum claim and any appeal is finally rejected will no longer be treated as though they were still asylum seekers and so will no longer be eligible for support under section 95.

The Home Office published a report on a review of cash allowances paid to asylum seekers in 2017. The Home Office concluded that the cash allowance should remain unchanged and as a general rule asylum seekers supported under section 95 will continue to receive a cash allowance of £36.95 per week.⁴⁵¹

The British Red Cross reported in February 2017 that '*asylum destitution was on the rise*' in Britain. The British Red Cross came to the aid of 14,909 people, including dependants, without adequate access to food, housing or healthcare last year, an increase of nearly 10% on the 13,660 seen in 2015.⁴⁵² A report by the Refugee Council in September 2017 found that a number of newly recognised refugees were forced to rely on charities, friends, family and foodbanks once their asylum support was terminated as Home Office support had dropped away and employment had not been secured. The Refugee Council recommended that when an application for welfare payments has been made within the 28 day 'move on period', the Home Office should not cease asylum support until the first payment has been made.⁴⁵³

Recommendation

The Commission is concerned that reductions in asylum support resulting from the Immigration Act 2016 have had a retrogressive impact on the right to an adequate standard of living and the right to social security. The Commission recommends the UK Home Office increase the level of support provided to asylum seekers, including through the daily allowance, in order to ensure that they enjoy their economic, social and cultural rights, in particular the right to an adequate standard of living. It also calls on the UK Home Office to review the restrictions placed on asylum seekers which prevent the taking up of work while claims are being processed. The Commission also recommends the UK Home Office review the length of the 28 day grace period which, without revision of current safeguards, is contrary to the best interests of the child.

449 Regulation 2 of The Asylum Support (Amendment No.3) Regulations 2015.

450 Immigration Act 2016, schedule 11.

451 Home Office 'Report on Review of Cash Allowance paid to Asylum Seekers:2016; March 2017, p. 3.

452 British Red Cross 'Asylum Destitution on the Rise' 3 February 2017.

453 Refugee Council 'Refugees without Refuge: findings from a survey of newly recognised refugees' September 2017, p. 4.



Social housing

Housing supply

The UN ICESCR Committee in its 2016 Concluding Observations urged the UK to:

*adopt all necessary measures to address the housing deficit by ensuring a sufficient supply of housing, in particular 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.*⁴⁵⁴

At March 2016, the total number of applicants on the social housing waiting list was 37,586. Of these applicants, 22,645 were in housing stress, where they had 30 or more points under the Common Selection Scheme. This included 11,202 households deemed to be statutorily homeless.⁴⁵⁵ There is an overall requirement of 190,000 new dwellings needed in NI between 2008 and 2025, an annual figure of 11,200.⁴⁵⁶ Current targets fall significantly short of this. During 2015/2016, 1,209 new dwellings were completed under the Social Housing Development Programme.

The 'Facing the Future: Housing Strategy for NI 2012-2017' commits to ensuring access to decent affordable sustainable homes across all tenures and meet housing need and support the most vulnerable.⁴⁵⁷ This strategy is due to expire at the end of 2017 and its final evaluation should be available in early 2018.⁴⁵⁸ In August 2015, 21 actions set out in the strategy had been achieved or were on track for achievement, nine actions were broadly on track for achievement, two actions had some risk of delay and one action was not expected to be achieved within the timescale.⁴⁵⁹ The new Housing Strategy is set out in the draft 'Programme for Government'.⁴⁶⁰ This adopts an outcomes based approach, which includes a Housing Delivery Plan. The Draft Programme aims:

*to address (i) the number of households in housing stress and (ii) the gap between the number of houses we need, and the number of houses we have. The draft proposes a number of measures, including providing an additional 9,600 social homes and supporting 3,750 first time buyers into home ownership. It also includes a proposal to release more public sector land for housing development.*⁴⁶¹

However, without a NI Executive a new strategy cannot be implemented.

The Housing Supply Forum was established as a result of the strategy. It published its report in January 2016, concluding that there were not enough homes being constructed in NI to meet demand.⁴⁶² The Forum made a number of recommendations, including issues such as: the completion of a mapping exercise, assessing demand and availability; and increased support and encouragement from Government for joint ventures between Housing Associations and private developers. It also recommended that powers be made available to the new local councils to enable sites to be developed for the benefit of the whole community and to ensure appropriate delivery of housing need.⁴⁶³

⁴⁵⁴ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 50(a).

⁴⁵⁵ Statistics on waiting lists are provided at: http://www.nihe.gov.uk/waiting_lists

⁴⁵⁶ NI Housing Executive, NI Housing Market Review and Perspectives 2015-2018, 2015, p. 23.

⁴⁵⁷ Department for Social Development, Facing the Future: The Housing Strategy for NI 2012-17, 2012; DSD, Facing the Future: The Housing Strategy for Northern Ireland Action Plan Update: September 2015, 2015.

⁴⁵⁸ Department for Communities, Email on Social Housing from Department for Communities to NIHRC, Department for Communities, 28 September 2017

⁴⁵⁹ Department for Social Development, Facing the Future: The Housing Strategy for NI Action Plan Update, Department for Social Development, September 2015, p. 10.

⁴⁶⁰ Department for Communities, Email on Social Housing from Department for Communities to NIHRC, Department for Communities, 28 September 2017

⁴⁶¹ AQW 7338/16-21 Ms Carál Ní Chuilín Question to Minister for Communities Answered On Date: 28/11/2016

⁴⁶² Housing Supply Forum, Report and Recommendations: January 2016, p. 10.

⁴⁶³ *Ibid.*, pp. 13-19.

In 2016, following reviews by the Office of National Statistics of the statistical classification of registered social landlords and housing associations across the UK, social housing providers were reclassified as Public Financial Corporations. In effect this made such housing providers public sector bodies.⁴⁶⁴ The Department for Communities ran a consultation between December 2016 and February 2017, which considered a reversal of the reclassification in NI. The former Minister for Communities, Paul Givan, was concerned that the reclassification had:

*the potential to significantly reduce the amount of money available to Registered Social Housing Providers and therefore the number of social homes that are built each year.*⁴⁶⁵

Officials continue to develop policy options and legislative proposals for consideration by an incoming Minister to facilitate a reversal of the reclassification.⁴⁶⁶ This includes a report on the consultation.

Segregation

The UN ICESCR Committee in its 2016 Concluding Observations urged the UK to,

*intensify its efforts to address the challenges to overcome persistent inequalities in housing for Catholic families in North Belfast, including through meaningful participation of all actors in decision-making processes related to housing.*⁴⁶⁷

The Equality Commission NI in its 'Statement on Key Inequalities on Housing and Communities in NI' found that the Catholic household reference person applicants continue to experience longest waiting times for social housing in NI as a whole. It further found '*while median waiting times had increased for all groups, more substantive increases were noted for households with a 'Catholic' or 'Other' religion household reference person*'.⁴⁶⁸

One of the key priorities under the 'Together: Building a United Community Strategy' is the creation of new shared communities, as the NI Life and Times Survey indicates that 77 per cent of respondents would prefer to live in a mixed neighbourhood.⁴⁶⁹ One of the commitments under the strategy was the creation of ten new '*Shared Neighbourhood Developments*'. Five of the new shared neighbourhood developments have been completed, with the development of the remaining five underway.⁴⁷⁰ All new residents of the shared neighbourhoods '*are required to sign up to a voluntary 'Good Neighbour' charter, which promotes good relations and the right to diversity within the development*'.⁴⁷¹ In October 2017 a number of Catholic families were intimidated from their homes in a shared housing area in East Belfast by a loyalist paramilitary organisation.⁴⁷²

The 'Community Cohesion Strategy 2015-20' is delivered across five themes including segregation/integration. In this regard, the strategy contains a number of actions including: supporting research into segregated and shared housing including updating the Mapping Segregation report; facilitating and encouraging mixed housing schemes in the social and affordable sector; and work with the NI Executive Office, the Department for Communities, Housing Associations and others to bring proposals forward for ten Shared Future capital build projects of mixed housing schemes in the medium term. The strategy also commits to developing programmes of action to address issues of

464 Office for National Statistics, Statistical classification of registered providers of social housing in Scotland, Wales and Northern Ireland: September 2016

465 Department for Communities, Proposals to Seek Reversal of the Reclassification of Registered Social Housing Providers in Northern Ireland, Department for Communities, 2016, p. 3.

466 Department for Communities, Email on Social Housing from Department for Communities to NIHR, Department for Communities, 28 September 2017

467 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para. 50(e).

468 Equality Commission NI, Statement on Key Inequalities in Housing and Communities in NI: Full Statement, Equality Commission NI, April 2017, para 1.9

469 Economic and Social Research Council, Northern Ireland Life and Times Survey: Community Relations, 2016, available at: http://www.ark.ac.uk/nilt/2016/Community_Relations/MXRLGNH.html.

470 NI Executive, Together: Building a United Community Update Report, June 2017, p.3

471 *Ibid*, p.14

472 BBC News NI, PSNI: 'UVF behind intimidation of Catholic families' 5 October 2017

residential segregation and integration across three years, as well as developing legacy programmes targeting young champions in neighbourhoods.⁴⁷³

Data collection

The Equality Commission NI assessment of the 'Facing the Future: Housing Strategy for NI 2012-2017' and 'Building Successful Communities' found that, despite monitoring guidance for public authorities, there is a lack of robust housing and communities data relating to a number equality grounds including: gender; gender identity; religion; race; political opinion; and sexual orientation.⁴⁷⁴

Recommendation

The Commission recommends the Department for Communities adopt measures to implement the recommendations of the Housing Supply Forum in NI. The Commission highlights continued high levels of segregation in social housing in NI and persistent inequalities in housing for Catholic families. It welcomes the NI Housing Executive's Community Cohesion Strategy 2015-20 and calls on the NI Executive and Department for Communities to fully implement the strategy. It further recommends the Department for Communities intensify its efforts to address the challenges to overcome persistent inequalities in housing for Catholic families in North Belfast, including through meaningful participation of all actors in decision-making processes related to housing. The Commission calls on the Department for Communities to ensure the collection of robust equality data to assess, monitor and allow for evaluation of Department actions to address housing inequalities in NI.



Social security

In its previous annual statements the Commission reported on the advice provided to the NI Assembly in relation to the Welfare Reform Bill, which identified a number of potential consequential impacts on the protection of human rights.⁴⁷⁵

In 2016 the UN ICESCR Committee made a number of recommendations relating to social security reform in the UK. These included:

- *review the entitlement conditions and reverse the cuts in social security benefits introduced by the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016;*
- *restore the link between the rates of State benefits and the costs of living and guarantee that all social security benefits provide a level of benefit sufficient to ensure an adequate standard of living, including access to health care, adequate housing and food;*
- *review the use of sanctions in relation to social security benefits and ensure they are used proportionately and are subject to prompt and independent dispute resolution mechanisms; and*
- *provide in its next report disaggregated data on the impact of social security reforms on women, children, persons with disabilities, low income families and families with two or more children.*⁴⁷⁶

⁴⁷³ NI Housing Executive, Community Cohesion Strategy 2015-2020, 2015, p. 34.

⁴⁷⁴ Equality Commission NI, Investigation Report under Schedule 9 of the NI Act 1998: Department for Social Development - Housing Policy Proposals, November 2015.

⁴⁷⁵ NIHRC, The 2012 Annual Statement: Human Rights in NI, December 2012.

⁴⁷⁶ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016.

Following on from the findings of its Inquiry, in August 2017 the UNCRPD Committee recommended that the UK Government,

*Carry out a cumulative impact assessment, with disaggregated data, about the recent and coming reforms on the social protection for persons with disabilities, and in close collaboration with organisations of persons with disabilities define, implement and monitor measures to tackle retrogression in their standard of living and use it as a basis for policy development across the State party.*⁴⁷⁷

With respect to NI the Committee specifically recommended that relevant authorities extend support packages to mitigate negative impacts of the social security reform in NI.⁴⁷⁸

Westminster legislated for welfare reform in NI, broadly equivalent to the reforms in the Welfare Reform Act 2012. The NI Executive agreed to allocate a total of £585 million from NI Executive funds over four years to top up the UK welfare arrangements in NI, with a review in 2018-19. A NI Executive-established working group published its recommendations for mitigations in January 2016. The First Minister of NI agreed to fully implement the recommendations made by the working group to mitigate the impact of social security reform.⁴⁷⁹

The High Court in London ruled in June 2017 that the further reduced benefit cap introduced by the UK Government unlawfully discriminated against lone parents with children under two years of age. The claimants argued that the imposition of the cap on lone parents with children under two amounted to unlawful discrimination contrary to Articles 8, 14 and Article 1 Protocol 1 of the ECHR. Mr Justice Collins said:

*Whether or not the defendant accepts my judgment, the evidence shows that the cap is capable of real damage to individuals such as the claimants. They are not workshy but find it, because of the care difficulties, impossible to comply with the work requirement. Most lone parents with children under two are not the sort of households the cap was intended to cover and, since they will depend on DHP, they will remain benefit households. Real misery is being caused to no good purpose.*⁴⁸⁰

The UK Government has indicated that it intends to appeal the decision on the benefit cap.⁴⁸¹

The continuing implications of social security reform are not yet clear, with a number of the reform measures yet to be fully implemented in NI. The Social Size Criteria for housing benefit, commonly known as 'the bedroom tax' came into effect in 2017 though the mitigations package ameliorates its impact for many claimants.⁴⁸² From April 2017, new claimants will generally not be able to claim Child Tax Credit for third or subsequent children or qualifying young persons born on or after 6 April 2017, save in limited circumstances.⁴⁸³ This will also apply to Universal Credit once introduced. The Institute of Fiscal Studies has noted that absolute child poverty is projected to increase by around four per cent from 2015/16 to 2021/22. The increase is driven significantly by a sharp rise in poverty among families of three or more children, which is itself a result of planned tax and social security reforms.⁴⁸⁴

477 Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, para 59 (b)

478 Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, para 59(d)

479 BBC News NI, NI Welfare Reform: Arlene Foster "will fully implement" welfare mitigation proposals, 22 January 2016.

480 DA and Others v Secretary of State for Work and Pensions [2017] EWHC 1446 (Admin) at para 43.

481 The Guardian 'Benefit cap on lone parents of under-tuos is unlawful, court rules' 22 June 2017.

482 NI Housing Executive 'Social Size Criteria' 26 Jul 2017

483 HM Revenue and Customs 'Child Tax Credits: Exceptions to the 2 Child Limit' 6 April 2017

484 Institute for Fiscal Studies 'Living Standards, Poverty and Inequalities in the UK: 2017/18 to 2021/22' Andrew Hood and Tom Waters, November 2017

Concerns have been raised with one of the exemptions namely, a child being born as a result of rape or coercive conception. A woman must prove that they conceived their third child through rape to access Child Tax Credit for that child under the exemption. Women's Aid Federation NI said:

*This ill-thought out law will be devastating and re-traumatising for victims of rape who need to access child tax credits. The policy is discriminatory towards women, and towards poor women in particular.*⁴⁸⁵

The Commission has written to the Attorney General for NI about the third party reporting arrangements and the interaction with Section 5 of the Criminal Justice (NI) Act 1967, which requires individuals to report knowledge or belief of crime where failure to do so amounts to a criminal offence. The Child Poverty Action Group has lodged a judicial review claim in Britain challenging the lawfulness of the two child limit on human rights grounds, covering both the ECHR and UNCRRC.⁴⁸⁶

Universal Credit has been introduced on a phased geographical basis from September 2017 for new claims, and between July 2019 and March 2022 for existing claimants. Universal Credit will replace: income based Jobseekers Allowance; income related Employment and Support Allowance; Income Support; Child Tax Credit; Working Tax Credit; and Housing Benefit.

It has been reported that delays and waiting times in the processing of Universal Credit applications in other parts of the UK has resulted in claimants reporting they were in rent arrears. One in four new Universal Credit claimants waited more than 42 days for a first payment, while nearly half of families said moving on to the benefit had led them to fall behind with rent for the first time.⁴⁸⁷ Unlike elsewhere in the UK Universal Credit will normally be paid twice a month to a household in NI.⁴⁸⁸

The House of Commons Public Accounts Committee published a report on benefit sanctions in 2017 recommending that the Department for Work and Pensions should undertake a trial of warnings rather than sanctions for first sanctionable offences. Furthermore, the Committee recommended that the Department should monitor variations in sanctions referrals and assess reasons for differences across jobcentres.⁴⁸⁹

In November 2017 the Equality and Human Rights Commission published a report on the impact that changes to all tax, social security and public spending reforms since 2010 will have on people by 2020. The report found the poorest were set to lose ten per cent of their incomes. While the richest lose barely one per cent. Moreover specific groups will do particularly badly including lone parents, families with a disabled adult and/or disabled child.⁴⁹⁰

Recommendation

The Commission remains concerned over the disproportionate impact cuts to social security has on low income households. It recommends that the UK Government ensures social security benefits, as a minimum, guarantee an adequate standard of living for all recipients, including access to health care, adequate housing and food. It calls on the UK Government to review the entitlement conditions and reverse the cuts in social security benefits introduced by the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016 to this end.

485 Women's Aid Federation NI 'Women's Aid NI statement on 2-child tax credit rule and 'rape clause' 30 March 2017

486 Child Poverty Action Group, Two child limit challenge, 17 October 2017

487 The Guardian 'Universal credit is in 'total disarray', says Labour', 15 September 2017.

488 Gov.uk, Universal Credit, available at: <https://www.gov.uk/universal-credit/how-youre-paid>

489 House of Commons 'Benefit Sanctions' 17 February 2017

490 Equality and Human Rights Commission: Distributional results for the impact of tax and welfare reforms between 2010-17, modelled in the 2021/22 tax year, November 2017

Travellers accommodation

Supply

The UN CEDAW Committee recommended in its 2013 Concluding Observations that the UK *'provide adequate sites designated for use by Traveller women and members of their families'*.⁴⁹¹ The UN ICESCR Committee in its 2016 Concluding Observations found within the UK, including NI, there is a *'shortage of adequate stopping sites for Roma/Gypsies and Irish Travellers'*.⁴⁹² The UN ICESCR Committee urged the UK to *'ensure adequate access to culturally appropriate accommodation and stopping sites for the Roma, Gypsy and Traveller communities, as appropriate, take steps to avoid all discrimination in the provision of accommodation'*.⁴⁹³ The UN ICERD Committee in its 2016 Concluding Observations recommended the UK *'develop a comprehensive strategy, in consultation with members of Gypsy, Traveller and Roma communities, to ensure a systematic and coherent approach in addressing the challenges that members of these communities continue to face in the fields of... housing'*.⁴⁹⁴ The UN ICERD Committee continued the UK should *'ensure the provision of adequate and culturally appropriate accommodation and stopping sites as a matter of priority'*.⁴⁹⁵

The Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities in its 2016 report on the UK found *'access to campsites by Gypsies and Travellers continues to be problematic, particularly in... NI'*.⁴⁹⁶ Furthermore, *'local authorities appear to struggle with the task of providing adequate permanent and temporary sites for these groups'*.⁴⁹⁷ The Advisory Committee acknowledged that there is a *'link between poor health conditions and inadequate and insecure campsite availability'*.⁴⁹⁸ The Advisory Committee recommended for immediate action that *'a multi-agency taskforce on Traveller sites in NI'* is set up *'to cater to the needs of Irish Travellers'*.⁴⁹⁹

The Commission, in its 2016 parallel report, advised the UN ICESCR Committee to recommend that the UK ensure planning rules take into account the needs of Travellers in NI.⁵⁰⁰

Statistics

The UN ICERD Committee in its 2016 Concluding Observations recommended the UK *'ensure its effective implementation by adopting specific action plans, putting in place effective oversight and monitoring mechanisms to track progress, and providing adequate human and financial resources'*.⁵⁰¹

The official figures for the Traveller population in NI do not appear to reflect reality making it difficult to create and evaluate appropriate policies and strategies. The NI Housing Executive has recorded that between 2002 and 2014, the Traveller community population in NI fluctuated between 1,220

491 UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/7, UN CEDAW, July 2013, para 61(b).

492 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 30.

493 *Ibid*, para 50(d).

494 UN Committee on the Elimination of Racial Discrimination, Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom, CERD/C/GBR/CO/21-23, UN CERD, 26 August 2016, para 25(a).

495 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 25(b).

496 CoE Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on the UK adopted on 25 May 2016, Advisory Committee on the FCNM, 27 February 2017, p.2.

497 CoE Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on the UK adopted on 25 May 2016, Advisory Committee on the FCNM, 27 February 2017, p.2.

498 *Ibid*, para 139.

499 *Ibid*, p.2.

500 NIHR, Submission to the UN Committee on Economic, Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom's Compliance with ICESCR, April 2016, pp. 59-60.

501 UN Committee on the Elimination of Racial Discrimination, Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom, CERD/C/GBR/CO/21-23, UN CERD, 26 August 2016, para 25(a).

and 1,480.⁵⁰² The NI Government Partnership on Travellers' issues estimated that a more accurate approximation would be a Traveller population of between 3,500 and 4,000 persons.⁵⁰³

Adequacy

The UN ICESCR Committee in its 2016 Concluding Observations on the UK expressed concern that *'Travellers continue to face barriers in accessing adequate and culturally appropriate accommodation across [the UK], with adequate access to basic services, such as water and sanitation'*.⁵⁰⁴

A quarter of Traveller respondents residing in NI considered their place of residence to be unhealthy or very unhealthy, with 29 per cent describing their residence as unsafe.⁵⁰⁵ A lack of footpaths, public lighting, fire hydrants, safe play areas, plumbing, washing facilities, electricity and refuse management has been reported.⁵⁰⁶ Research suggests that the standard of Travellers' sites, in particular, is inadequate. The Commission, in its 2016 parallel report, advised the UN ICESCR Committee to recommend that the UK complies with the Housing (NI) Order 2003 to improve basic living conditions on serviced and halting sites in NI.⁵⁰⁷

Commission's investigation

On 1 September 2016 the Commission launched an investigation into Travellers' accommodation in NI.⁵⁰⁸ The Investigation exercises the Commission's powers under Section 69 of the NI Act 1998. The Investigation focuses on providing a human rights analysis of good practices and issues that arise in relation to the right to adequate housing, in the context of Travellers' accommodation. It involves gathering and analysing evidence from the relevant public authorities, civil society organisations and members of the Traveller communities in NI. The findings of the Investigation will be published in Spring 2018.

Recommendation

The Commission highlights concern over the provision and adequacy of culturally appropriate accommodation and transit sites for Roma, Gypsy and Traveller communities in NI contributing to the State's failure to secure an adequate standard of living for these communities. It recommends the NI Executive take vigorous measures to meet the accommodation needs of Gypsies and Travellers. This includes taking steps to avoid all discrimination in the provision of accommodation for Gypsies and Travellers; addressing the legislative anomaly by removing the need to obtain site licences from District Councils in NI and complying with the Housing (NI) Order 2003 by improving basic living conditions on serviced and halting sites in NI. The Commission further recommends that the Department for Communities improves its monitoring and statistical recording of the Traveller population in NI as well as their engagement with Traveller communities to better evaluate appropriate policies and strategies applicable to the communities.

502 NI Housing Executive, Traveller Accommodation Needs Assessment 2002, p. 10; NIHE, Traveller Accommodation Needs Assessment 2008, p. 10; NIHE, Traveller Accommodation Needs Assessment 2014, p. 9.

503 Minutes of the 429th Meeting of the NI Housing Council, Armagh City Hotel, 14 April 2016, p. 3.

504 UN Committee on Economic, Social and Cultural Rights, Concluding Observations of the CESCR: United Kingdom of Great Britain and NI, the Crown Dependencies and the Overseas Dependent Territories, E/C.12/GBR/CO/5, UN Economic and Social Council, 22 May 2009, para 30; UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 49.

505 Equality Commission NI, Outlining Minimum Standards for Traveller Accommodation, 2009, pp. 9-10.

506 Safa Abdella et al, Our Geels: All Ireland Traveller Health Study, UCD, 2010, p. 46; NICEM, The Annual Human Rights and Racial Equality Benchmarking Report 2013/14, OFMDFM, 2014, p. 96.

507 NIHRC, Submission to the UN Committee on Economic, Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom's Compliance with ICESCR, April 2016, pp. 59-62.

508 NIHRC, Travellers' Accommodation Investigation Terms of Reference, NIHRC, September 2016

Unauthorised encampments (NI) Order 2005

The UN ICESCR Committee has consistently expressed concern at how the Unauthorised Encampments (NI) Order 2005 *'makes Roma/Gypsies and Irish Travellers liable to be evicted from their homes, to have their homes destroyed and then to be imprisoned and/or fined'*.⁵⁰⁹ The UN ICESCR Committee has called for this legislation to be repealed,⁵¹⁰ in line with the Commission's advice.⁵¹¹

The Police Service NI attended 102 incidents regarding unauthorised encampments between 2006/2007 and 2015/2016. The powers under the 2005 Order are used sparingly. Over the period 2015/2016, there were nine reported incidents engaging the 2005 Order, six involving Irish Travellers and one involving a member of another Traveller community. Some representatives of the Police Service NI and civil society organisations believe the 2005 Order bears more heavily on Traveller communities.⁵¹²

The NI Housing Executive operates a co-operation policy. This policy permits Travellers to set up an unauthorised encampment on public land for which there is no current or immediate use and permits them to occupy the land provided it does not create a public health or traffic hazard and the land is maintained in a reasonable and orderly manner.⁵¹³ The NI Housing Executive emphasises that the policy is not a substitute for permanent or transit sites but is intended to act as a way of dealing with a humane requirement.⁵¹⁴ In its 2016 Parallel Reports to the Council of Europe Advisory Committee on the FCNM⁵¹⁵ and the UN ICESCR Committee,⁵¹⁶ the Commission welcomed the co-operation policy, but advised that the measures in the 2005 Order potentially have a chilling impact; these measures enable a national minority to become liable to criminal prosecution for following their traditional lifestyle in a context of inadequate site provision.

Recommendation

The Commission welcomes the NI Housing Executive's co-operation policy with Travellers. The Commission continues to raise concerns with regards the applicability of the Unauthorised Encampments (NI) Order 2005. The measures therein enable a national minority to become liable to criminal prosecution for following their traditional lifestyle in a context of inadequate site provision. As a result, the Commission endorses the recommendation of the UN ICESCR Committee for the NI Executive to repeal the provisions of the Unauthorised Encampments (NI) Order 2005 in NI.

509 UN Committee on Economic, Social and Cultural Rights, Concluding Observations of the CESCR: United Kingdom of Great Britain and NI, the Crown Dependencies and the Overseas Dependent Territories, E/C.12/GBR/CO/5, UN Economic and Social Council, 22 May 2009, para 30; UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 49.

510 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 50(d).

511 NIHR, Submission to the UN Committee on Economic, Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom's Compliance with ICESCR, NIHR, April 2016, p. 13.

512 NIHR, Travellers' Accommodation Investigation, NIHR, Forthcoming, Chapter 6.

513 Department for Social Development, Guide to the Unauthorised Encampments (NI) Order 2005, 2006.

514 NI Housing Executive, 'Our Cooperation Policy for Travellers'. Available at: http://www.nihe.gov.uk/index/advice/advice_for_travellers/co-operation_policy.htm

515 NIHR, Submission to the Advisory Committee on the Framework Convention for the Protection of National Minorities: Parallel Report to the Advisory Committee on the Fourth Monitoring Report of the UK, 2016, p. 104.

516 NIHR, Submission to the UN Committee on Economic, Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom's Compliance with ICESCR, April 2016, pp. 59-62.

Right to health

ICESCR	Article 12
UNCRPD	Article 25
ESC	Article 11
CFREU	Article 35

Access to healthcare for irregular migrants

In its 2016 submission to the UN ICESCR Committee the Commission expressed concern that there are practical barriers impeding refused asylum seekers accessing healthcare. In response, the UN ICESCR Committee expressed concern that among others, asylum seekers and refused asylum seekers continue to face discrimination in accessing health-care services. The Committee noted that the Immigration Act 2014 had further restricted access to health services by temporary migrants and undocumented migrants. The Committee recommended that *'the State party take steps to ensure that temporary migrants and undocumented migrants, asylum seekers, refused asylum seekers... have access to all necessary health-care services and reminds the State party that health facilities, goods and services should be accessible to everyone without discrimination, in line with article 12 of the Covenant'*.⁵¹⁷ The UN ICERD Committee reaffirmed in its 2016 Concluding Observations that the UK *'should take effective measures to ensure the accessibility and availability of quality health-care services to persons belonging to ethnic minorities, through its jurisdiction'*.⁵¹⁸

The UN CRC Committee highlighted in its 2016 Concluding Observations to the UK that *'asylum-seeking, refugee and migrant children and their families face difficulty in accessing basic services, such as... health care'*. It recommended migrant, refugee and asylum-seeking children were provided with *'sufficient support... to access basic services'*.⁵¹⁹ This includes health-care.

The 'Provision of Health Services to Persons Not Ordinarily Resident Regulations (NI) 2015' and the 'Health and Personal Services (General Medical Services Contracts) (Amendment) Regulations (NI) 2015' confirm all asylum seekers *'who have made an application to be granted temporary protection, asylum or humanitarian protection'* are entitled to free primary, secondary and emergency healthcare. This includes asylum seekers that have exhausted the appeals process and remain in NI. However, the Commission has received reports that there are a number of barriers to migrants, including irregular migrants, accessing healthcare they are entitled to. Delays in the Home Office issuing asylum registration cards and HC2 certificates has been reported. One or both of these documents are required to register and receive full support for many health care services, particularly GP and dental services. There are difficulties in migrants, including irregular migrants, getting to healthcare appointments because the financial support provided by the government is in the form of vouchers. This means for example, no cash to pay for transport to appointments. The Commission has also received reports of pregnant migrant women, including irregular migrants, not receiving financial support until late in their pregnancy. This has been due to delays in the decision-making process and in the issuance of awards.⁵²⁰

⁵¹⁷ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 56.

⁵¹⁸ UN Committee on the Elimination of Racial Discrimination, Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom, CERD/C/GBR/CO/21-23, UN CERD, 26 August 2016, para 31.

⁵¹⁹ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, paras 77-78.

⁵²⁰ NIHRC, Submission to the UN Committee on Economic, Social and Cultural Rights on the 6th Periodic Report of the UK's compliance with ICESCR, April 2016, paras 49.1-49.5.

Since May 2012, a number of the health trusts in NI offer the NI New Entrants Service. It is the first point of contact to the health services for new migrants, including asylum seekers, it offers initial health assessments, health promotion advice, and information on accessing health services in NI.⁵²¹

The Commission remains concerned that there is still a potential gap in respect of undocumented or irregular migrants (ie those who have not made an asylum application) and their children. They are not entitled to primary and secondary healthcare under the Regulations. The Commission continues to recommend that an amendment or policy direction may be required to ensure that the full set of General Practitioner services, including access to a General Practitioner list (subject to discretion) is genuinely available to any persons.⁵²²

Recommendation

The Commission remains concerned that undocumented or irregular migrants and their children, beyond in emergencies, are not entitled to primary and secondary healthcare. The Commission recommends that the NI Executive commit to monitoring and reviewing the operation of the Regulations to identify the implications of this exclusion.



Emergency healthcare

In 2015 the Commission published its report into emergency health care in NI.⁵²³ The inquiry report included over 100 key findings. On publication of the report the Commission stated:

The Commission considered quality, accountability and governance of the service. We visited emergency departments throughout NI during the day and night. We heard from dedicated staff striving to maintain patient dignity in an often challenging and crowded environment. In such circumstances there were reported instances where patients did not receive assistance with personal care needs, no pain relief, and no access to food and fluids. Of particular concern were cases involving end of life care, the inappropriate transfer of older patients from nursing homes and the experiences of those presenting to Accident & Emergency in mental health crisis, with dementia or disabilities.

The Commission made 26 recommendations including a recommendation that the Department of Health, develop dedicated Emergency Department minimum care standards, rooted in human rights and providing a benchmark for patient experience within Emergency Departments. The standards should include criterion on, inter alia:

- The promotion of dignity in Emergency Departments;
- Participation by individuals, their family members and other carers in the care provided in the Emergency Department setting;
- Measures covering staff behaviour and attitude, adequate facilities;
- Accessible mechanisms to provide feedback of Emergency Department experiences including complaints;
- The policies and procedures each Emergency Department should have including a hospital wide escalation policy to address overcrowding; and,

521 Belfast Health and Social Care Trust, Screening service for new entrants to Northern Ireland, 24/05/2012

522 NIHRC, 'Access Denied or Paying When You Shouldn't. Access to publicly funded medical care, residency, visitors and non-British/Irish Citizens', 2011, p. 49.

523 NIHRC, 'Human Rights Inquiry: Emergency Health Care', May 2015.

- Ways of helping to guarantee equality of access for particular groups of patients including older people, patients with dementia, rare diseases, sensory impairments and those presenting in mental health crisis.⁵²⁴

The Commission is tracking the progress of the Inquiry recommendations and is engaging with Health and Social Care Trusts in progressing implementation of the recommendations. The Commission obtained an update from the Health and Social Care Board in September 2017.

In November 2015 the then Minister for Health, Social Services and Public Safety, Simon Hamilton, set out significant changes to the health and social care system in NI, stating:

*We have too many layers in our system. I want to see the Department take firmer, strategic control of our Health and Social Care system with our Trusts responsible for the planning of care in their areas and the operational independence to deliver it.*⁵²⁵

Subsequently in October 2016 the Minister of Health published a ten year vision for the transform of the health and social care system, entitled 'Health and Wellbeing 2026: Delivering Together'. This plan was based on the report, 'Systems, Not Structures - Changing Health and Social Care' produced by an Expert Panel led by Professor Bengoa, tasked with considering the best configuration of Health and Social Care Services in NI.⁵²⁶

Speaking at the launch of the vision the then Minister Michelle O'Neill stated:

*Whole system transformation will take time and it will only be truly sustainable if there is meaningful engagement with clinicians, staff and patients to build a collective way forward. I believe by working in partnership with those who use and those who deliver services we can co-design, co-produce and implement the changes our population deserves.*⁵²⁷

In October 2017 the Department of Health published a twelve month progress report.⁵²⁸

Recommendation

The Commission continues to track the progress of their inquiry recommendations and calls upon the NI Executive and Department of Health to expedite implementation of recommendations, in particular the introduction of dedicated Emergency Department minimum care standards.

Mental capacity

In August 2017 the UN CRPD Committee recommended that the UK Government and devolved administrations,

*abolish all forms of substituted decision-making concerning all spheres and areas of life by reviewing and adopting new legislation in line with the Convention to initiate new policies in both mental capacity and mental health laws. It further urges the State party to step up efforts to foster research, data and good practices of, and speed up the development of supported decision-making regimes.*⁵²⁹

⁵²⁴ *Ibid*, Recommendations.

⁵²⁵ Department of Health Social Services and Public Safety Press Release, 'Health Minister Simon Hamilton has today announced radical changes to the way health and social care in Northern Ireland is delivered,' 4 November 2015.

⁵²⁶ Expert Panel Report, 'Systems not structures: Changing health and social care' 25 October 2016

⁵²⁷ Department of Health Press Release, 'O'Neill launches 10 year vision for Health & Social Care', 25 October 2016.

⁵²⁸ Department of Health 'Health and Wellbeing 2026: Delivering Together: 12 Month Progress Report' October 2017

⁵²⁹ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, para 30

The Mental Capacity (NI) Act 2016 received royal assent on 9 May 2016, it has not yet been brought into effect. The Act provides a single legislative framework governing situations where a decision needs to be made in relation to the care, treatment (for a physical or mental illness) or personal welfare of a person aged 16 or over, who lacks capacity to make the decision for themselves. The Act therefore continues to make provision for substitute decision making. An act done or decision made for or on behalf of a person lacking mental capacity must be done or made in their best interests and with special regard to their past and present wishes and feelings. The Act has been described as innovative in its emphasis on supported decision making. Throughout 2017 the Department of Health has been developing a Code of Practice required to ensure the effective implementation of the Act.

The 2016 Act will introduce a presumption of capacity in all persons over the age of 16 only.⁵³⁰ For under 16 year olds the Department for Health had committed to review how the current legal framework, principally the Children (NI) Order 1995, reflects the emerging capacity of children in a health and welfare context. In its previous annual statement the Commission advised that a project plan with a clearly defined timetable for this project should be developed and made publicly available.⁵³¹ However, during the Second Stage debate on the Bill the Minister for Health stated that there are '*simply no available resources and arguably no time to undertake such a wide-ranging project at this moment*'.⁵³² In 2016 the UN CRC Committee raised concern that:

*Children under the age of 16 years are excluded from the protection under the Mental Capacity Act (2005) in England and Wales, as well as under the Mental Capacity Act (2016) in NI, including with regard to medical treatment without consent.*⁵³³

The UN CRC Committee further recommended that the State Party:

Review current legislation on mental health to ensure that the best interests and the views of the child are taken duly into account in cases of mental health treatment of children below the age of 16, in particular with regard to hospitalisation and treatment without consent.

Recommendation

The Commission welcomes the introduction of the Mental Capacity (NI) Act 2016 and continues to advocate for the effective implementation of the Act in a manner in line with the UN CRPD, Article 12. The Commission remains concerned that children under the age of 16 are excluded from the application of the Act. To that end, the Commission calls on the Department of Health to conduct a review of current legislation on mental health to ensure that the best interests and the views of the child are taken duly into account in cases of mental health treatment of children below the age of 16, in particular with regard to hospitalization and treatment without consent.

530 NIHRC, 'The 2013 Annual Statement: Human Rights in NI', 2013, p. 45.

531 NIHRC, 'Submission to the Consultation on Proposals for New Mental Capacity Legislation for NI', September 2014, para 90.

532 NI Assembly, Official Report: Tuesday 16 June 2015.

533 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016.



Termination of pregnancy

International human rights system

In July 2016 the ICESCR Committee recorded its concern that termination of pregnancy was still criminalised in all circumstances in NI, save for where the life of the mother was in danger.⁵³⁴ The Committee noted that this could lead to unsafe terminations and discriminated against women from low income families who could not afford to travel to access termination services. The Committee recommended that NI legislation on termination of pregnancy be amended to make it compatible with women's rights to health, life and dignity. Also in July 2016 the UN CRC Committee recommended that legislation in NI be reviewed to ensure girls have access to safe abortion and post-abortion care services.⁵³⁵

The Commission's case

In December 2014 the Commission issued judicial review proceedings against the Department of Justice maintaining that the law on termination of pregnancy in NI violates the rights of women and girls by criminalising them when they seek a termination of pregnancy in circumstances of fatal and serious foetal abnormality, rape or incest. The Commission has repeatedly advised the Department of Justice that the existing law is, in the Commission's view, a violation of human rights. The case was heard in June 2015. The Attorney General for NI among others intervened in the case.

Speaking at the commencement of the case the Chief Commissioner, Les Allamby, stated:

*It is appropriate for the Human Rights Commission to take this legal challenge in our own name. We recognise the particular sensitivities of the issue. It is a matter of significant public interest to ensure that the rights of vulnerable women and girls in these situations are protected. It is in everyone's interest that the law is clarified in this area.*⁵³⁶

Mr. Justice Horner ruled, on the 30 November 2015, that the law in NI breached Article 8 of the European Convention on Human Rights; the right to private life and a women's right to personal autonomy by the absence of exceptions to the general prohibition on abortions in the cases of: (a) fatal foetal abnormalities at any time; and (b) pregnancies which are a consequence of sexual crime up to the date when the foetus becomes capable of existing independently of the mother.⁵³⁷

The Attorney General and the Justice Minister both lodged appeals to the NI High Court's ruling in January 2016. The Commission also cross-appealed the decision and reintroduced all of the original grounds brought before the NI High Court. The NI Court of Appeal hearing took place in June 2016 and judgment was reserved.

The Court of Appeal delivered their judgment on 29 June 2017 and allowed the appeal of the Department of Justice and Attorney General and did not uphold the Commission's own challenge to the law on termination of pregnancy.⁵³⁸ The three judge panel were divided on two specific issues: whether the laws breached Article 8 of the European Convention on Human Rights, and whether the common law should be extended to allow termination of pregnancies in certain circumstances beyond the R v. Bourne case. The Court of Appeal gave leave to appeal to the Supreme Court and an expedited three-day hearing took place on 24 October 2017. Judgment has been reserved and is not expected at least until 2018.

⁵³⁴ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016.

⁵³⁵ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016.

⁵³⁶ NIHRC Press Release, 'Human Rights Commission's Review of Termination of Pregnancy Law to begin', 15 June 2015.

⁵³⁷ The Northern Ireland Human Rights Commission's Application [2015] NIQB 96

⁵³⁸ The Northern Ireland Human Rights Commission's Application [2017] NICA 42

Legislative initiatives

In March 2016 the then Justice Minister and Health Minister established an inter-departmental working group to make recommendation on how the issue of fatal foetal abnormalities could be addressed. The Working Group reported to the Health and Justice Ministers but the report has not been made public.⁵³⁹ During the hearing of the Commission's case before the Supreme Court, counsel for the Department of Justice indicated that the Working Group report recommends a change in the law regarding fatal foetal abnormality.

In June 2017, the UK Supreme Court gave judgment in a case that considered whether NHS England should make provision for women from NI to undergo a termination of pregnancy free of charge.⁵⁴⁰ The Supreme Court, by a 3-2 majority, held that the decision of the Secretary of State for Health not to provide termination free of charge struck a fair balance between the appellants' rights and the interests of the UK community as a whole and was, therefore, justified.⁵⁴¹ However, on 29 June 2017, the Chancellor Philip Hammond announced that the National Health Service would fund terminations for women travelling from NI.⁵⁴² In a subsequent letter from the Minister for Women & Equalities, it was announced that the funding will be made available to the National Health Service through the Government Equalities Office.⁵⁴³ A further announcement by the Minister for Women and Equalities, on 23 October 2017, that support with travel costs will also be funded if the woman meets financial hardship criteria.⁵⁴⁴ A centralised booking system is also intended to be established before the end of the year, to simplify the process.⁵⁴⁵

Relevant prosecutions

In March 2016, a woman who bought drugs on the internet to induce a miscarriage received a suspended prison sentence following a successful prosecution. It was reported that she had been unable to raise the funds to travel to England for a termination. Other criminal proceedings under the Offences Against the Person Act 1861 are currently before the courts. In January 2017, the NI Divisional Court granted leave for a judicial review against a prosecution under the Offences against the Person Act 1861. A mother is being prosecuted for procuring abortion medication on behalf of her 15 year old daughter.⁵⁴⁶ The hearing has been adjourned pending the outcome of the case brought by the Commission.

Recommendation

The Commission recommends that the Department of Justice introduce legislation to end the criminalisation of women and girls in NI if they seek a termination of pregnancy in circumstances of serious foetal abnormality, rape or incest. It recommends that the Department of Health ensures that women and girls have access to safe abortion and post-abortion care services in these circumstances in NI in line with international human rights standards.

539 NI Assembly, Official Report: Fatal Foetal Abnormality: Working Group Report, Answer to questions AQO 499/16-21, 18 October 2016.

540 R (on application of A and B) v. Secretary of State for Health [2017] UKSC 41

541 R (on application of A and B) v. Secretary of State for Health [2017] UKSC 41, para 35

542 HC Deb, 29 June 2017, Vol. 626, Col. 791 (Mr Philip Hammond)

543 Letter from Rt Hon Justine Greening MP, Minister for Women & Equalities, 29 June 2017

544 Minister for Women and Equalities, written statement (23 October 2017) HCWS192

545 *Ibid.*

546 The Guardian, Woman who bought abortion pills for daughter can challenge prosecution, 26 January 2017

Right to education

ICESCR	Article 13
CRC	Article 28
ECHR	Protocol 1, Article 2
CFREU	Article 14
CRPD	Article 24

Academic selection

In 2016 the UN CRC Committee recommended that the State Party:

*abolish the practice of unregulated admission tests to post-primary education in NI.*⁵⁴⁷

In commenting on this concluding observation the then Minister of Education Peter Weir MLA stated:

*I am committed to respecting and progressing the rights of children and young people and it is important that a collective approach across Executive Departments is taken when considering UN CRC Committee recommendations. On the issue of selection, I have made it clear that I support the right of schools to select on the basis of academic ability. I will be discussing this issue with a wide range of stakeholders and will want to consider very carefully how any changes might be taken forward.*⁵⁴⁸

In September 2016 the then Minister of Education issued revised guidance entitled 'The Procedure for Transfer from Primary to Post-primary Education'. The guidance endorses the use of academic selection.⁵⁴⁹ In correspondence to the Commission, the then Minister indicated his support for '*the right of schools to select on the basis of academic ability*'. The guidance sets out how primary schools may help children prepare for admissions tests.

In October 2016 the then Minister of Education announced the appointment of Professor Peter Tymms, from the school of education at Durham University to work the Association of Quality Education and the Post-Primary Transfer Consortium to develop a common post-primary assessment for the purposes of academic selection.⁵⁵⁰ A discussion paper was published in March 2017, it did not consider the human rights implications of academic selection.⁵⁵¹

On 21 February 2017 key findings from a Department of Education policy group established to advise the Minister of Education on promoting inclusion and prosperity for all young people were published. The policy group highlighted that the education system was, '*reflective of a divided society in terms of religious background, social class, ethnicity and disability... This social division is evident in the continuing existence of a selective and non-selective post-primary system*'.⁵⁵² The group considered that academic selection had 'negative influences' upon inclusion in schools. However the group did not recommend the abolition of academic selection.

547 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 72(a).

548 AQW 1175/16-21 14/06/2016.

549 Department of Education, 'The Procedure for Transfer From Primary to Post-Primary Education', Circular Number 2016/15, 7th September 2016.

550 BBC News NI, 'Department seeks single transfer test by 2017', 31 October 2016.

551 Professor Peter Tymms, Professor David Galloway and Paul Latham, Towards a Common Assessment for Academic Selection - Discussion Paper, DE, 2 March 2017

552 BBC News NI, Academic selection: Policy group criticises 'negative impact', 21 February 2017

Recommendation

Noting the lack of political consensus the Commission raises concern over the continued existence of the two tier system of education in NI. It highlights that as a result of continued unregulated post-primary academic selection and the prevalence of privately funded tutoring, children from poor socio-economic backgrounds are disadvantaged in current academic selection processes. The Commission continues to call for the Department of Education to introduce a non-selective system of post-primary school admission in order to abolish the two tier system of education in NI.



Bullying in schools

The Addressing Bullying in Schools (NI) Act 2016 introduced a statutory definition of bullying and introduced duties around preventing bullying and recording bullying incidents for all grant-aided schools.⁵⁵³

The Commission, in its evidence to the Education Committee during the scrutiny of the then Bill, welcomed the progressive principles of the legislation and noted that taking measures to address bullying is in line with a number of human rights instruments including the ECHR, UNCRC and ICESCR. The Commission also highlighted a range of instruments that require specific action to address violence directed towards particular groups such as persons with disabilities,⁵⁵⁴ women and girls,⁵⁵⁵ persons belonging to national minorities,⁵⁵⁶ persons of different racial groups⁵⁵⁷ and people of different sexual orientations and gender identities.⁵⁵⁸

The Commission welcomed the categories listed under the duty to record the motivation of bullying and to address the majority of grounds for discrimination and vulnerable groups but also advised that bullying of young mothers constitutes a barrier to the full enjoyment of the right to education for women and girls.⁵⁵⁹ The legislation was subsequently amended to include *'persons with dependents and persons without'*. However, no changes were made to reflect the Commission's concerns that bullying also presents a significant barrier for linguistic minorities and children experiencing socio-economic deprivation. The legislation does enable the Department in Section 3(4) to amend the included grounds by Order subject to negative resolution. This provision could be engaged should evidence suggest that those groups identified by the Commission are being significantly targeted.

The Commission also advised that the State has a positive duty to secure the child's right to education regardless of whether they are in a private or public setting.⁵⁶⁰ Therefore children should have statutory protection from bullying regardless of where the educational provision takes place. Since the duties to prevent bullying and record bullying incidents in the legislation apply only to *'grant*

553 Addressing Bullying in Schools Act (NI) 2016. Available at <http://www.legislation.gov.uk/nia/2016/25>

554 Convention on the Rights of Persons with Disabilities, Article 24 requires the State to ensure an inclusive education system at all levels directed to *'The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity'*.

555 Convention on the Elimination of All Forms of Discrimination against Women, Article 10 requires the State to take all appropriate measures to eliminate discrimination against women in the field of education.

556 Framework Convention for the Protection of National Minorities, Article 12 requires Parties to the Convention to undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

557 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 requires the State to prohibit and eliminate racial discrimination to guarantee the right to education. In its 2016 Concluding Observations on the UK the CERD Committee noted concern at *'continued reports of racist bullying and harassment'* and recommended that the State party *'strengthen efforts to eliminate' it*. This should include data collection, developing concrete strategies, training staff and ensuring the curriculum contains accurate accounts of *'the history of the British Empire and colonialism'*. See http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf.

558 The International Panel of Experts on International Human Rights Law and on Sexual Orientation and Gender Identity, The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, March 2007. The Principles provide that States shall *'Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment.'*

559 See Strategic objective B.1 (Ensure Equal Access to Education) Action 80g, <http://www.un.org/womenwatch/daw/beijing/platform/educa.htm>

560 Kjeldsen, Busk Madsen and Pedersen v. Denmark, Application Nos. 5095/71, 5920/72, 5926/72, Judgement of 7 December 1976, para 50.

aided schools' the Commission remains concerned about how bullying will be addressed in respect of the 14 independent schools in NI.

The provisions of the Act have not yet been commenced. A steering group has been formed to oversee the development of supporting guidance and training materials. It is anticipated that the Bill will commence in 2018/19.

In 2017, the Department for Education published a report that aimed to identify the issues affecting young LGBT people in post-primary education. As part of this research, LGBT people were asked about their experiences of bullying in post-primary education. It was found that 48 per cent of respondents had experienced bullying because of their sexual orientation or gender identity.⁵⁶¹ The main forms of bullying experienced by LGBT young people included: name-calling, lies or false rumours, being isolated by other pupils, or hit/kicked/pushed/shoved around.⁵⁶² Of the respondents 38.8 per cent reported bullying to a member of staff.⁵⁶³ Responses from schools generally were not perceived to be very satisfactory, with 54.1 per cent of respondents feeling 'very unsupported' or 'unsupported' by the response.⁵⁶⁴

Recommendation

The Commission welcomes the Addressing Bullying in Schools (NI) Act 2016. It highlights that no alterations to the legislation were made to address the Commission's concerns that bullying also presents a significant barrier for linguistic minorities and children experiencing socio-economic deprivation. The Commission recommends that the Department monitors levels of bullying in schools across all vulnerable groups and review protected categories within the 2016 Act accordingly. The Commission further recommends that the Department of Education extend the new legislation making it applicable to independent schools in NI.



Educational needs of Traveller children

In its 2016 concluding observations the UN CRC Committee raised concerns that:

- (a) *Substantial inequalities persist in educational attainment, particularly for boys, children living in poverty, Roma, gypsy and traveller children, children with disabilities, children in care and newcomer children;*
- (b) *Among children subject to permanent or temporary school exclusions, there is a disproportionate number of boys, Roma, gypsy and traveller children, children of Caribbean descent, children living in poverty and children with disabilities.*⁵⁶⁵

In November 2013 the Minister of Education for NI published the Traveller Child in Education Action Framework, at the launch of the Framework the Minister stated:

This is very much a Framework for action. It is the start of the journey of inclusion, to ensure that Traveller children have the opportunity to benefit from the educational opportunities on

561 Department of Education, 'Department of Education – Post- Primary School Experiences of 16- 21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)', 14 September 2017 p.28

562 Department of Education, 'Department of Education – Post- Primary School Experiences of 16- 21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)', 14 September 2017 p.30

563 Department of Education, 'Department of Education – Post- Primary School Experiences of 16- 21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)', 14 September 2017 p.31

564 Department of Education, 'Department of Education – Post- Primary School Experiences of 16- 21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)', 14 September 2017 p.33

565 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016.

offer.⁵⁶⁶ [the Minister further stated] An independent Monitoring and Evaluation Group will be established within the next few months to monitor the Action Framework. That group will report progress directly to me.⁵⁶⁷

In January 2016 in responding to a written question the then Minister stated that '*[t]he Traveller Education Monitoring Group has not yet been established*'.⁵⁶⁸ In 2016 the then Minister of Education indicated to the Commission that the Department monitors implementation of the Framework through its oversight of the regional Traveller Education Support Service.

In April 2017 the Traveller Education Support Services was amalgamated with the Inclusion and Diversity Service to form the 'Intercultural Education Service', which provides support and assistance to Traveller families in accordance with the Action Framework. In correspondence to the Commission the Permanent Secretary indicated that the Department monitors the support provided to Traveller children through regular reporting and updates from the Education Authority. However the Traveller Education Monitoring Group is yet to be established.

Recommendation

The Commission highlights the failure of the Department of Education to establish a Traveller Education Monitoring Group for the purposes of monitoring the Traveller Child in Education Action Framework. The Commission notes that this is a significant obstacle to assessing the effectiveness of the Action Framework and consequentially, achieving the aims of the Action Framework. The Commission recommends the Department of Education expedite the establishment of the Monitoring Group and regularly publishes data on the educational outcomes of Traveller children.



Shared education

In 2016 the UN CRC recommended that the State party,

carefully monitor the provision of shared education, with the participation of children, in order to ensure that it facilitates social integration.⁵⁶⁹

In addition the UN ICESCR Committee recommended:

that the State party take all necessary measures to reduce the attainment gaps, particularly among children belonging to low-income families, including by reconsidering the austerity programmes adopted and effectively implementing measures aimed at reducing de facto discrimination and segregation of students based on their religion, national or social origin, as well as their economic background.⁵⁷⁰

The Shared Education Act (NI) 2016 received royal assent on 9 May 2016.

This Act places an obligation on the Department of Education NI to promote: '*shared education*', which is defined in the Act as '*the education together of—(a) those of different religious belief, including reasonable numbers of both Protestant and Roman Catholic children or young persons; and (b) those who are experiencing socio-economic deprivation and those who are not, which is secured by the working together and co-operation of two or more relevant providers.*'

⁵⁶⁶ NI Executive Press Release, 'Traveller children and young people should be encouraged to value education and supported to reach their full potential', Wednesday 13 November 2013.

⁵⁶⁷ *Ibid.*

⁵⁶⁸ AQW 53269/11-16.

⁵⁶⁹ UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 73.

⁵⁷⁰ *Ibid.*, para 57.

The Act places an obligation on the Department to report on the impact of shared education on good relations between participating children and young people and on their attitudes towards persons from backgrounds other than their own. The Commission welcomed the Act and the reporting obligations on the Department. The delivery of obligations contained within the Act will go some way towards ending segregation in schools. In September 2016 the Minister of Education announced:

*Shared Education is now well established across NI with approximately 134 partnerships involving 314 schools who have successfully applied for funding and are now actively engaged in the Programme. Opening another call for funding will help to further embed the good practice and learning which is already established to deliver improved outcomes for our children, young people and wider society.*⁵⁷¹

In January 2017 the then Minister for Education updated the NI Assembly on the provision of funding for shared and integrated education, the Minister informed the NI Assembly:

*The Fresh Start Agreement includes provision of up to £500 million over ten years (2016-2026) of new capital funding to support shared and integrated education. To date 23 projects have been selected. The majority of the projects are in the early stages of planning with procurement currently ongoing to appoint integrated consultant teams. A significant number of the projects will also require land acquisition which can involve lengthy lead-in times.*⁵⁷²

On 6 February 2017 it was reported that there was a £47 million underspend in the funds allocated under the Fresh Start Agreement to promote shared and integrated education in NI for the financial year 2016/17. In the absence of a Minister, the Commission wrote to the Permanent Secretary of the Department of Education voicing concerns at the apparent underspend. In correspondence to the Commission dated 19 September 2017 the Permanent Secretary confirmed that feasibility studies had been commenced for the selected 23 projects. In 2016/17 £2.7 million of funds allocated under the Fresh Start Agreement had been expended and an indicative budget allocation of £7 million for 2017/18.

Recommendation

The Commission welcomes the Shared Education Act (NI) 2016 and the reporting obligations on the Department. The Commission recommends the Department of Education NI carefully monitors the provision and promotion of shared education in order to ensure that it facilitates social integration.



Integrated education

In May 2016 the UN CRC recommended that the State Party including the NI Executive 'actively promote a fully integrated education system'.⁵⁷³ In its 2008 concluding observations the UN CRC Committee expressed concern regarding 'the problem of segregation of education' in NI and recommended that measures be taken to address this.⁵⁷⁴ The UN CRC Committee had previously noted the low percentage of schools that were integrated and recommended the NI Executive:

571 NI Executive, 'Further opportunity to access £25million fund for Shared Education', 19 September 2016.

572 AQW 9440/16-21 Ms Paula Bradshaw Alliance Party, 24.01.17

573 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 72(e).

574 UN Committee on the Rights of the Child, Concluding observations on the third and fourth Period Reports of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, UN CRC, October 2008, para 66.

*increase the budget for and take appropriate measures and incentives to facilitate the establishment of additional integrated schools in Northern Ireland to meet the demand of a significant number of parents.*⁵⁷⁵

In 2015/16, 6.9 per cent of pupils in NI attended an integrated school with the most common approach to achieving integrated status now being the transformation of existing schools.⁵⁷⁶ There have been no new integrated schools established since 2008. In examining the relatively slow growth of integrated schooling despite the statutory obligation on the Department of Education NI to 'encourage and facilitate the development of integrated education'⁵⁷⁷ the impact of the Department of Education NI planning policy has been identified as potentially creating barriers to the growth of integrated education.⁵⁷⁸

An independent review of the planning, growth and development of integrated education was conducted in 2016. The then Minister for Education tasked the review team to 'develop short and medium term proposals to develop a more integrated education system based on current legislation, enhance the network of viable schools and are cost effective and value for money'. The Review was published on 2 March 2017.

The Review Team made 39 recommendations including, recommending that:

That the Education Authority should pro-actively plan, set objectives for, and monitor progress towards, increasing the places available in the integrated sector.

*That Department of Education brings forward legislation to place a duty on Department of Education and the Education Authority and a power on all other Arms Length Bodies to encourage, facilitate and promote integrated education.*⁵⁷⁹

In correspondence to the Commission the Permanent Secretary has confirmed that Departmental officials are attempting to progress recommendations of an operational nature, including the development of guidance on the process of transformation to an integrated school.

Recommendation

The Commission is concerned that no new integrated schools have been established in NI since 2008. It advises the NI Executive to continue to take appropriate measures to facilitate the establishment of additional integrated schools in NI to meet the demand of a significant number of parents. The Commission welcomes the report of the Independent Review Panel relating to the current arrangements for the planning and development of integrated education and recommends that the Department of Education set out its plans to address the Panel's recommendations.



Special educational needs

The NI Executive is required by the UN CRPD, Article 24, to ensure that children with intellectual impairments have access to an inclusive education system.⁵⁸⁰

575 UN Committee on the Rights of the Child, Thirty-first session Consideration of Reports submitted by State Parties under Article 44 of the Convention, Concluding observations: United Kingdom of Great Britain and Northern Ireland CRC/C/15/Add.188, UN CRC, 9 October 2002, para 48.

576 Department of Education Website, 'Integrated Schools', available at <https://www.education-ni.gov.uk/articles/integrated-schools>.

577 Education Reform Order (NI) 1989, art. 64.

578 Drumragh Integrated College's Application [2014] NIQB 69.

579 The Review of Integrated Education, Integrating Education in Northern Ireland: Celebrating Inclusiveness and Fostering Innovation in our Schools, Department of Education, November 2016, Recommendation 2

580 In addition see, UN Committee on the Rights of the Child, General Comment No. 9 (2006) The rights of children with disabilities CRC/C/GC/9/Corr.1, UN CRC, 13 November 2007, para 66.

In 2016 the UN CRC Committee noted:

Many children with disabilities are still placed in special schools or special units in mainstream schools and many school buildings and facilities are not made fully accessible to children with disabilities; With reference to its general comment No. 9 (2006) on the rights of children with disabilities, the UN CRC Committee recommends that the State party adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities and: take comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions and classes and make mainstream schools fully accessible to children with disabilities.⁵⁸¹

In 2017 the UNCRPD Committee recommended that the UK Government and NI Executive,

Develop a comprehensive and coordinated legislative and policy framework for inclusive education, and a timeframe to ensure that mainstream schools foster real inclusion of children with disabilities in the school environment and teachers and all other professionals and persons in contact with children understand the concept of inclusion and are able to enhance inclusive education.⁵⁸²

The Special Educational Needs and Disability (NI) Act 2016 received royal assent in March 2016. In 2016, the Department of Education has consulted on Regulations required to implement the new legislation. The Commission highlighted the recommendations of the UN CRC Committee relating to special educational needs and continues to advise on the need to ensure no retrogression in the enjoyment of the right to education for children with disabilities.⁵⁸³ The Commission also highlighted that provision for the piloting of appeal rights for children under 16 should be introduced as soon as possible, in line with the UN CRC Committee's previous concluding observation.⁵⁸⁴ Throughout 2017 officials have continued to develop the Code of Conduct and Regulations with a view to the implementation of the Act in 2019.

In September 2017 the Permanent Secretary in the Department of Education raised concerns regarding funding for the Department highlighting a shortfall of £105m in 2017/18.⁵⁸⁵ Reduced funding may lead to a failure to put in place reasonable adjustments to ensure the inclusion of children with disabilities in schools.

Recommendation

The Commission welcomes the Special Educational Needs and Disability (NI) Act 2016. The Commission recommends that the Department of Education ensures Regulations to implement the provision for the piloting of appeal rights for children under 16 should be introduced as soon as possible, in line with the UN CRC Committee's previous concluding observation.

581 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 56(b).

582 Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, 53(a)

583 NIHRC, Response to the consultation on the SEND Bill (2015), para 27.

584 UN Committee on the Rights of the Child, Concluding observations on the third and fourth Period Reports of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, UN CRC, October 2008, paras 66-67.

585 BBC News NI, Department of Education faces £105m cash pressures, 25 September 2017

Right to participate in the cultural life of the community

ICCPR	Article 27
CRC	Article 31
ICESCR	Article 15
FCNM	Article 5
CEDAW	Article 13 (c)
CRPD	Article 30
CFREU	Article 13 Article 22
European Charter for Regional or Minority Languages	

The Irish language and Ulster Scots

The Commission has consistently highlighted the need to ensure adequate legal protection for the Irish language and for Ulster Scots.

The Advisory Committee for the FCNM published their fourth advisory opinion in February 2017. The Advisory Committee noted that there had been little progress on an Irish language bill or the strategy for the development of the language. It commented that it regards *'appropriate legislation by the Northern Ireland Assembly as a necessity to protect and promote the Irish language'*.⁵⁸⁶ As a recommendation for immediate action, the Advisory Committee called for the authorities to *'[a]dopt appropriate legislation protecting and promoting the Irish language and take measures to ensure progress on language rights of persons belonging to the Irish minority'* and for the UK Government to *'engage in a dialogue to create the political consensus needed for adopting legislation'*.⁵⁸⁷

An Irish language organisation, Conradh na Gaeilge, initiated judicial review proceedings against the NI Executive over its failure to adopt or implement an Irish language plan. In February 2017, the NI High Court made a declaration that *'the Executive Committee had failed in its statutory duty, under section 28D(1) of the Northern Ireland Act 1998, to adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language'*.⁵⁸⁸

It was reported in December 2016 that the Department for Communities had withdrawn funding for an Irish language bursary scheme.⁵⁸⁹ However in January 2017, the Minister for Communities announced that he had identified the necessary funding to advance the scheme.⁵⁹⁰ In June 2017, the Equality Commission NI announced that it will conduct an investigation into whether the Department has complied with its Equality Scheme commitments relating to screening and equality impact assessment in respect of funding decisions regarding the Community Halls Pilot Programme and the Líofoa Gaeltacht Bursary Scheme.⁵⁹¹

586 Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on the United Kingdom (ACFC/OP/IV(2016)005), 27 February 2017, para 150

587 *Ibid*, p. 49.

588 In the matter of an application by Conradh Na Gaeilge [2017] NIQB 27

589 BBC News NI, Irish gaeltacht scheme for young 'cut by £50,000' 23 December 2016

590 BBC News NI 'Irish language bursary funding 'found' says Paul Givan' 12 January 2017.

591 Equality Commission for Northern Ireland, Press Release: Equality Commission investigates funding decisions by Department for Communities, 16 June 2017

In May 2017, Belfast City Council voted to approve a public consultation on the draft policy on linguistic diversity which includes the option of a staff member dedicated to the promotion of the Irish Language.⁵⁹² On 22 September 2017, the Council's Strategic Policy and Resources Committee approved the hiring of two staff, one for the Irish language and a second to cover Ulster Scots and sign language.

The issue of an Irish language Act remains a focus of ongoing negotiations to re-establish the NI Assembly and Executive. In March 2017, Irish-language organisation Conradh na Gaeilge published a discussion document on the cost of an Irish language Act. It predicted a one-off cost of £9 million with an annual cost of £2 million.⁵⁹³ The total cost over the initial 5 years is predicted to be £19 million.⁵⁹⁴

Recommendation

The Commission recommends that the NI Executive commit to the implementation of the Irish language strategy and to support the introduction of legislation in order to protect and promote the Irish language in NI. The Commission recommends that the NI Executive further commit to the establishment of the Ulster Scots Academy and ensuring that necessary support is in place to guarantee the full implementation of the Ulster Scots Strategy in NI.

592 Belfast City Council, Meeting of Strategic Policy and Resources Committee (21 April 2017) Item 23

593 Conradh na Gaeilge, Irish Language Act: Discussion document, 15 March 2017, p9

594 *Ibid.*, p. 29.

Constitutional protections



A Bill of Rights for NI

As required by the Belfast (Good Friday) Agreement and the NI Act 1998, the Commission provided advice to the UK Government on a Bill of Rights for NI in 2008. On receipt of its advice the NI Office sought views from the public by way of a public consultation.⁵⁹⁵

In December 2010 the then Minister of State within the NI Office reported that there was *'considerable support from human rights and community groups for a wide-ranging Bill of Rights along the lines of that recommended by the NI Human Rights Commission'*.⁵⁹⁶

Since 2010 it has been consistently stated by Government Ministers that there has been a lack of political consensus around a Bill of Rights for NI.⁵⁹⁷ The Commission has repeatedly reported on the absence of any significant development to progress a Bill of Rights for NI.

In 2016 the Commission updated the UN CRC Committee on the lack of progress in relation to a Bill of Rights for NI. The Committee subsequently recommended that the State Party *'[e]xpeditiously the enactment of a Bill of Rights for Northern Ireland, agreed under the Good Friday Agreement'*.⁵⁹⁸

The Commission also updated the UN ICESCR Committee who noted *'that a bill of rights for Northern Ireland has not yet been adopted, as provided by the Belfast (Good Friday) Agreement'*. The Committee's concluding observation stated *'the Committee recalls its previous recommendation (see E/C.12/GBR/CO/5, para. 10) and urges the State party to take all necessary measures to expedite the adoption of a bill of rights for Northern Ireland'*.⁵⁹⁹

In February 2017 the UK Government, in its National Report for the Universal Periodic Review, noted that *'the UKG is willing to consider proposals for a NI specific Bill of Rights if sufficient consensus can be reached'*.⁶⁰⁰ A number of states made recommendations relating to a Bill of Rights for NI within the Review process, in particular Ireland recommended that the UK,

*Provide reassurance that any proposed British Bill of Rights would complement rather than replace the incorporation of the European Convention on Human Rights in Northern Ireland law and acknowledging this is a primary matter for the Northern Ireland Executive and Assembly — that a Bill of Rights for Northern Ireland to reflect the particular circumstances of Northern Ireland should be pursued to provide continuity, clarity and consensus on the legal framework for human rights there.*⁶⁰¹

Unfortunately this recommendation was not accepted by the UK.

The development of a Bill of Rights for NI has been considered as part of ongoing discussions to restore the NI Assembly.⁶⁰² Speaking at an event on the implications of leaving the European Union on constitutional protections in NI, the Chief Commissioner Les Allamby stated that the lack of a Bill of Rights for NI was,

595 NI Office, 'Consultation Paper: A Bill of Rights for NI: Next Steps', November 2009.

596 Minister of State Hugo Swire MP, Written Ministerial Statement to Parliament, 16 December 2010.

597 Westminster Hall Tuesday 16 July 2013 [Mr Christopher Chope in the Chair] Column 190WH Bill of Rights (NI).

598 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 9.

599 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland E/C.12/GBR/CO/6, UN Economic and Social Council, 14 July 2016, para 10.

600 UK Government, Universal Periodic Review, United Kingdom, British Overseas Territories and Crown Dependencies National Report, February 2017, para 13

601 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/36/9/Add.1, 7 September 2017

602 The Telegraph, Powersharing talks in Northern Ireland could continue into next week, 3 July 2017

*the missing piece in the jigsaw of the implementation of the agreement.*⁶⁰³

Recommendation

The Commission recommends that the NI Office meet its commitment to implement a Bill of Rights for NI and work towards developing a consensus among the political parties on a Bill of Rights for NI.

A Charter of Rights for the Island of Ireland

The Commission and the Irish Human Rights Commission were mandated by the Belfast (Good Friday) Agreement 1998 to consider through a joint committee:

*the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.*⁶⁰⁴

A Charter should recognise the commonality of rights protected in both jurisdictions and that an equivalence of human rights protections, if achieved, could assist in underpinning peace in both jurisdictions. This task was completed in June 2011 when the Commissions together presented advice to the Governments of the UK and Ireland, the Speaker of the NI Assembly and the Ceann Comhairle of Dáil Éireann.⁶⁰⁵ The Speaker and Ceann Comhairle both agreed to forward the advice to political parties in their respective legislative bodies for further consideration. Since then no further communication has been received on this matter.

In June 2015 both Commissions made a presentation to the Joint Oireachtas Committee on the Implementation of the Good Friday/Belfast Agreement.⁶⁰⁶ In its presentation to the Committee, the Commissions referred to the establishment of the North-South Parliamentary Forum and the potential for the Charter to form part of its work plan as part of an active consideration on the establishment of a Charter of Rights for the island of Ireland. The work of the Forum in 2017 has been hampered due to the failure to re-establish the NI Assembly.

The issue of a Charter of Rights for the Island of Ireland has arisen in the context of discussions regarding the implications of Brexit for the island of Ireland.⁶⁰⁷ A Seanad Special Select Committee on Withdrawal of the UK from the European Union published the report 'Brexit: Implications and Potential Solutions'. Within the Report the Committee state:

*An all-island approach to human rights should be explored, with possible solutions including a reimagined role for the Joint Committee on Human Rights and a Charter of Rights for the island of Ireland. Additionally, the Bill of Rights project in NI should also be revisited.*⁶⁰⁸

Recommendation

The Commission, in accordance with advice provided by the Joint Committee, recommends that political parties in both NI and Ireland adopt a Charter of Rights for the Island of Ireland. The Commission calls on the UK and Irish governments to endorse a proposed Charter of Rights for the Island of Ireland as co-guarantors of the peace process.

603 Irish Independent, UK could breach Good Friday Agreement with U-turn over human rights, says Flanagan, February 14 2017

604 The Joint Committee of the NIHRC and the Irish Human Rights Commission, 'The advice of the joint committee on a charter of rights for the island of Ireland', June 2011.

605 See <http://www.nihrc.org/publication/category/Charter-of-Rights>

606 Joint Statement, IHREC and NIHRC, 25 June 2015. Available at: <http://www.nihrc.org/news/detail/joint-statement-of-irish-human-rights-and-equality-commission-and-northern>

607 Professor Colin Harvey, 'Brexit, Northern Ireland and Human Rights', 5 May 2017

608 Seanad Special Select Committee Withdrawal of the United Kingdom from the European Union, Brexit: Implications and Potential Solutions, June 2017. 32/SSSCWUKEU/01 p. 35

A UK Bill of Rights

In October 2014 the Conservative Party issued a paper proposing the reform of human rights protections in the UK, including the repeal of the Human Rights Act 1998 and its replacement with a 'British Bill of Rights and Responsibilities'.⁶⁰⁹ This aim was reflected in the Conservative Party manifesto and in the Queen's Speech of May 2015. However, proposals were not published during 2015. The issue was again included within the 2016 Queen's speech.⁶¹⁰

Speaking following a visit to the UK, Nils Muižnieks, the Council of Europe Commissioner for Human Rights stated:

*The repeatedly delayed launch of the consultation process for repeal of the Human Rights Act has created much speculation and an atmosphere of anxiety and concern in civil society and in some parts of the devolved administrations. There is a real fear of regression in terms of rights' protection in the United Kingdom.*⁶¹¹

In 2016 the UN ICESCR Committee recommended:

*that the State party undertake a broad public consultation on its plan to repeal the Human Rights Act 1998 as well as on the proposal for a new bill of rights. It also recommends that the State party take all necessary measures to ensure that any new legislation in this regard is aimed at enhancing the status of human rights, including economic, social and cultural rights, in the domestic legal order and that it provide effective protection of those rights across all jurisdictions of the State party.*⁶¹²

On 24 January 2017 David Nuttall MP asked a Parliamentary Question namely,

our manifesto commitment to replace the Human Rights Act remains on the Government's agenda, but does my right hon. and learned Friend agree that leaving the European Union and freeing the United Kingdom from the bonds of the charter of fundamental rights must be their top priority?

The then Minister of State for the Ministry of Justice replied,

*I do agree with that. I think it important for us to sort out the EU side of matters, and the exit from the EU, before we return to that subject.*⁶¹³

In year the Commission raised the issue of reform to the Human Rights Act 1998 during the Universal Periodic Review process. In its report to the UN Human Rights Council as part of process the UK Government stated that it:

*remains committed to reforming the domestic human rights framework. We will consider further the Bill of Rights once we know the arrangements for the EU exit and consult fully on our proposals in the full knowledge of the new constitutional landscape that will create.*⁶¹⁴

The UK Government noted a number of recommendations from UN member states relating to the preservation of the Human Rights Act 1998.⁶¹⁵

609 Conservative Party, Protecting Human Rights in the UK: The Conservatives' Proposals for Changing Britain's Human Rights Laws, 2014.

610 Cabinet Office, 'Queen's Speech 2016', 18 May 2016.

611 Council of Europe, 'UK: Forthcoming reforms to human rights law must not weaken protection', 22 January 2016. http://www.coe.int/tm/web/commissioner/view/-/asset_publisher/ugj3i6qSEkhZ/content/uk-forthcoming-reforms-to-human-rights-law-must-not-weaken-protection?_101_INSTANCE_ugj3i6qSEkhZ_languageId=en_GB

612 UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights on the fourth to fifth Periodic Reports of the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/5, UN Economic and Social Council, June 2009.

613 Hansard, Human Rights Act 1998, Oral Answers to Questions — Justice — in the House of Commons at 12:00 am on 24th January 2017.

614 Ministry of Justice, Universal Periodic Review, United Kingdom, British Overseas Territories and Crown Dependencies, National Report, UK Government, February 2017, p. 6

615 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/36/9/Add.1, 7 September 2017

The 2017 Queen's Speech did not include reforms to the human rights framework.⁶¹⁶

Recommendation

The Commission is of the view that establishing a Bill of Rights, or other similar statute, for the UK or any of its constituent parts, which seeks to repeal the Human Rights Act 1998 in part or whole risks being regressive. The Commission continues to recommend that the UK Government recognise the Human Rights Act 1998 as a constitutional statute and ensure any reform builds upon the Act as part of further progress in the promotion and protection of human rights.



Business and human rights

National Action Plan

In 2013 the UK was the first state to produce a business and human rights National Action Plan, 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights',⁶¹⁷ which has been welcomed by the UN.⁶¹⁸ In 2016 the UK was the first state to produce an update on its inaugural Plan in 'Good Business, Implementing the UN Guiding Principles on Business and Human Rights, Updated May 2016' (UK Update).⁶¹⁹

Although the UK Update notes 'Government commitments' it does not provide concrete steps with time-frames or budgets attached to specific Government Departments or public authorities to take forward a business and human rights agenda. The UK Update focuses largely on pillar one of the UN Guiding Principles, The State Duty to Protect Human Rights, and is not designed as a practical guide for business. The case studies provided in the UK Update are largely focused on UK Government interactions and projects. The consultation process in developing the UK Update did not extend to NI.

In June 2017 the Commission made an oral intervention at the UN Human Rights Council on the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, highlighting concerns regarding the process of updating the Plan.⁶²⁰ The Chief Commissioner stated,

*SMEs' limited capacity to engage reinforces the importance of supporting their participation. We highlight that the process of updating the UK's National Action Plan provided limited opportunities for stakeholder consultation, and no consultation in the devolved jurisdictions. This had a direct impact on SME involvement.*⁶²¹

Northern Ireland Business and Human Rights Forum

The NI Business and Human Rights Forum was established in 2015. It has a multi-stakeholder membership which allows Government, business, and civil society to engage on business and human rights. The aim of the forum is to help answer the question of how human rights are relevant to business, and to allow the sharing of information and good practice amongst businesses.

616 Cabinet Office, Queen's Speech 2017, 21 June 2017

617 HM Government, Good Business, Implementing the UN Guiding Principles on Business and Human Rights, September 2013

618 UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI, CRC/C/GBR/CO/5, UN CRC, 12 July 2016, para 11

619 HM Government, Good Business, Implementing the UN Guiding Principles on Business and Human Rights, Updated May 2016

620 Human Rights Council, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/35/32, 24/04/2017

621 Oral Statement submitted by the Northern Ireland Human Rights Commission (A Status NHRI), 35th Session of UN Human Rights Council Agenda item 5: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises., June 2017

The forum has developed and adopted a human rights policy statement, which those attending can also adopt themselves. The forum has further developed a Guide to Business and Human Rights. The current Chair of the Forum is Glenn Bradley, Ethical Trade Manager of Hardscape, while the Vice-Chair is Kerry Kelly, Head of Compliance for Staffline Ireland.

At its September 2017 meeting the forum agreed to begin work on drafting a NI action plan on business and human rights.

Public procurement

The UN Guiding Principles on Business and Human Rights provide that ‘States should promote respect for human rights by business enterprises with which they conduct commercial transactions’.⁶²² The Principles further provide that:

*States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law.*⁶²³

In 2013 the Commission produced a report, ‘Public Procurement and Human Rights in Northern Ireland’,⁶²⁴ to advise on the applicable human rights standards in the context of awarding Government contracts. In 2017 the Central Procurement Directorate (within the Department of Finance) is undertaking a project to embed human rights within the public procurement process and has piloted a human rights based approach to procurement. In addition the Department has developed a draft Practice Guidance Note on human rights in public procurement.

Recommendation

The Commission recommends that measures giving effect to the UN Guiding Principles on business and human rights should provide for the effective participation of all relevant stakeholders in NI. The Commission further recommends that the NI Executive consider adopting a National Action Plan on business and human rights specific to NI.

National Human Rights Institution

Recent amendments to the NI Act 1998 provide that the functions of the Secretary of State for NI relating to the Commission may be transferred to the competency of the NI Assembly through the laying of an Order in Council before Parliament.⁶²⁵ No such Order has been laid in 2017.

Prior to the laying of such an Order the Secretary of State must provide a report to the Houses of Parliament relating to the potential implications of a transfer on the effectiveness and independence of the Commission.⁶²⁶ The Commission remains of the view that any transfer of the responsibilities of the Secretary of State should be to the NI Assembly, in line with the Belgrade Principles.

In 2009/2010, the Commission’s cash budget was £1,702,000. The Commission’s budget for 2017/18 is £1,124,000 and this is to decrease by £25,000 each year until 2019-20, when the budget is

622 UN OHCHR, Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011, para 6

623 *Ibid.*

624 NIHRC, Public Procurement and Human Rights in Northern Ireland, November 2013

625 NI (Miscellaneous Provisions) Act 2014.

626 NIHRC, ‘The 2013 Annual Statement: Human Rights in NI’, December 2013, p. 50.

planned to be £1,075,000. The Commission raised concerns regarding its funding with the UN Human Rights Committee.⁶²⁷ The Committee recommended that:

The State party should provide the Northern Ireland Human Rights Commission with adequate funding to enable it to discharge its mandate effectively and independently, in full compliance with the Paris Principles (General Assembly resolution 48/134, annex).⁶²⁸

The Commission's accreditation as an A status National Human Rights Institution was subject to its five year review by the Global Alliance of National Human Rights Institutions in May 2016 as required by the UN and it was successfully re-awarded A status.⁶²⁹ It was noted that the Commission had experienced a significant cut in its budget since 2009 and that this will continue until 2019. The Commission was encouraged to advocate for an appropriate level of funding to effectively carry out its mandate and to advocate for amendments to its enabling law to allow it to receive donor funding without prior government approval.

In February 2017, the Attorney General for NI referred two devolution issues to the UK Supreme Court in respect of the Commission's legal powers. The Attorney General's reference, under paragraph 33 of Schedule 10 of the NI Act 1998, questions whether the Commission can institute human rights proceedings where there is no unlawful act and whether the Commission is empowered to seek a Declaration of incompatibility under section 4 of the Human Rights Act 1998. The Department of Justice is also a party to these proceedings and invited the Court to answer these issues in the negative. These issues were heard by the Supreme Court in October 2017, alongside the Commission's ongoing challenge to termination of pregnancy legislation in NI. Judgement is awaited.

Recommendation

The Commission supports the recommendation of the Global Alliance of National Human Rights Institutions that the Commission continues to advocate for the NI Office to provide an appropriate level of funding for the institution so that it can continue to carry out its mandate effectively in accordance with the UN Paris Principles.



UK membership of the European Union

A referendum on whether the UK should leave or remain in the European Union took place on Thursday 23 June 2016. The overall vote was to leave although NI voted to remain.

In October 2016 the Commission made a submission to an inquiry by the Joint Committee of Human Rights on the human rights implications of European Union withdrawal. In its submission the Commission highlighted the potential implication of withdrawal from the European Union on freedom of movement for persons living close to the border with Ireland.⁶³⁰

In October 2016 two applications for judicial review arguing that the authorisation of the NI Assembly was required before the process of exiting the European Union could commence were rejected by the NI High Court.⁶³¹ An appeal was made to the NI Court of Appeal, who subsequently made a reference to the Supreme Court. The Attorney General for NI also referred a number of matters to the Supreme Court. The Supreme Court considered the references along with an appeal by the Secretary of State for Exiting the European Union from a decision of the Divisional Court of England and Wales that the

627 NIHRC, 'Submissions to the UN Human Rights Committee on the UK's Seventh Periodic Report on compliance with the ICCPR', May 2015, para 2.6.

628 UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, UN HRC, July 2015, para 7.

629 Global Alliance of National Human Rights Institutions, Report and Recommendations of the Session of the Sub-Committee on Accreditation, 9-13 MAY 2016, pp. 46-47.

630 BBC News, 'Parliament 'should scrutinise' NI EU exit', 6 October 2016.

631 McCord's (Raymond) Application [2016] NIQB 85.

UK Government required Parliament's authority before initiating the process of leaving the European Union.⁶³² The Supreme Court held that an Act of Parliament was required to authorise Ministers to give Notice of the decision of the UK to withdraw from the European Union. However the court unanimously concluded that there was no obligation to obtain the authorisation of the NI Assembly.⁶³³

The European Union (Notification of Withdrawal) Act 2017 received royal assent on 16 March 2017. On 29 March 2017 the UK formally invoked Article 50 (2) initiating the two year countdown before European Union Treaties shall cease to apply to the UK.⁶³⁴

The Irish Government in its Approach to the UK's withdrawal from the European Union stated that,

*A range of significant rights and equality protections are, in practice, given effect through EU regulations and directives, such as in the area of employment law and equality rights, as well as being enshrined in the EU Charter of Fundamental Rights. Consequently, the departure of the UK from the EU will have a significant impact on the human rights landscape in NI. A future divergence of rights, North and South, as a consequence of Brexit, is a key concern, as is the loss of the EU as a driver for the equivalence of rights.*⁶³⁵

In February 2017 as part of the All Island Civic Dialogue on Brexit the Chief Commissioner joined a panel discussion on the implications of Brexit for Human Rights under the Belfast (Good Friday) Agreement alongside the then Irish Minister for Foreign Affairs and Trade, Charles Flanagan T.D. Speaking at the event the Chief Commissioner stated,

*The Commission recommends that the UK government ensures there is no regression in the protection of human rights as a consequence of exiting the European Union. It calls upon the NI Executive and NI Assembly to build a political consensus and work to mitigate the risk of there being any detrimental affects on the current rights and benefits afforded to those residing in NI.*⁶³⁶

On 16 March 2017 the European Union (Notification of Withdrawal) Act 2017 received royal assent. During the passage of the Bill a proposed amendment to require the Government to take into consideration the Good Friday Agreement during Brexit negotiations was defeated by 327 votes to 288.

On the 30 March 2017 the UK Government published 'The Great Repeal Bill White Paper' which states:

*The UK's withdrawal from the EU will not change the UK's participation in the ECHR and there are no plans to withdraw from the ECHR.*⁶³⁷

The White paper further states:

*the Charter will not be converted into UK law by the Great Repeal Bill.*⁶³⁸

The White paper notes:

*The Government's intention is that the removal of the Charter from UK law will not affect the substantive rights that individuals already benefit from in the UK.*⁶³⁹

632 R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant), [2017] UKSC 5, 24 January 2017

633 R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant), [2017] UKSC 5, 24 January 2017, para 150

634 UK Government, Prime Minister's Letter to European Council President Donald Tusk - Invoking Article 50, 29th March 2017

635 Irish Government, Ireland and the negotiations on the withdrawal of the UK from the European Union, May 2017

636 NIHR, The Implications of Brexit for Human Rights, 13 February 2017

637 UK Government, Legislating for the United Kingdom's withdrawal from the European Union, The Great Repeal Bill White Paper, 30th March 2017, para 2.22

638 UK Government, Legislating for the United Kingdom's withdrawal from the European Union, The Great Repeal Bill White Paper, 30th March 2017, para 2.23

639 UK Government, Legislating for the United Kingdom's withdrawal from the European Union, The Great Repeal Bill White Paper, 30th March 2017, para 2.25

The EU (Withdrawal) Bill was introduced to the House of Commons and given its First Reading on 13 July 2017. The Bill proposes that any rights, powers, liabilities, obligations, restrictions, remedies and procedures, recognised and available in domestic law by virtue of section 2(1) of the European Communities Act 1972, and enforced and followed, will be recognised and available in domestic law. This would include, for example, directly effective rights contained within EU treaties.⁶⁴⁰ However, the Bill will not provide any rights, powers, etc. if they already form part of domestic law. Moreover, there is a provision excluding directly effective rights which arise under an EU directive and are not recognised by the ECtHR or any court or tribunal in the UK.

In accordance with the White paper, the Bill does not make provision for the retention of the CRFEU: it is considered by the Government an exception to the incorporation of EU law into UK law, with the Bill stating the CRFEU is not part of domestic law on or after exit day. The Bill states this does not affect the retention of any fundamental rights or principles which exist irrespective of the CRFEU. The Government has emphasised that the CRFEU did not create new rights; rather it codified rights and principles already present in EU law.⁶⁴¹

The Commission, in conjunction with the Equality and Human Rights Commission, has produced a number of suggested amendments to the Bill and accompanying briefing highlighting the need to ensure the Bill will not diminish parliamentary scrutiny of any changes to the UK's equality and human rights legal framework and advocating for the retention of the Charter. These amendments will be considered as the EU (Withdrawal) Bill goes through its Committee stage.

In August 2017 the UNCRPD Committee issued concluding observations relating to the UK and raised a concern at,

*The lack of information on policies, programmes and measures that will be put in place by the State party to protect persons with disabilities from being negatively affected, on triggering article 50 of the Treaty on European Union.*⁶⁴²

The Committee recommended that the UK,

*Prevent any negative consequences for persons with disabilities by the decision of the triggering article 50 of the Treaty on European Union, in close consultation with organizations of persons with disabilities.*⁶⁴³

In September 2017 the Prime Minister Theresa May set out the Government's desire for continued cooperation with the European Union in a number of areas, including security, the Prime Minister stated,

*Our security co-operation is not just vital because our people face the same threats, but also because we share a deep, historic belief in the same values – the values of peace, democracy, human rights and the rule of law.*⁶⁴⁴

640 European Union (Withdrawal) Bill, 57/1, 13.07.2017

641 European Union (Withdrawal) Act 2017 : Explanatory Notes., 13 July 2017, Para 100

642 Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, para 6(e)

643 Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1, 29 August 2017, para 6(e)

644 Prime Minister's Office, PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017

Recommendation

The Commission recommends that the UK government ensures there is no regression in the protection of human rights as a consequence of exiting the European Union and that the rights contained in the CFREU are maintained. It calls upon the NI Executive and NI Assembly to build a political consensus and work to mitigate the risk of there being any detrimental effects on the current rights and benefits afforded to those residing in NI.

Protecting and promoting your rights

Contact us

If you would like to know more about the work of the Commission, or any of the services we provide, please contact us.

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