

COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO THE UNITED
KINGDOM
FROM 27 JUNE TO 1 JULY 2022

TABLE OF CONTENTS

SUMMARY	6
INTRODUCTION	9
1. OVERALL HUMAN RIGHTS LANDSCAPE	10
1.1. Ensuring an enabling environment for human rights and Human Rights Defenders	10
1.1.1. Issues related to the UK government’s approach to human rights	10
1.1.2. Conclusions and recommendations	11
1.2. The Bill of Rights Bill	11
1.2.1. Overview	11
1.2.2. Specific issues related to the Bill of Rights Bill	12
1.2.3. Conclusions and recommendations	13
1.3. The Police, Crime, Sentencing and Courts Act and subsequent proposals	14
1.3.1. Restrictions on demonstrations	14
1.3.2. Impact on minority groups, especially Gypsy, Roma and Traveller communities	15
1.3.3. Conclusions and recommendations	16
1.4. The rights of refugees, asylum seekers and migrants	17
1.4.1. Overview	17
1.4.2. Specific issues of concern	17
1.4.3. Conclusions and recommendations	19
1.5. The rights of LGBTI people, especially trans persons	20
1.5.1. Addressing an increasingly toxic discourse against trans people	20
1.5.2. Specific legal and policy issues	22
1.5.3. Conclusions and recommendations	24
1.6. Other issues raised	24
1.6.1. The extradition of Julian Assange and implications for media freedom	24
1.6.2. Conclusions and recommendations	25
2. CHILDREN’S RIGHTS	25
2.1. General issues in relation to the protection of children’s rights	25
2.1.1. Overview	25
2.1.2. Conclusions and recommendations	26
2.2. Poverty	27
2.2.1. Overview	27
2.2.2. The importance of child poverty strategies	27
2.2.3. Structural issues in the welfare and benefits system	28
2.2.4. Specific issues related to child poverty requiring attention	29
2.2.5. Poverty and links with the right to health	30
2.2.6. Conclusions and recommendations	31

2.3. Police and justice issues.....	32
2.3.1. Issues related to policing operations	32
2.3.2. Children in the criminal justice system	33
2.3.3. Equal protection from violence	34
2.3.4. Conclusions and recommendations.....	34
2.4. The right to participation.....	35
2.4.1. Overview	35
2.4.2. Possibilities to strengthen child participation in decision-making	35
2.4.3. Political participation	36
2.4.4. Conclusions and recommendations.....	36
3. SPECIFIC ISSUES RELATING TO NORTHERN IRELAND	37
3.1. Dealing with the legacy of the troubles	37
3.1.1. Summary of the Commissioner’s concerns about the Legacy Bill	37
3.1.2. Implications of the adoption of the Bill	39
3.1.3. Conclusions and recommendations.....	40
3.2. Wider issues of human rights protection in Northern Ireland.....	40
3.2.1. Overall framework for human rights protection in Northern Ireland	40
3.2.2. The Northern Ireland Human Rights Commission	41
3.2.3. Conclusions and recommendations.....	42
3.3. Media freedom, safety of journalists, and threats to other groups.....	42
3.3.1. Overview	42
3.3.2. Conclusions and recommendations.....	43
3.4. Other human rights issues in Northern Ireland discussed during the visit.....	44
3.4.1. Children’s rights	44
3.4.2. Towards a more inclusive education system	44
3.4.3. Sexual and reproductive health and rights	45
3.4.4. Conclusions and recommendations.....	46

SUMMARY

Commissioner Dunja Mijatović and her team visited the United Kingdom UK from 27 June to 1 July 2022. This report focuses on the following issues: the overall human rights landscape in the UK, children's rights, and specific human rights issues relating to Northern Ireland.

Overall human rights landscape

The Commissioner observes a high level of anxiety among stakeholders about human rights protection in the UK, in view of the significant impact of recent and proposed legislation, an increasingly antagonistic attitude by the UK government towards human rights, and verbal attacks on lawyers and organisations defending human rights. The Commissioner finds that the Bill of Rights Bill, which would repeal and replace the Human Rights Act 1998 (HRA), would weaken human rights protections by encouraging a divergence in interpretations by UK courts and the European Court of Human Rights of rights set out in the European Convention on Human Rights (ECHR), and by limiting the bringing of human rights cases to UK courts. She calls on the UK government to ensure that any further reform of the domestic human rights system leads to a strengthening, rather than a weakening, of protections.

The Commissioner observes that the Police, Crime, Sentencing and Courts Act (PCSC Act) introduced broad restrictions on peaceful assemblies, which risk being arbitrarily applied, and which should be reconsidered. She is concerned about attempts, through the Public Order Bill, to introduce even further-reaching restrictions, and calls on the UK Parliament not to adopt the Bill. Provisions within the PCSC Act which de facto criminalise Gypsy, Roma and Traveller communities leading a nomadic lifestyle must also be rescinded, and more efforts must be made to facilitate the exercise of their right to lead this lifestyle.

The Commissioner highlights numerous issues of concern relating to the UK's existing policies towards refugees, asylum seekers and migrants, including the newly introduced inadmissibility rules for asylum claims, the possibility of removing persons to Rwanda, the criminalisation of asylum seekers arriving irregularly, and the differential treatment of refugees based on the manner of their arrival. She also warns against the use of practices that would result in pushbacks of people crossing the Channel. The Commissioner observes that the lack of an effective mechanism to allow persons staying in France to make a claim with the UK authorities for protection or entry on other grounds is an important factor in the current resort to dangerous, irregular crossings of the Channel. The Commissioner makes a range of recommendations to address these and other issues to ensure the UK's overall approach to asylum and migration fully complies with its international obligations.

The Commissioner observes the emergence of an increasingly harsh political and public discourse against trans people in the UK, which negatively impacts on their rights, and the rights of LGBTI people and other groups, more generally. The Commissioner is concerned about narratives that represent trans people as a threat to others in society. She calls on the authorities to take action to counter these narratives and promote inclusion. She warns against attempts to frame the protection of the rights of trans people and those of women as a zero-sum game. She furthermore highlights that self-determination models for legal gender recognition, which de-pathologise such procedures, present a human rights best practice. In relation to equal treatment laws, she calls on authorities to maintain strong protections for trans people. She further urges the acceleration of efforts to ban conversion practices, which must be comprehensive and cover trans people.

On the topic of freedom of expression and media freedom, the Commissioner reiterates her concern about the chilling effect that the extradition of Julian Assange would have, and she calls on the UK government not to agree to his extradition to the United States.

Children's rights

Regarding the role of international instruments in the protection of children's rights, the Commissioner observes that the incorporation of the UN Convention on the Rights of the Child (CRC) in all parts of the UK would be an important step forward. She notes that efforts to move towards this are underway in some devolved jurisdictions. The Commissioner also warns about the specific impact on children's rights of any weakening of the protections currently afforded by the HRA. She further highlights the need to expand the UK's adoption of instruments protecting the social and economic rights of children. Other efforts related to the elaboration and implementation of children's rights strategies and the mainstreaming of children's rights impact assessments are also necessary.

The Commissioner observes that poverty among children in the UK is widespread, and that this has a devastating effect on children's rights, with children from ethnic minority groups being particularly affected. In various parts of the UK, there is a need for the elaboration and implementation of child poverty reduction strategies that impose clear and binding targets on the authorities. Child poverty is also closely connected to structural issues in the UK's welfare benefits system. The Commissioner finds that the level of support available under Universal Credit needs to be reviewed, and needs to include rises commensurate with inflation in order to tackle child poverty. The benefit cap and the two-child limit are also factors identified as having a clear impact on child poverty, and the Commissioner calls for the abolition of these provisions. Children are also highly impacted by their families being subjected to a 'No Recourse to Public Funds' (NRPF) condition, and a children's rights impact review of the NRPF policy should be urgently carried out.

Food insecurity is a key issue connected to child poverty. The Commissioner calls on the authorities to address barriers to access free school meals, such as income thresholds, and to work towards the universal provision of free school meals. Homelessness and living in temporary accommodation are other key child poverty issues. In this regard, the Commissioner calls for concerted efforts to combat homelessness among children, and to promptly move them out of temporary accommodation into stable, adequate housing. The Commissioner further observes that there are multiple links between poverty and the right to health of children, including in relation to mental health and to the right to a healthy environment. She therefore calls for significant investment in mental health support for children, and for steps to ensure that all children can enjoy a healthy environment, in particular one free from air pollution, without discrimination.

On police and justice issues, the Commissioner highlights ongoing concerns about the use of stop and search powers against children, as well as the practice of strip-searching children, which impacts disproportionately on children from ethnic minority groups. This must therefore be subject to an urgent review leading to the establishment of practices that fully comply with children's rights. The use of force against children by the police also remains an important issue to tackle. Furthermore, 16- and 17-year-olds may be unable to benefit from child-friendly justice measures, including while in custody, and the Commissioner calls for measures to redress this situation. She observes that the minimum age of criminal responsibility continues to fall below international standards in all parts of the UK, and urges authorities to raise this age. She furthermore highlights that children should benefit from the same protection from violence as adults, and calls for the abolition of the defence of reasonable chastisement in England and in Northern Ireland.

The Commissioner finds that there are many good practices in the UK that promote the meaningful participation of children in decision-making, especially its advanced network of children's and youth parliaments and assemblies. However, further improvements can be made to strengthen the consistency and inclusiveness of participation structures. Efforts should also be made by decision-makers to proactively reach out to children who are not represented in formal participation structures, and to increase the diversity of voices that are heard. She highlights the importance of enhancing

children's political participation, and in this context she calls on the authorities to consider lowering the voting age where applicable.

Specific issues relating to Northern Ireland

The Commissioner observes that the Northern Ireland Troubles (Legacy and Reconciliation) Bill faces widespread opposition from victims' groups, human rights actors, and political parties across Northern Ireland. She is concerned about the UK government's lack of genuine consultation with key actors ahead of the publication of the Bill. The Bill raises a number of serious issues of compliance with the ECHR, including in relation to the independence and effectiveness of the mechanism for the review of Troubles-related incidents by the Independent Commission for Reconciliation and Information Retrieval (ICRIR), the closure of many important existing avenues for victims to seek truth and justice, and the conditional immunity scheme. The Commissioner calls on the UK government to consider withdrawing the Bill. She urges a return to previously agreed principles which provide a basis for a human rights compliant approach. Any steps to address the legacy of the past must put the rights and needs of victims at its heart.

Regarding wider issues of human rights protection in Northern Ireland, the Commissioner highlights that the Belfast/Good Friday Agreement is strongly underpinned by effective domestic protections of ECHR rights, and that any steps to undermine such protections must be prevented. She calls for work on a Bill of Rights for Northern Ireland to be resumed. The Commissioner also notes the crucial role of the Northern Ireland Human Rights Commission in the protection of human rights in Northern Ireland and she calls for urgent steps to be taken to provide it with adequate funding to ensure that it can carry out its important functions fully.

The Commissioner also calls for steps to ensure the safety of journalists in Northern Ireland, in view of cases of journalists having been murdered, and the frequent threats against them, especially from paramilitary groups. She calls on the authorities to ensure that all circumstances in relation to the murders of journalists Martin O'Hagan and Lyra McKee are fully investigated and that those responsible are brought to justice. She also calls on politicians to condemn any threats and to refrain from making statements that contribute to hostility against journalists, academics and civil society activists.

In addition to the issues addressed in the chapter on children's rights, which are also relevant to Northern Ireland, the Commissioner highlights the need for the better protection of children in Northern Ireland from actions by paramilitary groups. As part of the process of moving forward as a post-conflict society, she particularly highlights the need to foster a more inclusive education system, in view of the very high levels of school segregation along community lines. She calls for steps to be taken to achieve a significant expansion of the number of integrated schools, with a view to making these the norm in Northern Ireland.

Finally, the Commissioner highlights the need for measures to protect and realise sexual and reproductive health and rights. She notes that, despite the decriminalisation of abortion in Northern Ireland, the adequate and sustained funding of abortion services is necessary to ensure effective access to these rights.

INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), carried out a visit to the United Kingdom (UK) from 27 June to 1 July 2022. The visit focused on the overall human rights landscape in the UK (section 1), children's rights (section 2) and specific issues relating to Northern Ireland (section 3).
2. During the visit, the Commissioner met with the Lord Chancellor, Secretary of State for Justice and Deputy Prime Minister, the Rt Hon Dominic Raab MP; the Minister of State (Minister for South and Central Asia, North Africa, the United Nations and the Commonwealth) of the Foreign, Commonwealth and Development Office, Lord Ahmad of Wimbledon; and the Parliamentary Under Secretary of State for the Home Office and the Ministry of Justice, Tom Pursglove MP. Following the visit, the Commissioner had further online meetings with the Parliamentary Under Secretary of State of the Northern Ireland Office, Lord Caine; the Welsh Minister for Social Justice, Jane Hutt AS/MS, and Counsel General and Minister for the Constitution, Mick Antoniw AS/MS; and with the Scottish Minister for Equalities and Older People, Christina McKelvie MSP, and Minister for Children and Young People, Clare Haughey MSP. In addition, she met with the Equality and Human Rights Commission, the Northern Ireland Human Rights Commission, the Northern Ireland Commissioner for Victims and Survivors and the Victims and Survivors Forum, and the office of the Northern Ireland Commissioner for Children and Young People. Ahead of the visit, the Commissioner met with the UK Parliament's Joint Committee on Human Rights (JCHR) on its visit to Strasbourg, and she had online meetings with the Scottish Human Rights Commission and the Children and Young People's Commissioner Scotland. The Commissioner's office consulted with the offices of the Children's Commissioner for England and the Children's Commissioner for Wales. The Commissioner also had exchanges with journalists, human rights defenders, academics, and other representatives of civil society, including children and young people.
3. The Commissioner visited Belfast on 27 and 28 June 2022 to discuss specific human rights issues relating to Northern Ireland, and she visited the London Borough of Newham within the context of her work on children's rights. In Newham, she visited the Magpie project and met with Newham's Children's Commissioner, Geeta Subramaniam-Mooney.
4. The Commissioner would like to thank the UK Permanent Representation and the authorities in London for their assistance in organising her visit, and to the relevant devolved administrations for their engagement. She expresses her gratitude to all interlocutors in the UK for sharing with her their knowledge and experience. She specifically thanks the many children and young persons she met for their trust and openness, and for the invaluable insights they provided.
5. This report was finalised on 16 November 2022 and does not take into account developments after this date. The Commissioner notes that the political situation in the UK since the visit has been subject to frequent important changes, including at ministerial level in most of the government departments working on the issues discussed in this report. Furthermore, this period has seen a large number of policy announcements potentially impacting on these issues. Especially in view of this situation, the Commissioner stresses the importance of following up on her recommendations, both to address ongoing and long-standing human rights concerns, and to ensure that future policy decisions are compliant with human rights.

1. OVERALL HUMAN RIGHTS LANDSCAPE

1.1. ENSURING AN ENABLING ENVIRONMENT FOR HUMAN RIGHTS AND HUMAN RIGHTS DEFENDERS

1.1.1. ISSUES RELATED TO THE UK GOVERNMENT'S APPROACH TO HUMAN RIGHTS

6. The United Kingdom has a well-established system for human rights protection, both in terms of its domestic institutions and the international instruments to which it is bound. The UK is party to the major Council of Europe and international treaties. The Commissioner welcomes the further strengthening of the UK's human rights commitments through its ratification, in July 2022, of the Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention), which sees the country joining this gold standard for protecting women and girls from violence.
7. Despite this well-established framework, the Commissioner's visit came at a time of high anxiety among different stakeholders at the national level but also internationally, about the direction of human rights protection in the UK. In the weeks and months prior to the visit, several pieces of legislation had been adopted or proposed, that had (or had the potential for) a significant impact on human rights across the UK. Several of these are discussed in this report.¹ Concerns were repeatedly raised that these legislative changes were the result of an increasingly antagonistic attitude of the UK government towards human rights. In the view of the Commissioner, these concerns are difficult to disconnect from a marked political focus on so-called 'culture wars' issues and positioning as 'anti-woke'. Overall, this has resulted in an increasing presentation of human rights in the public and political discourse as an obstacle to the effective implementation of government policies, rather than as a foundation for such policies in a democratic society based on the rule of law.
8. The Commissioner was made aware of the verbal targeting, both by members of the UK government and of the Parliament, of individuals and non-governmental organisations (NGOs) working on human rights issues, especially legal professionals. At various times, government officials have accused lawyers who support human rights cases as being '[politically motivated](#)', or branded them as '[lefty lawyers](#)' or '[activist lawyers](#)'. In the last few years, human rights based litigation has also been characterised by government officials as being '[vexatious](#)' or perceived as a way to wage '[lawfare](#)'.
9. The Commissioner is concerned about such accusations from government officials and parliamentarians, which insinuate that the launching of legal proceedings on human rights grounds undermines the common good. She stresses that such a hostile public discourse can have a chilling effect on lawyers and NGOs. She reiterates the concern about the impact on the rule of law that has been expressed by professional associations.² While physical attacks on human rights professionals are thankfully rare in the UK,³ there are [concerns](#) that inflammatory language against lawyers may put them at risk. Many of the Commissioner's interlocutors working with human rights organisations also reported seeing an increase in threats and abusive language directed at them online.

¹ Including the Bill of Rights Bill (section 1.2 below), the Police, Courts, Sentencing and Courts Act and further proposals (section 1.3) and the Nationality and Borders Act (section 1.4), as well as the Northern Ireland Troubles (Legacy and Reconciliation) Bill (section 3.1).

² See, for example, The Law Society, '[PM's "misleading and dangerous" attack on lawyers undermines the rule of law](#)', 5 May 2022; *Guardian*, '[Bar Council says Suella Braverman's jibe against lawyers "undermined the rule of law"](#)', 6 October 2022.

³ However, in September 2020, a staff member of a law firm was attacked by a man armed with a knife, which led to [concern](#) that more hostile rhetoric towards lawyers may have played a role in this.

1.1.2. CONCLUSIONS AND RECOMMENDATIONS

10. The Commissioner calls on the UK government to clearly communicate the importance of strong human rights protections for all in society, and that this is inextricably linked with the fundamental values of democracy and the rule of law.
11. The Commissioner urges all public and elected officials to refrain from derogatory and inflammatory language against lawyers and others who are engaged in supporting people to access their rights or in advocating on their behalf.
12. The Commissioner calls on the UK government to ensure its public communication leaves no doubt that bringing legal proceedings to challenge the government's laws and policies is an entirely legitimate practice. It should publicly acknowledge the crucial role played by human rights defenders, and provide them with an enabling environment, in line with international frameworks and the UK's own commitments,⁴ including by ensuring that human rights defenders can engage in litigation free from intimidation or harassment.

1.2. THE BILL OF RIGHTS BILL

1.2.1. OVERVIEW

13. The Human Rights Act 1998 (HRA) makes rights contained in the European Convention on Human Rights (ECHR) justiciable in the UK. Over the last decade and a half, successive governments have proposed to amend or repeal it, but this has not resulted in concrete changes to the HRA. The [2019 Conservative party manifesto](#) pledged to "update" the HRA (and administrative law) "to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government." On 22 June 2022, the UK government introduced the [Bill of Rights Bill](#) to Parliament. The Bill sets out to repeal the HRA and to replace it with a Bill of Rights. According to the [explanatory notes](#) to the Bill, it would "restore a common-sense approach to human rights" and "protect people's fundamental rights while safeguarding broader public interest and respecting the will of elected representatives in Parliament". Changes were also deemed necessary because current judicial practices had "undermined public confidence" in human rights. The Bill was published shortly before the Commissioner's visit and was a key topic of discussion during her meetings. While in September it was [reported](#) that the UK government had shelved plans for the Bill, it has since been [confirmed](#) that this piece of legislation will return to Parliament.
14. Both ahead of and during her visit, the Commissioner was informed in detail about the government's rationale behind the Bill. She notes that it is in principle up to each member state to decide how to best ensure compliance with its obligations under the ECHR. But given in particular the ECHR system's reliance on domestic mechanisms to ensure effective protection, she finds it difficult to discern a pressing reason for a fundamental overhaul of such a well-established national human rights framework. The Commissioner's impression is that the repeal of the HRA and its replacement by a Bill of Rights is an attempt to fix something that is not broken.⁵ The HRA has been a remarkably successful instrument to ensure that people can effectively enforce their Convention rights through domestic courts, to strengthen public bodies' duties to respect and protect rights, and to improve alignment of domestic courts' judgments with the case law of the European Court of Human Rights

⁴ [Declaration](#) of the Committee of Ministers of the Council of Europe on action to improve the protection of human rights defenders and promote their activities, 6 February 2008; and the UN [Declaration](#) on Human Rights Defenders, A/RES/53/144, 8 March 1999. Support to human rights defenders is also a [central element](#) of the UK's foreign policy.

⁵ The report of the [Independent Human Rights Act Review](#) suggests some changes to the HRA, but not fundamental ones. The government's [summary](#) of consultation responses also gives no indication of significant support for fundamental changes. The Joint Committee on Human Rights (JCHR) has [noted](#): "We do not think a case has been made for replacing the Human Rights Act with the British Bill of Rights in the form proposed by the Government.", p. 1.

(the Court). While this should not rule out the possibility of making changes, such changes should lead to strengthened, rather than to weakened, protection. However, the Commissioner considers that the Bill of Rights Bill contains many elements that would do exactly the latter. Contrary to the position expressed by the UK government, she also sees no inherent conflict between the principle of parliamentary sovereignty and having a strong framework which provides for judicial scrutiny based on an international human rights instrument to which the UK has willingly committed itself. Furthermore, the Commissioner is concerned that the proposed reforms send a wrong signal beyond the UK's borders, at a time when human rights are under pressure throughout Europe.

1.2.2. SPECIFIC ISSUES RELATED TO THE BILL OF RIGHTS BILL

15. Although the Bill contains the same ECHR rights as the HRA, its provisions would alter how these would be protected in UK law in many ways. While under the HRA, domestic courts should “[take into account](#)” the case law of the Court, the Bill sets out in detail how domestic courts should approach interpreting ECHR rights.⁶ As clarified in the [explanatory notes](#) to the Bill, domestic courts would have to take the case law of the Court as a ‘ceiling’.⁷ It would, however, allow for interpretations that diverge from the Court’s jurisprudence, which would therefore not act as a ‘floor’ for the interpretation of ECHR rights by domestic courts. The Bill also restricts domestic courts from adopting new interpretations of positive obligations on public authorities arising out of ECHR rights. This is intended to prevent domestic courts from keeping pace with any new interpretations of such obligations by the Court.⁸ The application of existing (‘pre-commencement’) positive obligations, however, would also be constrained by requiring domestic courts to give ‘great weight’ to several considerations which could overrule those obligations.⁹ Such constraints risk interpretations of positive obligations that would fall short of those compatible with the Court’s case law.¹⁰
16. The Bill also limits the extent to which persons can bring human rights cases before domestic courts, including through the introduction of a permissions stage before certain human rights claims against public authorities can be made.¹¹ Applicants in such cases would have to show they are victims and that they have suffered (or would suffer) a significant disadvantage. The application of the ‘significant disadvantage’ criterion in particular may lead to reduced possibilities to have human rights cases substantively examined at the national level, as more cases would be declared inadmissible.¹²

⁶ Clause 3, for example, requires domestic courts to have particular regard to the Convention right’s text and preparatory work, which interlocutors noted indicated a push towards a more ‘originalist’ approach to the ECHR, discouraging domestic courts from following the Court’s long-standing doctrine that the ECHR is a [living instrument](#).

⁷ This would be done by prohibiting them from adopting a more expansive interpretation of a Convention right than the Court would do, unless there would be no reasonable doubt the Court would also do so in the future.

⁸ UK Government, [Bill of Rights: European Convention on Human Rights Memorandum](#), June 2022, paragraph 7.

⁹ For example, if an interpretation would conflict with or otherwise undermine the public interest in allowing public authorities to use their own expertise when deciding how to allocate the financial and other resources available to them.

¹⁰ For example, the Bill limits the ability of courts to find deportations incompatible with Article 8 ECHR, by setting a standard that ostensibly is much higher than under current Court’s case law. Clause 8 would only allow deportations to be halted if this results “in a level of harm to a qualifying member of the deportee’s family so extreme that it overrides the public interest in the deportation.”

¹¹ Clause 15.

¹² In this respect, the government’s [ECHR memorandum](#), points to the ‘significant disadvantage’ criterion also being part of the ECHR. However, this criterion in determining admissibility of cases under Article 35 ECHR is part and parcel of the principle of subsidiarity and, with the entry into force of [Protocol N° 14](#) to the ECHR, cannot be activated if the case brought before the Court “has not been duly considered by a domestic tribunal”. The [explanatory report](#) to the Protocol clarifies that this is to ensure that every case will receive judicial examination *whether at the national or European level*. As such, the approach foreseen in the Bill of Rights Bill would thus have the practical effect of shifting the burden of substantively examining such cases to the Court.

17. Overall, the key effect of the Bill, as clearly intended by the UK government,¹³ would be to encourage (and in some cases, require) divergence in the approach by UK courts as compared to that of the European Court of Human Rights. The Bill would diminish the possibility of judges in UK courts acting effectively as ordinary judges of the Convention, and it would weaken the principle of subsidiarity that underlies the Convention system, of which the UK has been one of the foremost champions.¹⁴ Most importantly, people in the UK would no longer have the guarantee that they can effectively enforce their ECHR rights through domestic courts, and thus may have to turn to the Court for the protection of these rights more often. This would presumably change the current situation in which the UK produces the lowest number of cases per capita allocated to a judicial formation of the Court of all Council of Europe member states.¹⁵ It would likely also lead to more findings of violations by the UK, which at the moment are very few.¹⁶
18. Other issues include the Bill's provisions on interim measures. While these provisions do not explicitly say that interim measures should not be complied with (as is required by the Court's case law),¹⁷ they do prevent domestic courts from taking these into account in various instances.¹⁸ The Commissioner notes that interim measures have saved lives in many cases in several member states, and she underlines that domestic rules must not diminish effective compliance with these measures, as they are crucial in protecting individuals from the most serious human rights violations. The Bill also contains provisions to prevent persons from bringing human rights claims in relation to military operations overseas.¹⁹ While a detailed discussion of the extraterritorial application of the ECHR falls outside the scope of this report, the Commissioner has highlighted the need to ensure that there is no impunity for serious human rights abuses in the course of overseas military or security operations.²⁰ The domestic legal framework must ensure that human rights claims for abuses which have occurred within the UK's jurisdiction can be effectively brought before domestic courts.
19. During the visit, concerns were also expressed that the Bill would interact with other developments, such as existing problems with the funding and accessibility of legal aid, creating further issues of access to justice. Furthermore, the highly prescriptive nature of the Bill's provisions in how to deal with human rights-related cases also raised questions about possible encroachment on the independence of the judiciary. Finally, concerns were expressed about the Bill's impact on efforts by devolved administrations to improve human rights protection in their jurisdictions.²¹

1.2.3. CONCLUSIONS AND RECOMMENDATIONS

20. The Commissioner underlines that any reform of the HRA that might take place should strengthen, rather than weaken, domestic human rights protections. Any approach that seeks to create a discrepancy between domestic approaches and that of the European Court of Human Rights should

¹³ The [ECHR memorandum](#) states that "[c]lauses 3 to 8 will allow the domestic courts to interpret and apply the Convention rights more restrictively than the Court. This is already possible under the HRA, but the new clauses are intended to lead to a greater willingness by the domestic courts to decline to follow Strasbourg jurisprudence", paragraph 10.

¹⁴ For example, the UK government was the driving force behind the [Brighton Declaration](#) of 2012, which aimed to reinforce subsidiarity in the Convention system.

¹⁵ European Court of Human Rights' [Annual Report 2021](#), p. 184-185.

¹⁶ *Ibid.*, p. 187.

¹⁷ See [Mamatkulov and Askarov v. Turkey](#), applications nos. 46827/99 and 46951/99, judgement [GC] of 4 February 2005, and [Paladi v. the Republic of Moldova](#), application no. 39806/05, judgment [GC] 10 March 2009, and the Court's [case law guide on interim measures](#), August 2022.

¹⁸ Clause 24 prohibits domestic courts, when determining rights and obligations under of a public authority or other person, from taking into account interim measures issued by the Court, or to have regard to any interim measures when deciding on whether relief in relation to a Convention right should be granted.

¹⁹ Although such limits would only come into effect if the Secretary of State is satisfied that this would be consistent with the UK's obligations under the ECHR.

²⁰ See her [letter](#) on the Overseas Operations Bill, 30 October 2020, and her [letter](#) calling for an independent, judge-led inquiry into post-9/11 detainee abuses and renditions, 10 August 2018.

²¹ On Northern Ireland and the possible impact of the Bill of Rights Bill, see section 3.2.1.

be rejected. The UK government should ensure that domestic judges can effectively fulfil their role as ordinary judges of the Convention, by ensuring they remain able to take the case law of the Court fully into account, including in line with the doctrine that the ECHR is a living instrument.

21. The Commissioner calls on the UK government to develop measures to enhance public support for human rights, including by engaging in a comprehensive reflection about its own role in any loss of public confidence that might have occurred over the years. She encourages all relevant authorities to challenge misconceptions about human rights. She welcomes the [Independent Review Panel's recommendation](#) to strengthen awareness raising and promote public ownership of human rights, and calls on all authorities to take measures in this area, in particular by strengthening human rights education in schools and for staff of public authorities.
22. The Commissioner welcomes the UK government's consistent compliance with interim measures issued by the Court, even when it has fundamentally disagreed with the Court's decisions, and she urges the government to refrain from any steps that would negatively impact on its compliance with interim measures.
23. The Commissioner calls on the UK government to ensure that its legislation provides for access to effective remedies for victims of all serious human rights violations that have occurred within its jurisdiction, including in the context of overseas military or security operations.

1.3. THE POLICE, CRIME, SENTENCING AND COURTS ACT AND SUBSEQUENT PROPOSALS

1.3.1. RESTRICTIONS ON DEMONSTRATIONS

24. In April 2022, the [Police, Crime, Sentencing and Courts Act](#) (PCSC Act) was adopted. Part 3 of the PCSC Act has introduced a worrying expansion of the possibilities to interfere with public demonstrations and protests in England and Wales. This includes restricting or banning demonstrations and protests using broad notions of 'serious disruption'. In particular, restrictions could be imposed based on the level of noise generated by protesters, which could lead to a ban if this would cause harassment, intimidation, alarm or distress to others. The noise-related restrictions also apply to one-person protests. The Act further includes restrictions on protests near Parliament. It also introduces a number of protest-related offences, which are subject to heavy penalties. During the legislative process, the Commissioner [highlighted](#) that the restrictions were broadly formulated and risked being arbitrarily applied, creating issues of compatibility with the ECHR.
25. Despite serious concerns expressed by different actors about the impact of these provisions, including by the Parliament's Joint Committee on Human Rights (JCHR),²² the government introduced the [Public Order Bill](#) in May 2022, which is currently before the House of Lords. The Public Order Bill essentially reintroduces measures which the government had tried to add to the PCSC Bill, but which were rejected during the legislative process. The Public Order Bill introduces offences related to the act of attaching oneself to something as a protest tactic ('locking on').²³ It also makes an offence out of obstructing major transport works or the act of interfering with key national infrastructure. It furthermore introduces new stop and search powers for the police in connection to these protest-related offences. Finally, the Bill introduces the possibility of issuing so-called 'serious disruption prevention orders' (SDPOs), which allow courts to impose conditions on individuals following a conviction for a protest-related offence, including reporting requirements, electronic tagging, restrictions on entering specific places, restrictions on association with other

²² JCHR, [Legislative Scrutiny : Police, Crime, Sentencing and Courts Bill, Part 3 \(Public Order\)](#), Second Report of Session 2021-22, 16 June 2021.

²³ The offence can arise in a wide range of situations when this act is capable of causing serious disruption – with the latter element not being defined. The [JCHR](#) notes that this “could extend beyond attachments that cause difficulties such as using padlocks or glue to people simply linking arms.”, paragraph 21.

individuals, or restrictions on carrying specific items which might be used to engage in a protest-related offence. The Commissioner notes that the [JCHR](#) has found that the Bill would introduce “sweeping restrictions on peaceful protest” and that its provisions “threaten the overall balance struck between respect for the right to protest and protecting other parts of the public from disruption.” It points, among other issues, to the lack of adequate safeguards against criminalising actions falling within the protections of Articles 10 and 11 ECHR, the risk of excessive or inappropriate use of stop and search powers against protesters, and the disproportionality of SDPOs in relation to the disruption caused by protest.

26. The Commissioner observes that peaceful public assemblies, including demonstrations and protests, are a legitimate way for individuals to express collectively disagreement with, or demand improvements in, laws, policies and practices. Freedom of peaceful assembly and freedom of expression are fundamental in democratic societies and they should not be interpreted in a restrictive way. The Court has stressed that a balance must always be struck between lawful restrictions and the right of persons assembled in public places to express opinions freely.²⁴ Peaceful assemblies carried out in public places often temporarily disrupt the life of a community, including through the generation of noise, the obstruction of road traffic, or other types of nuisance. This temporary alteration of ordinary life does not exempt state authorities from their positive obligation to facilitate the effective exercise of the right to peaceful assembly.²⁵
27. The Commissioner is concerned that the new restrictions introduced through the PCSC Act will have a chilling effect on people in England and Wales exercising their freedom of expression and assembly, which would be aggravated by the Public Order Bill and other measures.²⁶ She highlights that this impact may be particularly felt by groups that have less access to political and policy decision-making circles, and who consequently may need to rely on demonstrations or protests, including disruptive ones, to make their voices heard. These groups include young people, who have limited possibilities of formally participating in political decision-making.²⁷ The Commissioner further notes that several government representatives have, in statements and parliamentary debates, specifically singled out groups or movements such as Extinction Rebellion and Black Lives Matter, as examples of why the new restrictions on assemblies and protests were necessary. She is therefore concerned that these measures may impact disproportionately on groups focusing on issues related to environmental degradation and climate justice or those engaged in promoting racial equality.

1.3.2. IMPACT ON MINORITY GROUPS, ESPECIALLY GYPSY, ROMA AND TRAVELLER COMMUNITIES

28. During the legislative process leading to the adoption of the PCSC Act, the Commissioner also [warned](#) against the potentially discriminatory effects of its provisions on the rights of members of ethnic minority groups, many of whom already experience a disproportionate impact of criminal justice and policing measures, including people of African descent.²⁸

²⁴ [Taranenko v. Russia](#), application no. 19554/05, judgment of 15 May 2014, paragraph 65.

²⁵ The Court recognises an assembly as unpeaceful only in limited circumstances, especially when the organisers or participants have violent intentions, incite to or engage in violence, or “reject the foundations of a democratic society”, see, for example [Kudrevičius and Others v. Lithuania](#), judgment [GC] of 15 October 2015, paragraph 92. The Commissioner underlines that even when some individual participants engage in violent or otherwise anti-democratic acts, the assembly as a whole may still be covered by Article 11 if the other participants remain peaceful.

²⁶ Other legislative proposals may further impact on freedom of assembly. In relation to the [National Security Bill](#), for example, the [JCHR](#) has found that some provisions “would interfere unnecessarily and disproportionately with rights to freedom of expression and association, and the right to protest”.

²⁷ See section 2.4 below.

²⁸ Examples of potentially discriminatory policing practices are highlighted elsewhere in this report. See, for instance, section 2.3.1.

29. In this context, the Commissioner has already highlighted the situation of Gypsy, Roma and Traveller communities leading a nomadic lifestyle. Part 4 of the PCSC Act introduced a new offence of trespass in relation to unauthorised encampments. The Act's provisions expand the possibilities of enforcement, including bans on returning to land for extended periods and the seizure of property, which may even include the vehicles in which they live. [Statutory guidance](#) setting the framework for the implementation of the PCSC Act's powers provide for a low and often subjective bar in relation to key elements for finding a criminal offence, including when an unauthorised encampment causes 'significant damage' or 'distress'. During her visit, the Commissioner heard compelling accounts from representatives of Gypsy, Roma and Traveller communities of the issues they faced. Concerns raised by them about discriminatory treatment, the lack of publicly provided sites or stopping places, and the poor conditions in many of those sites and places that are provided, unfortunately echo those repeatedly reported by the Commissioner's predecessors, going as far back as 2005.²⁹ They have, for example, pointed to the lack of a statutory duty on authorities to provide sites commensurate with needs,³⁰ as well as barriers faced by Travellers who want to develop sites on land they own. Other structural solutions, such as promoting negotiated stopping arrangements, also appear to be largely lacking. The lack of progress in this area only increases the likelihood of people resorting to unauthorised encampments, which in turn may lead to more frequent recourse to enforcement measures by the authorities, including repeated evictions and other sanctions.
30. The Commissioner highlights that Gypsy, Roma and Traveller communities are an intrinsic part of the UK's history and culture. The European Court of Human Rights has explicitly recognised the positive obligation of states to facilitate their lifestyle.³¹ The UK, as a party to the Framework Convention on National Minorities (FCNM), furthermore has a duty to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity.³² The Commissioner regrets that, through the PCSC Act, repressive measures have been introduced that are targeting Gypsy, Roma and Traveller communities, and which, in contravention of the UK's obligations set out above, contribute to the de facto criminalisation of the members of those communities leading a nomadic lifestyle.

1.3.3. CONCLUSIONS AND RECOMMENDATIONS

31. While acknowledging the complexities of dealing with public assemblies, the Commissioner calls on all relevant authorities to refrain from overly restrictive approaches to policing of demonstrations and protests, and to ensure these are fully in line with obligations under Articles 10 and 11 ECHR. The primary focus of authorities should be on the facilitation of peaceful assemblies. When restrictions are necessary, authorities should refrain from taking disproportionate measures. The Commissioner invites them to take advantage of relevant international guidance to inform their approaches.³³
32. Recently introduced restrictive provisions, through the PCSC Act, on disruptive protests and demonstrations should be reconsidered at the earliest possible opportunity, but while these are in force, the Commissioner urges relevant authorities to ensure close monitoring of their

²⁹ [Report](#) by Commissioner Gil-Robles on his visit to the United Kingdom, CommDH(2005)6, 8 June 2005, paragraphs 144-148; [Letter](#) from Commissioner Hammarberg about the provision of sites for travellers, CommDH(2012)14, 1 March 2012.

³⁰ Also see [Fourth Opinion on the UK](#) by the Advisory Committee on the FCNM, ACFC/OP/IV(2016)005, 27 February 2017, and [Resolution CM/ResCMN\(2018\)](#) on the implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom, adopted by the Committee of Ministers on 7 February 2018, which contains a recommendation for immediate action on the provision of sites.

³¹ [Connors v. the UK](#), application 66746/01, judgment of 27 May 2004, paragraph 84.

³² Article 5(1) FCNM. Article 5(2) also protects national minorities from being subjected to policies and practices aimed at their assimilation against their will.

³³ See particularly the [Guidelines on Freedom of Peaceful Assembly](#) of the Venice Commission and ODIHR.

implementation, and to ensure that any interventions in public demonstrations are fully compliant with the UK's human rights obligations.

33. In addition to these recently introduced restrictions, the Public Order Bill creates further threats to the exercise of freedom of expression and of freedom of peaceful assembly in the UK. In view of this, the Commissioner urges the UK Parliament not to adopt this Bill.
34. Regarding the question of unauthorised encampments by Gypsy, Roma and Traveller communities, the Commissioner calls on the authorities to move away from an approach based primarily on repression, and to remove the offence of trespass from the PCSC Act.
35. The Commissioner calls on all authorities to facilitate the recognised right of Gypsy, Roma and Traveller communities to lead a nomadic lifestyle, and to promptly implement long-standing recommendations in this area, including the reintroduction of a statutory duty on authorities to provide sites commensurate with needs, and addressing barriers to developing sites on land owned by these communities, as well measures to combat discrimination and intolerance.

1.4. THE RIGHTS OF REFUGEES, ASYLUM SEEKERS AND MIGRANTS

1.4.1. OVERVIEW

36. The treatment of refugees, asylum seekers and migrants in the UK is a long-standing concern, as also reflected in the work of previous Commissioners.³⁴ Over the years, the implementation of a 'hostile environment' policy has put the human rights of refugees, asylum seekers and migrants at risk, and its impact on those affected continues to date. The UK government has recently introduced further changes in response, among other things, to the increasing arrival of asylum seekers and migrants on small boats from France to the UK across the Channel. The groundwork for some of the more recent changes was laid by the 2021 [New Plan for Immigration](#). Various elements of the plan have been implemented by the provisions on asylum and irregular migration in the [Nationality and Borders Act](#), adopted in April 2022, and by the government's pursuit of a [Migration and Economic Development Partnership](#) (MEDP) with Rwanda. In combination, these developments have resulted in a significant regression in the protection of the human rights of refugees, asylum seekers and migrants. The Commissioner further expresses her concern that these developments have often been surrounded with, and fuelled by, a public rhetoric that stigmatises and dehumanises those attempting to cross the Channel to the UK and stirs up fear, to which members of the UK government have unfortunately significantly contributed. She notes that the UN High Commissioner for Human Rights has also [warned](#) against the use of dehumanising language.³⁵

1.4.2. SPECIFIC ISSUES OF CONCERN

37. **Inadmissibility rules and removal to Rwanda.** The Commissioner is concerned about the expansion of admissibility rules to make persons who have "a connection" to a safe third state ineligible to claim asylum in the UK.³⁶ In view of the UK's geographical location, and the lack of safe and legal routes for the purpose of claiming asylum (see below), this means that the applications of the vast majority of persons seeking protection in the UK would likely be declared inadmissible. A person whose asylum claim is declared inadmissible can furthermore be removed to any other safe country,

³⁴ See, for example, the [Memorandum](#) by Commissioner Hammarberg, CommDH(2008)23, 18 September 2008, and the [Memorandum](#) by Commissioner Muižnieks, CommDH(2016)17, 22 March 2016.

³⁵ This includes suggestions that the arrival of asylum seekers and migrants constitutes an "invasion."

³⁶ According to the [Nationality and Borders Act 2022](#), such a connection arises in a range of situations, including if they have protection in that other state or made a claim that was rejected, but also if they were in another state and they could have reasonably been expected to apply for asylum there and they failed to do so.

including a state where they have never been. In this respect, the Commissioner [reiterates](#) her objection to the removal of asylum seekers to Rwanda under the MEDP. As also noted by [UNHCR](#) and the [JCHR](#), such a course of action jeopardises key legal protections, and would be inconsistent with the UK's obligations under international instruments, in particular the Refugee Convention.³⁷ She observes that the Rwanda scheme is an attempt to move people who have specifically turned to the UK for protection outside of its jurisdiction, before a substantive assessment of their protection needs is carried out. While the UK has agreed conditions for the treatment of those who are removed to Rwanda, and a monitoring mechanism has been set up, the MEDP remains a political instrument and compliance with the agreed conditions will be [unenforceable under international law](#). In the Commissioner's view, this attempt by the UK to shift responsibility for the assessment of asylum claims and the reception of asylum seekers to a third country furthermore sets a troubling precedent, and it has the potential to fundamentally undermine the global system for international protection. She notes that, at the time of writing, legal challenges to the Rwanda scheme are still under consideration by domestic courts in the UK.

38. **Criminalisation of asylum seekers arriving irregularly.** The Nationality and Borders Act expands criminal penalties for asylum seekers, including by [providing](#) that anyone requiring entry clearance and knowingly arriving without that clearance commits an offence, even if the person seeks asylum immediately upon arrival. As UNHCR has [observed](#), such an approach clashes with the non-penalisation requirement contained in Article 31 of the Refugee Convention. It has further noted that provisions in the Act could lead, in certain circumstances, to the criminalisation of those providing assistance to refugees, including refugees helping each other, even if they do not do this for financial or other material benefit.³⁸
39. **Risk of pushbacks.** In recent years, there have been multiple suggestions from UK government officials that persons attempting to reach the UK by sea would be intercepted and immediately returned. As the Commissioner noted in her [Recommendation Pushed beyond the limits: Four areas for urgent action to end human rights violations at Europe's borders](#), pushbacks involve multiple violations of human rights, including through denial of access to asylum and the circumventing of safeguards relating to expulsion procedures.³⁹ The Commissioner also notes that there have been [reports in the media](#) of plans to implement pushbacks, including by using tactics that would clearly put the safety and lives of persons at sea at risk.⁴⁰ The Nationality and Borders Act furthermore expands the possibilities of maritime enforcement, increasing the risk that the implementation of these powers will lead to pushbacks. While the Commissioner acknowledges the challenges associated with irregular Channel crossings, she reiterates that any attempt to address these challenges must fully ensure the rights and safety of those involved, including under international human rights, refugee and maritime law. While the Commissioner is not aware of pushback tactics currently being used, she remains deeply concerned about repeated suggestions that pushbacks should be a feature of the UK's approach to Channel crossings.
40. **Safe and legal routes.** The Commissioner has [noted](#) earlier that the UK's approach to irregular arrivals via the Channel ignores one particularly important element, which is the role that safe and

³⁷ Removals to Rwanda have been condemned by many actors, including, to name only a few, the [Public and Commercial Services Union](#) (who have launched legal action together with Care4Calais and Detention Action), the [British Red Cross](#), many [NGOs](#), the [Law Society](#), [local authorities](#), and the [Archbishop of Canterbury](#), who condemned the "sub-contracting out of our responsibilities".

³⁸ UNHCR, [Updated Observations](#) on the Nationality and Borders Bill, as amended, January 2022, paragraph 29, points (iv)-(vi).

³⁹ In relation to procedural safeguards in relation to expulsion, the Commissioner notes that the UK is one of the few Council of Europe member states that has not ratified Protocol N° 4 to the ECHR, Article 4 of which prohibits collective expulsions. However, such an obligation is also recognised as following from wider international obligations and as a [key element](#) for human rights compliant border control practices.

⁴⁰ See also the Commissioner's [Recommendation Pushed beyond the limits: Four areas for urgent action to end human rights violations at Europe's borders](#), April 2022, p. 21.

legal routes play in the prevention of the making of irregular and dangerous sea crossings. The UK government has, both in [writing](#) and during the visit, highlighted its various programmes for, for example, persons from Hong Kong and Afghanistan, as well as its wider resettlement efforts, and its reception of Ukrainians. While welcome, the Commissioner notes that none of these programmes address the specific situation at the Channel. She also notes that some [earlier schemes](#) for cross-Channel safe and legal routes have been discontinued, and that there currently appears to be no framework designed and implemented in co-operation between the authorities in the UK and in France to ensure that persons on the territory of France, who may have a legitimate claim to protection or to a stay on other grounds (such as family links) in the UK, can effectively put such a claim forward.

41. **Differential treatment of refugees.** New rules on the status of those granted protection in the UK will introduce unjustifiable differential treatment between refugees. Under the Nationality and Borders Act, persons eligible for protection in the UK will now be classified according to whether they arrived in the UK directly from a country or territory where their life or freedom was threatened, presented themselves to the authorities without delay, and did not enter or were present in the UK unlawfully. Only those meeting those requirements are categorised as ‘Group 1’ refugees, while those who are not are classified as ‘Group 2’ refugees.⁴¹ The two groups would be subject to differential treatment, with Group 2 refugees (who are likely to be the vast majority of those ultimately granted protection), being accorded less favourable treatment in regard of the period of limited leave to remain or enter, access to indefinite leave to remain, the attachment to their status of a ‘No Recourse to Public Funds’ (NRPF) condition,⁴² and their eligibility for family reunification. As noted by UNHCR, such differentiation is inconsistent with the Refugee Convention.⁴³
42. **Other asylum- and migration-related issues.** In discussions with refugee- and migrant-supporting organisations, many other issues requiring attention were identified, which cannot be covered in detail in this report. The Commissioner seeks to specifically highlight the [backlog in asylum processing](#), which appears to have significantly impacted on the UK’s ability to effectively react to increasing arrivals in a human rights compliant way. She observes that, despite [calls to introduce this](#), the UK still has no time limit for immigration detention, and she is concerned about reported [plans to expand](#) the UK’s detention estate. [Reports](#) about the inadequate standards in accommodation allocated to refugees and asylum seekers, including unaccompanied children, also remain frequent. The Nationality and Borders Act also introduces changes to age assessment rules for asylum seekers who claim to be unaccompanied minors.⁴⁴ Concerns were also raised with the Commissioner that wider changes to asylum law and policy risk undermining efforts in devolved jurisdictions to protect refugee rights.⁴⁵ Finally, the Commissioner observes that legal protections of victims of trafficking in human beings have increasingly been presented in the media and by government representatives and elected officials as a ‘loophole’ to residence in the UK. She is concerned that recent [announcements](#) of legislative changes to the framework related to victims of trafficking in human beings may be a prelude to the lowering of important and potentially life-saving protections for these victims.

1.4.3. CONCLUSIONS AND RECOMMENDATIONS

⁴¹ Nationality and Borders Act 2022, Section 12. A person could also fall into Group 1 if their entry or presence is unlawful, but they can show good cause for this, see Section 12, subsection 3.

⁴² On NRPF conditions, see section 2.2.2.

⁴³ UNHCR [Updated Observations](#) on the Nationality and Borders Bill, as amended, January 2022, paragraph 12.

⁴⁴ *Ibid.*, paragraphs 63-64, noting that changes include lowering the threshold for when age assessments are conducted, the introduction of a new standard of proof and provisions for using ‘scientific methods’ to assess age (such as x-rays).

⁴⁵ For example, some interlocutors suggested that UK-wide asylum policy inhibited the implementation of the Welsh government’s [Nation of Sanctuary](#) plan, January 2019.

43. The Commissioner calls on the UK government to ensure that its overall approach to asylum and migration fully complies with its obligations under international refugee and human rights law, and to refrain from introducing and implementing measures that would put the rights of refugees, asylum seekers and migrants at risk.
44. In view of the human rights implications, as well as of the wider impact on the global system of international protection, the Commissioner urges the UK government to abandon attempts to circumvent and externalise its responsibility for dealing with asylum claims and abandon its pursuit of removals to Rwanda for this purpose.
45. Regarding the challenges faced in relation to small boat crossings via the Channel, the Commissioner calls on the UK [once more](#) to adopt an approach that ensures the right to seek asylum and that prohibits [pushback practices](#). The expansion of safe and legal routes should be an integral part of the UK's approach. The Commissioner specifically calls on the government to establish a framework for ensuring that persons on the territory of France, who may have a legitimate claim to protection or to a stay on other grounds (such as family links) in the UK, can effectively put this claim forward to the UK authorities, without having to resort to dangerous, irregular sea crossings.
46. The Commissioner calls for provisions in the Nationality and Borders Act related to inadmissibility on the basis of safe third country concepts, the criminalisation of asylum seekers, and the discriminatory treatment of refugees based on their route or manner of arrival, to be removed.
47. The Commissioner calls on the UK government to take steps to strengthen the overall asylum system, including by improving capacity to deliver quality decision-making on asylum decisions in a timely manner, by addressing shortcomings in the accommodation of refugees and asylum seekers, and by establishing a clear time limit for immigration detention and by making alternatives to such detention readily available and as widely applicable as possible.⁴⁶
48. The Commissioner urges all relevant authorities to make use of international guidance, including that of the Council of Europe, to ensure human rights compliant approaches to age assessment⁴⁷ and family reunification.⁴⁸
49. The Commissioner calls on the UK government to refrain from any legislative changes that would undermine the UK's obligations to protect victims of trafficking in human beings, and to ensure such protection is fully in line with the ECHR and the Convention on Action against Trafficking in Human Beings, guidance by the Group of Experts on Trafficking in Human Beings (GRETA), and recommendations by the Committee of the Parties.

1.5. THE RIGHTS OF LGBTI PEOPLE, ESPECIALLY TRANS PERSONS

1.5.1. ADDRESSING AN INCREASINGLY TOXIC DISCOURSE AGAINST TRANS PEOPLE

⁴⁶ In this respect, the Commissioner specifically highlights the guidance published by the Council of Europe Steering Committee for Human Rights (CDDH), including its [analysis](#) of the legal and practical aspects of effective alternatives to detention in the context of migration, December 2017, and its practical guide [Alternatives to Immigration Detention: Fostering Effective Results](#), November 2019.

⁴⁷ Council of Europe, [Age assessment for children in migration: A human rights-based approach: A guide for policy makers](#), December 2019; PACE, [Resolution 2195\(2017\)](#), Child-friendly age assessment for unaccompanied children, 24 November 2017.

⁴⁸ Commissioner's Issue Paper [Realising the Rights to Family Reunification of Refugees in Europe](#), June 2017; PACE, [Resolution 2243\(2018\)](#), Family reunification of refugees and migrants in the Council of Europe, 11 October 2018; [Report](#) of the Council of Europe's Special Representative of the Secretary General on Refugees and Migration, *Family reunification for refugee and migrant children: Standards and promising practices*, April 2020.

50. In recent decades, the UK has made considerable progress in combating discrimination and upholding the human rights of LGBTI people. The country has taken a leading role on this issue on the international stage. However, such advances are now under increasing pressure. This is particularly the case in view of an increasingly harsh political and public discourse about the position of trans people. In view of the recent escalation of this discourse, and the reported impacts on LGBTI people and the protection of the rights of other groups, the Commissioner decided to address this during her visit, including by meeting with young trans people affected by these issues.
51. Trans people constitute one of the most discriminated groups in the UK. During her visit, the Commissioner heard harrowing testimonies of intolerance and discrimination of trans people in school, work and public life, including instances of verbal and physical abuse.⁴⁹ These negative experiences are still all too common, as is evident from official statistics.⁵⁰ Intolerance may also be fuelled by ignorance of the issues around gender diversity, which starts with gaps in relationships and sexuality education (RSE). While media attention to trans issues is extremely high in the UK, this attention often focuses on alleged controversies, while trans persons themselves, and their experiences, are often poorly represented.
52. [International bodies](#) have also observed that trans persons in the UK face increasingly hostile and toxic political and public discourse. This discourse has involved the calling into question of the notion of gender identity and the legitimacy of trans peoples' identity, and exerting pressure to alter and diminish safeguards which ensure equal treatment of trans people. A particularly concerning element of the current discourse in the UK is formed by frequent allegations or insinuations that trans people constitute a threat to other groups in society. The Commissioner notes that the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity has [warned against](#) the use of "deeply discriminatory stereotypes of trans and gender diverse persons based on ideas of predatory determinism." The Commissioner observes that narratives in the UK that frame trans people as a threat to others are particularly egregious examples of such stereotypes. In addition, she is concerned that activities of trans people (and groups that support them) aimed at standing up for their human rights and raising awareness about the experiences of trans people, have been negatively characterised as 'trans activism' or spreading 'gender ideology'.
53. The Commissioner underlines that public authorities should take action to promote respect for diversity and to foster inclusion, including by raising awareness about gender diversity in pluralist democratic societies, by countering false narratives, and by ensuring that public communication shows clear support for LGBTI equality.⁵¹ Both government officials and certain parliamentarians have actively contributed to an intolerant and stigmatising discourse. In line with her [previous warnings](#) about the increasing political manipulation of intolerance against LGBTI people in Europe, the Commissioner is particularly concerned by the apparently deliberate attempts by some politicians to turn the situation of trans people into 'culture wars' or 'wedge' issue for electoral purposes. The Commissioner is also concerned that this has led to a loss of trust by significant parts of the LGBTI community in the government as a protector of their rights, and that it has damaged

⁴⁹ Trans people in the UK also continue to face significant barriers in accessing support, including in the area of health care, however this issue is not addressed in this report.

⁵⁰ [Hate crime statistics](#) for England and Wales, for example, show a 56 per cent rise in transgender hate crime between 2021 and 2022.

⁵¹ PACE, [Resolution 2417\(2022\)](#), Combating rising hate against LGBTI people in Europe, 25 January 2022; Committee of Ministers of the Council of Europe, Recommendations [CM/Rec\(2010\)5](#) on measures to combat discrimination on grounds of sexual orientation or gender identity, 31 March 2010, and [CM/Rec\(2022\)16](#) on combating hate speech, 20 May 2022; European Commission on Racism and Intolerance (ECRI), [General Policy Recommendation N° 1](#) on combating racism xenophobia, antisemitism and intolerance, 4 October 1996, and [General Policy Recommendation N° 15](#) on combating hate speech, 8 December 2015.

relations between the UK government and a range of civil society organisations which have traditionally been important partners in advancing the UK government’s LGBTI rights agenda at home and abroad.⁵²

54. Another worrying feature of the current discourse is the framing of the protection of the rights of trans people as diametrically opposed to, and incompatible with, the protection of the rights of women, or of lesbians, gays or bisexuals. The Commissioner is of the opinion that such distortions of human rights as a zero-sum game between different groups must be vigorously rejected. In this context, the Commissioner highlights in particular that trans people and cis-gender women, rather than being groups in competition with each other for the realisation of their human rights, are far more likely to have a shared experience of prejudice, gender inequality, harmful stereotyping, and a higher vulnerability to violence. These human rights issues must be tackled urgently across the board and, in the Commissioner’s view, attempts to artificially pit these groups against each other will only undermine these efforts. The Commissioner observes that the concerns being raised often appeal to unfounded fears and prejudices against trans people and that they are not supported by evidence. If there are real cases of competing interests, these must be resolved through a careful balancing of those interests on a case by case basis, but with a view to preserving each group’s rights to the greatest extent possible, rather than on the basis of notions of the rights one group overriding the rights of another group.

1.5.2. SPECIFIC LEGAL AND POLICY ISSUES

55. **Legal gender recognition.** Public discourse has become particularly heated around possible changes to the framework for legal gender recognition in the UK, as contained in the [Gender Recognition Act 2004](#) (GRA).⁵³ In a 2018 [consultation](#), the UK government noted it that was convinced of the need for reform, taking into account the concerns of trans people that procedures were “intrusive, costly, humiliating and administratively burdensome” and “perpetuate[d] the outdated and false assumption that being trans is a mental illness.” Reform options included eliminating the need for medical reports that attest to the applicant being diagnosed as having gender dysphoria; changing the rules requiring a person to show that they have lived in their acquired gender for at least two years; and lowering costs. However, in 2020, the UK government [stated](#) that the balance struck by the GRA was correct after all, and that it would only act to lower costs for legal gender recognition to a nominal amount and to move the procedure online. In March 2022, the Scottish government published the [Gender Recognition Reform \(Scotland\) Bill](#) to replace, among other things, the need for medical reports with a statutory declaration by the applicant, and to lower the age to apply for legal gender recognition to 16.⁵⁴ In October 2022, the Bill advanced to Stage 2 of the legislative process in the Scottish Parliament.
56. Without intending to comment in detail on current and proposed legislation, the Commissioner notes that lowering barriers to legal gender recognition is key to the full realisation of trans people’s rights. In 2019, the World Health Assembly approved the removal of trans issues from the list of mental illnesses in the World Health Organisation’s [International Classification of Diseases](#). It is increasingly recognised that maintaining a pathologising approach to legal gender recognition “leads

⁵² One of the most visible outcomes of this loss of trust has been the boycott by various LGBTI rights organisations of the UK’s international Safe To Be Me conference, which was subsequently [cancelled](#) altogether. This action was also taken in relation to specific policy decisions by the UK government (see section 1.4.2 below).

⁵³ In a 2020 [statement](#), the Commissioner observed that debates on legal gender recognition in the UK, including in the media, amounted to fearmongering against trans people.

⁵⁴ Additionally, the Welsh government has indicated it would “seek to devolve powers in relation to Gender Recognition”, see the [LGBTQ+ Action Plan for Wales](#), July 2021, p. 8.

to stigmatisation and the risk of human rights violations.”⁵⁵ The Parliamentary Assembly of the Council of Europe (PACE) has [called on member states](#) to “develop quick, transparent and accessible procedures, based on self-determination”. The UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity has also [recommended](#) that legal gender recognition should be based on self-determination, be a simple administrative process, and not require applicants to fulfil abusive requirements, including medical certification.⁵⁶ The Commissioner considers that, from a human rights perspective, self-determination models for legal gender recognition represent a best practice, and the introduction of such a model in the UK would therefore constitute an important step forward. The Commissioner notes that the [number of Council of Europe member states](#) that have eliminated the requirement to provide medical certificates or diagnoses for legal gender recognition has more than doubled since 2018, with nine having adopted such models, and proposals pending in other member states. To the Commissioner’s best knowledge, there is no evidence of these self-determination procedures being misused or leading to issues in relation to the rights of others.

57. **Equal treatment.** Discussions about legal gender recognition in the UK have also impacted on questions of the application of equal treatment rules for trans people. The Commissioner highlights that protection against discrimination on the basis of gender identity is not just a matter of domestic law, but also of the UK’s [international human rights obligations](#). It is crucial that strong protections are maintained and that these are not weakened under the weight of the current political and public discourse, especially as trans people are still frequently the subject of discrimination. While domestic and international non-discrimination laws allow exceptions to equal treatment, these can only be applied when this is reasonable and objectively justified. The Commissioner is concerned that the current focus in the UK on the exclusion of trans people, is putting pressure on authorities and institutions tasked with preventing and combating discrimination to reverse the relationship between the rule and the exception of equal treatment of trans people. Any assessment of the reasonableness of exceptions put forward must be based on concrete and objective facts, and it should not be influenced by unsubstantiated and stigmatising narratives about threats posed by trans people, as a group, to others.
58. **Ban on conversion practices.** Conversion practices remain a considerable threat to the rights of LGBTI people. In October 2021, the UK government initiated a [consultation](#) on banning conversion practices in England and Wales.⁵⁷ In March 2022, the UK government [confirmed](#) that it would move towards a ban, but that trans people would fall outside its scope. In October 2022, it was [reported](#) that work on a ban was paused altogether. Bans on conversion practices are also being considered in Northern Ireland and Scotland.⁵⁸ It is welcome that steps are being taken to ban these practices across the UK, and these must not be delayed. Conversion practices have been [recognised](#) as harmful, inflicting severe pain and suffering on LGBTI people, and often resulting in long-lasting psychological and physical damage. The Commissioner highlights that this harm is inflicted on all

⁵⁵ Council of Europe Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), [Thematic Report on Legal Gender Recognition in Europe: First thematic implementation review report on Recommendation CM/Rec\(2010\)5](#), Council of Europe, June 2022, p. 32. Also see the Commissioner’s [statement](#) on the WHO’s ICD-11, 27 May 2019.

⁵⁶ Others have also recognised self-determination models as being the most respectful for trans people and as reflecting the highest human rights standards. See, for example, European Commission, [Legal gender recognition in the EU: The Journeys of trans people towards full equality](#), Directorate-General for Justice and Consumers, June 2020, paragraph 6.1.2.

⁵⁷ The government of Wales, for its part, has committed to “ban all aspects of LGBTQ+ conversion therapy within [its] current powers and seek the devolution of any necessary powers to enable [it] to achieve this”, see the [LGBTQ+ Action Plan for Wales](#), July 2021, p. 8.

⁵⁸ For Scotland see, in particular, the [independent report](#) of the Expert Advisory Group on Ending Conversion Practices, 4 October 2022, which informs the Scottish government on measures to be considered to end conversion practices. In Northern Ireland, the Assembly adopted, on 20 April 2021, a [Private Members’ Motion](#) on conversion therapy, calling on the Minister for Communities to commit to bringing forward legislation to ban conversion therapy in all its forms. The Minister also [spoke](#) in support of a ban.

victims, regardless of whether conversion practices are aimed at people's sexual orientation or at their gender identity. Trans people deserve equal protection from such harm and their exclusion from the scope of conversion practice bans would leave a significant, unjustifiable, and discriminatory gap in the protection of their human rights.

1.5.3. CONCLUSIONS AND RECOMMENDATIONS

59. The Commissioner urges government representatives and parliamentarians to refrain from stigmatising and harmful discourse against LGBTI people, and especially trans people, including promoting narratives that frame trans people as a threat.
60. All relevant authorities should take the necessary steps to combat intolerance against, discrimination of, and hate crimes directed at trans people. Government officials and elected representatives should proactively counter unsubstantiated and stigmatising narratives and ensure that their public communication shows support for LGBTI equality. Steps should also include ensuring that children and youth are provided with mandatory and mainstreamed comprehensive relationships and sexuality education, with curricula and teaching methods adapted to the different stages of children's development and their evolving capacity.
61. The Commissioner calls on the UK government to make all necessary efforts to rebuild trust with the LGBTI community and to re-establish constructive co-operation with civil society actors.
62. The Commissioner calls on all relevant authorities to ensure legal gender recognition procedures are quick, transparent, and accessible, and in line with internationally recognised human rights best practices, including self-determination.
63. The Commissioner calls on all relevant authorities and institutions tasked with preventing and combating discrimination to take all necessary steps to maintain strong equal treatment provisions in relation to trans people, in line with the UK's international obligations, and to ensure that equal treatment is maintained as the rule and differential treatment as the exception.
64. The Commissioner urges all relevant authorities to accelerate efforts to ban conversion practices, and to ensure that such bans are comprehensive and cover trans people.

1.6. OTHER ISSUES RAISED

1.6.1. THE EXTRADITION OF JULIAN ASSANGE AND IMPLICATIONS FOR MEDIA FREEDOM

65. During the visit, the Commissioner discussed the situation of Julian Assange with the UK government. By now, Mr Assange has been in detention for more than three-and-a-half years while proceedings concerning his possible extradition to the United States continue. The Commissioner again communicated to the UK government her [position](#) that Mr Assange should not be extradited, since allowing this would have a chilling effect on freedom of expression, media freedom and the right to information. She also shared her concern about the mental and physical health of Mr Assange and the very long duration of his detention.
66. The Commissioner takes note of the UK government's [response](#), again reiterated during the visit, that the procedure established in the [Extradition Act 2003](#) must be followed, that assessing the lawfulness of extradition is mainly a judicial function, and that once the case is approved, the Home Secretary is obliged to sign the extradition order if there are no grounds to prohibit the order being made.
67. While the Commissioner appreciates the need to follow procedures and ensure the independence of the judiciary, she is concerned that proceedings have so far mainly focused on Mr Assange's personal circumstances. While this is a very important aspect of the case, it means that the wider

human rights implications of Mr Assange's extradition, which reach far beyond his individual case, may not have been considered adequately thus far. Based on her discussion with the UK government, it remains unclear to the Commissioner to what extent the grounds to prohibit extradition, elaborated in the domestic legal framework, will provide a sufficient opportunity to have account of the wider implications for freedom of expression and media freedom that the extradition of Mr Assange would have.

68. The Commissioner considers that the possibility of Mr Assange's extradition stands in stark contrast to the UK government's wider focus on protecting freedom of expression, to which it devotes considerable attention both internationally and domestically. For example, the introduction in July 2022 of a [package of measures](#) to address so-called Strategic Lawsuits Against Public Participation (SLAPPs) is a welcome development, as SLAPPs constitute a [major threat](#) to freedom of expression in Europe.⁵⁹

1.6.2. CONCLUSIONS AND RECOMMENDATIONS

69. The Commissioner reiterates her call on the UK government not to agree to the extradition of Mr Assange to the United States, in view of the serious consequences of such a course of action for freedom of expression, media freedom and the right to information, in Europe and beyond.

2. CHILDREN'S RIGHTS

70. Children are among the groups most affected by recent and current crises. The COVID-19 pandemic significantly disrupted the lives and routines of children, including their education. The ongoing cost-of-living crisis puts children in an especially vulnerable position. The Commissioner therefore decided to pay particular attention to children's rights during her visit. She specifically focused on children in (or at risk of) poverty, on policing and justice issues in relation to children, and on the right of children to participation.

2.1. GENERAL ISSUES IN RELATION TO THE PROTECTION OF CHILDREN'S RIGHTS

2.1.1. OVERVIEW

71. **Incorporation of the UN Convention on the Rights of the Child (CRC).** The UK is party to the CRC, the key international instrument to protect children's rights. It has not accepted the possibility of [individual complaints](#) to the UN Committee on the Rights of the Child. At the time of writing, the CRC is not directly incorporated in domestic law in any part of the UK. The Commissioner is pleased to note that, in March 2021, the Scottish Parliament unanimously passed the [UNCRC \(Incorporation\)\(Scotland\) Bill](#), aimed at incorporating the CRC into Scottish law.⁶⁰ However, the UK Supreme Court [found](#) that some sections of the Bill went beyond the legislative powers of the Scottish Parliament. While the Commissioner was informed that efforts by the Scottish government were underway to address the issues identified by the Supreme Court, she notes that it has been over a year since the judgement was delivered, and that the revised Bill has not yet been returned to the Scottish Parliament. In Wales, [legislation](#) is in place that requires ministers to have due regard of the CRC,⁶¹ but direct incorporation has not taken place, apparently due to issues around the devolved powers of the Welsh Assembly to do so. The Commissioner underlines that the direct

⁵⁹ The Commissioner also notes with satisfaction the introduction in the House of Lords of the [Strategic Litigation Against Public Participation \(Freedom of Expression\) Bill](#) (introduced as a Private Members' Bill) in September 2022.

⁶⁰ Currently, the CRC is set out as a reference point in the [Children and Young People \(Scotland\) Act 2014](#).

⁶¹ Other measures to align practices in Wales with the CRC include the 2021 [Children's Rights Scheme](#), and the [Guidance](#) on Children's Rights Impact Assessments.

incorporation of the CRC into domestic law in all parts of the UK would be an important step in giving full protection to children's rights.

72. **Protection of children's rights through the Human Rights Act 1998 (HRA).** Since the ECHR is the only international human rights instrument incorporated into UK law, organisations and lawyers acting on behalf of children particularly rely on this instrument. Throughout the Commissioner's visit, the crucial importance of the HRA for the protection of children's rights was repeatedly emphasised. The [impact assessment](#) accompanying the Bill of Rights Bill showed that, between 2018 and 2021, about 45% of claimants in HRA cases were children, attesting to the fact that restrictions on bringing human rights cases to domestic courts would disproportionately affect children.⁶²
73. **Instruments to protect the social and economic rights of children.** In view of the discussion of children's economic and social rights below, the Commissioner notes that the UK is party to the European Social Charter of 1961 and the European Code of Social Security, but has not accepted the possibility of [collective complaints](#) under the Charter. It has neither ratified the [revised European Social Charter](#) of 1996 nor the [revised Code](#) of 1990. The UK is also party to the International Covenant on Economic, Social and Cultural Rights, again without accepting the related individual complaints mechanism.
74. **National measures to protect children's rights.** Children's rights impact assessments are an important way to assess how policies, strategies, and legislation, affect the rights of children. Applying these tools helps avoid and mitigate any negative impact for children at an early stage. During meetings with the Commissioner, interlocutors highlighted that, despite efforts made, especially in [Wales](#) and [Scotland](#), children's rights impact assessments are not conducted systematically in the UK and no statutory obligation to do so exists in any of the four nations. The Commissioner highlights that such a statutory obligation would significantly strengthen the attention given to, and the observance of, children's rights in the UK.
75. In terms of raising issues of concern in relation to children, and giving a voice to children, the Commissioner notes the important role played by the [Children's Commissioner for England](#), the [Children's Commissioner for Wales](#), the [Children and Young People's Commissioner Scotland](#), and the [Northern Ireland Commissioner for Children and Young People](#). As an emerging good practice, children's commissioners are also being established at local authority level, the of these having been established in the [borough of Newham](#) in London.

2.1.2. CONCLUSIONS AND RECOMMENDATIONS

76. The Commissioner urges all relevant authorities in the UK, within the remit of their specific powers, to take steps to appropriately implement the children's rights recognised in the CRC, including through full incorporation of the CRC into legislation.
77. The UK government should ensure that, if it continues to pursue reform of the HRA, this does not lead to a regression in the protection of children's rights, including their ability to bring cases to courts.
78. To strengthen its commitments to children's social and economic rights, the UK should ratify the revised European Social Charter, the Additional Protocol Providing for a System of Collective Complaints, and the revised European Code of Social Security. It should also accept individual complaints in relation to the CRC and the ICESCR.

⁶² See also section 1.2.2. For more on the specific links between the HRA and children's rights, see, for example, Children and Young People's Commissioner Scotland (CYCPS), [A Children's Rights Perspective: Repeal of the Human Rights Act](#), November 2022.

79. The Commissioner encourages the UK government and devolved governments to introduce a statutory obligation to conduct child rights impact assessments when developing laws and policies affecting children.

2.2. POVERTY

2.2.1. OVERVIEW

80. The high number of children in the UK living in (or at risk of) poverty was consistently raised as one of the most urgent human rights issues during the Commissioner's meetings. Poverty has a devastating effect on children's rights and on every aspect of their lives, including their safety and well-being. Under the above-mentioned instruments, the UK has a range of obligations, not least to secure to children an adequate standard of living, their right to the highest attainable standard of physical and mental health, and their right to adequate housing. UK government data for 2020-2021 indicated that there were 3.9 million children living in poverty in the UK, which is equivalent to 27% of all children.⁶³ Child poverty levels vary considerably across the UK.⁶⁴ In some areas, almost one in two children are living in poverty.⁶⁵ While some of the issues that need to be tackled have been aggravated by the COVID-19 pandemic, many of the causes of the high levels of child poverty precede this pandemic. As the cost-of-living crisis deepens, some of these pre-existing issues will impact on children even harder. The Commissioner is particularly concerned about the disproportionate impact of poverty on children belonging to ethnic minority groups.⁶⁶

2.2.2. THE IMPORTANCE OF CHILD POVERTY STRATEGIES

81. One of the issues raised with the Commissioner in relation to tackling child poverty was the gaps in, or absence of, comprehensive dedicated strategies by the different governments in the UK. The Commissioner notes that the [Child Poverty Act 2010](#) contained statutory targets for the eradication of child poverty, as well as the statutory obligation to produce child poverty strategies. Both obligations were repealed by the [Welfare Reform and Work Act 2016](#). No similar obligations have been introduced since, except in Scotland, where the [Child Poverty \(Scotland\) Act 2017](#) included specific, statutorily binding targets.⁶⁷ In Wales, there is also a [statutory obligation](#) to publish a strategy for contributing to the eradication of child poverty. Interlocutors in Wales also flagged to the Commissioner that despite [efforts](#) made, there is still a strong need to establish binding targets.⁶⁸ The Commissioner also notes that Northern Ireland's [child poverty strategy](#) has [expired](#), and a new one may be unlikely to be agreed in the near future, in view of the political impasse in Northern

⁶³ Department for Work and Pensions, '[Households below average income: for financial years ending 1995 to 2021](#)' (31 March 2022), table 1.4a and 1.4b. Developments during and since the height of the Covid-19 pandemic may have affected this number. In July 2022, [research by Loughborough University](#) for the End Child Poverty Coalition put the number of children in poverty in 2020-2021 at 3.6 million, but this research focused on children up to the age of 15.

⁶⁴ See, for example, the [interactive map](#) produced by the End Child Poverty Coalition, showing particularly high rates of child poverty in urban areas in England and across many parts of Wales.

⁶⁵ For example, in the borough of Newham in London, which the Commissioner visited, [49.47%](#) of children were living in poverty in 2020-2021.

⁶⁶ In Scotland, for instance, people from Black, Asian and minority ethnic backgrounds were [found](#) to be more than twice as likely to be living in poverty than people from a white British background. While all ethnic groups experience poverty, of people in households headed by someone who is not white, 18% are at a risk of very deep poverty, see Joseph Rowntree Foundation, [Going without: deepening poverty in the UK](#), 25 July 2022, p. 12. Very deep poverty means an income below 40% of the median income after housing costs.

⁶⁷ However, the Scottish government is currently [not on track](#) to meet the (interim) targets set out in the four-year [delivery plan](#).

⁶⁸ For example, the Children's Commissioner for Wales has [highlighted](#) that without targets it was very difficult for her to do her job and to hold the Welsh government to account, and to really see how well or poorly Wales was doing in the elimination of child poverty.

Ireland. Further action to reinstitute or to establish statutory obligations to have child poverty strategies and binding targets, would therefore provide an important boost for effectively tackling this serious children's rights problem.

2.2.3. STRUCTURAL ISSUES IN THE WELFARE AND BENEFITS SYSTEM

82. Structural elements of the welfare and benefits system in the UK were also identified as having a specific impact on child poverty. It should be noted that the devolved administrations have different competencies for benefit payments. The discussion below mainly focuses on the UK-wide system, which has an impact on child poverty in all parts of the UK. Nevertheless, the Commissioner recognises that devolved governments have made several welcome attempts to offset some of the problems identified below, including through cash transfers and targeted schemes,⁶⁹ although with inherently limited possibilities to reduce child poverty, in view of the overarching characteristics of the UK welfare system.
83. **The level of support under Universal Credit (UC)** was identified as a key contributing factor to child poverty. The [Welfare Reform Act 2012](#) introduced the system of UC, to replace and combine six benefits, including the housing benefit and child tax credit. In November 2022, Save the Children UK, based on government [statistics](#), [reported](#) that there were 4 million children living in households receiving UC. Interlocutors highlighted to the Commissioner that the level of support under UC was often insufficient to prevent child poverty, including due to the failure of benefit payments to keep pace with inflation.⁷⁰ The importance of increasing the level of support became evident during the COVID-19 pandemic, when the UK government instituted an increase on standard UC allowances of £20 a week. This [reportedly](#) lifted approximately 400,000 families out of poverty temporarily. Unfortunately, the increase was ended in September 2021. The Commissioner notes that, in 2019, the UK government committed to raising UC payments in line with inflation by 2023. At the time of writing, it remains unclear whether the levels of support under UC will be raised in line with inflation, and whether such a raise will come into effect in the short term to help out children currently in poverty and in urgent need of support.
84. **The benefit cap** constitutes a limit on the total amount of benefit an individual can claim. The idea behind the cap, [according](#) to the then Secretary of State for Work and Pensions, was that “people who are on benefits should not be earning more than those, for example, on average earnings”. Since 2016, the benefit cap has been set at £20,000 per year for couples and single parents and £13,400 for single adults across the UK, with a higher cap in London. The Commissioner is concerned that the cap may be limiting families from accessing sufficient support to meet their needs, especially considering the spike in inflation and the cost-of-living crisis.
85. **The two-child limit** restricts UC child-related payments to the first two children of a family. Notwithstanding [exceptions](#), many larger families are being affected by this limit. An April 2022 research report by the Child Poverty Action Group (CPAG) [estimates](#) that 1.4 million children in more than 400,000 families in the UK are disadvantaged by the two-child policy. It also suggests that removing the policy would immediately lift 250,000 children out of poverty. CPAG supported [litigation](#) at various instances against the two-child limit, but so far [without success](#). Nevertheless, the Commissioner notes that both the two-child limit and the benefit cap restrict the amount of

⁶⁹ For example, the [Scottish Child Payment](#) tops up the Universal Credit by £25 per week per child.

⁷⁰ Also see the [statement](#) by the Special Rapporteur on Extreme Poverty and Human Rights, ‘Increase benefits and wages in line with inflation or lives will be lost’, 17 October 2022.

benefits that households can receive, regardless of their specific needs, and thereby continue to exacerbate child poverty.

86. **No Recourse to Public Funds (NRPF).** During her visit, the Commissioner also visited [The Magpie Project](#), where she met with mothers of young children who were subject to a NRPF condition due to their specific immigration status. Persons subject to such a condition have no access to benefits, including those related to children.⁷¹ While persons subject to NRPF can turn to social services or the Home Office for support (for example, when they are at risk of destitution), interlocutors noted that this process is highly bureaucratic and that many persons had encountered difficulties either with the local council or the Home Office. Many also shared examples of being allocated poor quality emergency accommodation in hotels, where they were not allowed to cook for children, and of frequently being required to move to other accommodation at very short notice. In discussions with the UK government, the Commissioner underlined the need to assess the specific issues arising out of the NRPF condition that impact on children’s rights and to identify ways to mitigate these issues.
87. Tackling child poverty is a complex challenge, and many other factors and policies beyond the ones discussed above clearly come into play. Some other issues flagged during discussions with the Commissioner as requiring further attention from the authorities include the need to address problems arising from the ‘digital by default’ approach to accessing welfare benefits, which creates barriers to access for some,⁷² to tackling [in-work poverty](#), and to improve [access to childcare](#).

2.2.4. SPECIFIC ISSUES RELATED TO CHILD POVERTY REQUIRING ATTENTION

88. **Food insecurity** was highlighted as one of the key issues faced by children in poverty. As the effects of the COVID-19 pandemic and the cost-of-living crisis worsen, more families are struggling to put a nutritious meal on the table. [Research](#) by the Food Foundation suggests that, as of September 2022, 25.8% of UK households with children experienced food insecurity, resulting in 4 million children living in families that did not have access to a healthy and affordable diet. The provision of free school meals has been recognised as a key tool to tackle the impact of food insecurity among school-age children. However, the Commissioner was informed that many children in poverty experience significant barriers in accessing free school meals, especially in [England](#). In June 2022, CPAG [observed](#) that 800,000 children living in poverty in England did not qualify for free school meals.⁷³ The Commissioner welcomes that, from October 2022, free school meal eligibility has been [permanently extended](#) to children in all households with NRPF in England, which will hopefully bring some improvement in free school meal accessibility. Nevertheless, making free school meals universally available to *all* children in the UK, without income thresholds, would be a timely and crucial step to address food insecurity, and to prevent the stigmatisation of children who rely on free school meals.⁷⁴ The Commissioner understands that free school meals are now provided to all children in primary 1 to 5 in [Scotland](#), and that this will be rolled out to all primary school children in the future. In [Wales](#), the government has committed to ensuring that all primary school children will get free school meals by 2024. Since free school meals are not yet universally available and accessible across

⁷¹ Section 115 of the [Immigration and Asylum Act 1999](#).

⁷² As the UN Special Rapporteur on Extreme Poverty [highlighted](#) in his 2018, the UC system is the first major government service that is digital by default – meaning that it is mainly an online system. He stated that “[o]ne wonders why some of the most vulnerable and those with poor digital literacy had to go first in what amounts to a nationwide digital experiment.”

⁷³ The Commissioner notes that the income threshold of families to determine eligibility of children for free school meals can be a trigger for children being excluded from free school meals. This annual income threshold currently stands at only £7,400 in most of the UK, although it is almost twice as high in Northern Ireland. See also, Food Foundation, [‘Children Missing Out on Free School Meals’](#), 8 June 2022.

⁷⁴ During her visit, the Commissioner was told, for example, about differences between free school meals and paid meals. In some cases, children getting free school meals would only get cold lunches, in contrast to those getting paid meals. Furthermore, she was informed about at least one incident in which children formally ineligible for free school meals were being made to clean school canteens to get a free school meal.

the UK, the Commissioner reiterates recent [calls from civil society](#) to specifically focus efforts on expanding eligibility to all children in families on UC, and to ensure that children in families that are severely struggling are guaranteed free school meals.⁷⁵

89. **Homelessness or living in temporary accommodation**⁷⁶ was another poverty-related issue frequently raised by the Commissioner’s interlocutors. Homelessness or living in temporary accommodation has multiple impacts on children, including their educational attainment, as children more often miss school, or go to school hungry, tired or unkempt. The acute shortage of [social housing](#) is contributing to the number of families dependent on temporary accommodation. The housing rights charity Shelter has [found](#) that over one million families in the UK were waiting for social homes in 2020. In 2021, it was [reported](#) that more than 121,000 children were living in temporary accommodation in England, of whom 75,850 in London alone.⁷⁷ Human Rights Watch [found](#) that this was often for prolonged periods and in many cases in substandard or in uninhabitable conditions. Thousands more were living in temporary accommodation in [Scotland](#) (8,635 on 31 March 2022), [Northern Ireland](#) (3,913 on 16 July 2022), and [Wales](#) (2,515 on 31 August 2022).⁷⁸

2.2.5. POVERTY AND LINKS WITH THE RIGHT TO HEALTH

90. **Poverty and mental health.** Children and young people in the UK consider mental health and well-being as one of the biggest issues facing them today.⁷⁹ The proportion of young people in England with a probable mental disorder [increased](#) significantly from one in nine in 2017 to one in six in 2021.⁸⁰ Many reports have also established the link between the regression of children’s mental health and the COVID-19 pandemic and associated lockdowns.⁸¹ In the Commissioner’s meeting with children’s rights organisations, the lack of accessibility to children and young people’s mental health services ([CYPMHS](#)) was underlined as a shared concern.⁸² While the overall availability and accessibility of mental health services requires urgent attention, child poverty should be recognised as an important factor contributing to the current mental health crisis for children.⁸³ To a large extent, mental health is shaped by the social, economic, and physical environments in which people live,⁸⁴ and improving people’s socio-economic situation has been found to significantly reduce mental health problems.⁸⁵
91. **The right to a healthy environment.** According to the [World Health Organisation](#), air pollution is one of the greatest environmental risks to health, and children are particularly vulnerable.⁸⁶ [Research](#) by Friends of the Earth, based on data from the UK Department for Environment, Food & Rural Affairs (DEFRA), shows that over one million children in England lived in neighbourhoods where air pollution

⁷⁵ [Research](#) by the Food Foundation shows that over half of families on UC (54.3%) experienced food insecurity in September 2022.

⁷⁶ Temporary accommodation is meant for families without other places to stay, qualifying as a priority and provided a *short-term* housing solution until a more permanent solution can be found.

⁷⁷ House of Commons, ‘[Households in temporary accommodation \(England\)](#)’, 13 February 2022; Centre for London, ‘[Temporary Accommodation: London’s hidden homelessness crisis](#)’, 29 September 2022, p. 12.

⁷⁸ Statistics for Wales cover children up to the age of 16.

⁷⁹ See for example, statements by the [British Youth Council](#), the [Scottish Children’s Parliament](#), the [Welsh Youth Parliament](#), and the [Northern Ireland Youth Forum](#).

⁸⁰ A third [report](#) on the mental health of children and young people in England is due to be published on 29 November 2022.

⁸¹ See for example, report by [Young Minds](#) and statement by [Each Other](#).

⁸² Previously often referred to as ‘children and adolescent mental health services’ (CAMHS).

⁸³ See for example, statistics by the [Mental Health Foundation](#) and Children & Young People’s Mental Health Coalition, ‘[Heads Up Rethinking mental health services for vulnerable young people](#)’, July 2022, p. 18.

⁸⁴ WHO Report, ‘[Social Determinants of Mental Health](#)’ (2014).

⁸⁵ Centre for Mental Health, ‘[Tackling mental health disparities: ten evidenced based actions that government could take in the forthcoming white paper](#)’, May 2022, p. 2.

⁸⁶ WHO [statement](#) and PACE, [Resolution 2286 \(2019\)](#) *Air pollution: a challenge for public health in Europe*, 24 May 2019, paragraph 7.

was double the [WHO standards](#) in 2020. The organisation further observed that there were 1,737 schools in these high pollution-affected areas, many of which are in areas also experiencing high levels of child poverty. Again, evidence suggests that children of ethnic minority backgrounds are particularly affected.⁸⁷ Air pollution has serious implications for children’s right to health, and it may also affect their right to life. This was most tragically illustrated by the death in 2013 of nine-year old Ella Kissi-Debrah from London. In that case, the coroner [concluded](#) that air pollution had “made a material contribution” to Ella’s premature death which had followed an asthma attack. In view of the serious impact of air pollution on children, the Commissioner welcomes that a [Private Members’ Bill](#) to guarantee the right to clean air in England and Wales was introduced in the House of Lords in May 2022, and that it passed its second reading in July 2022, with the committee stage to start on 18 November 2022.

2.2.6. CONCLUSIONS AND RECOMMENDATIONS

92. The Commissioner calls on all relevant authorities to take all the necessary steps, to the maximum extent possible, to combat child poverty. To achieve this aim, they should introduce or strengthen statutory obligations to develop comprehensive child poverty reduction strategies and binding targets. Specific measures should be taken to tackle the vulnerability to poverty of specific groups of children, including children with disabilities or children living in a family with a person with disabilities, and children from minority ethnic backgrounds.
93. The UK government should urgently review key elements of the welfare and benefits system that are contributing to, or aggravating, child poverty. It should also ensure that the level of support under UC is sufficient to provide for an adequate standard of living for children and their families, including in view of inflation and the increasing cost of living. The Commissioner further urges the UK government to consider lifting the benefits cap and to abolish the two-child limit.
94. Decisions on fiscal policy and public spending should be informed by thorough children’s rights impact assessments and they should contribute to the overall goal of eliminating child poverty.
95. The Commissioner calls on all authorities to review any barriers to children in poverty accessing free school meals, including by reassessing family income thresholds. She encourages all authorities to work towards universal access to free school meals.
96. The Commissioner calls on all relevant authorities to adopt and implement sustainable housing strategies, with clear targets to end child homelessness and to promptly move children in temporary accommodation to long-term, stable, quality housing.
97. The Commissioner calls on the UK government to urgently carry out a children’s rights impact review of the NRPF policy, and to make the necessary changes to ensure that children’s rights, especially the right to an adequate standard of living, are fully protected, both in law and in practice.
98. The Commissioner calls on the authorities to take concrete steps towards the recognition of the right to a healthy environment, and to ensure that a clean and healthy environment, especially clean air, can be enjoyed by all children equally without discrimination. She encourages authorities to prioritise actions in areas with particularly vulnerable populations.⁸⁸ Children and young people

⁸⁷ Friends of the Earth research [shows](#) that people from ethnic minority groups in England are more than three times more likely to live in neighbourhoods with very high air pollution. This includes the borough of [Newham](#) which the Commissioner visited. A 2019 British Heart Foundation report on air pollution [found](#) that the borough of Newham, where an [estimated](#) 96 residents die every year due to poor air quality, was the most polluted borough in the UK. Some 72% of Newham’s [residents](#) are from black, Asian, and other ethnic minority groups.

⁸⁸ In line with [Recommendation](#) CM/Rec(2022)20 of the Committee of Ministers of the Council of Europe on human rights and the protection of the environment, 27 September 2022. Such action should especially be focused on areas where air pollution significantly exceeds UK legal limits and the [revised 2021 WHO guidelines](#).

should be afforded concrete and genuine opportunities to take part in the design of any laws, policies and projects with an environmental impact.

99. The Commissioner calls on all authorities to significantly invest in mental health support services for children, to ensure these are adequately available and accessible to all who need them, and to take comprehensive measures around the prevention and early warning of mental health issues among children.

2.3. POLICE AND JUSTICE ISSUES

100. Successive Commissioners have devoted attention to the rights of children who come into conflict with the law in the UK, in particular their interactions with the police and with the criminal justice system.⁸⁹ During the Commissioner's visit, several related issues were discussed, in particular the practice of stop and search, the age of criminal responsibility, criminal justice responses to children, and the equal protection of children against violence.

2.3.1. ISSUES RELATED TO POLICING OPERATIONS

101. **Stop and search and strip searches.** In all parts of the UK, the police have powers to stop and search children, both based on a reasonable suspicion and, in certain cases, without suspicion. Reporting shows that stop and search powers in general remain widely used throughout the UK.⁹⁰ These powers are reportedly disproportionately used against persons from minority ethnic backgrounds, which gives rise to serious concerns about racial profiling. For children specifically, being stopped and searched can be a frightening and intimidating experience, and perceptions of being unfairly [targeted](#) can severely undermine children's trust in the police. The Commissioner also received disturbing information about the practice of strip-searching of children, which has particularly come to public attention through the 'Child Q' case.⁹¹ Information requested by the Children's Commissioner for England showed that this unlawful strip search was not an isolated incident. She [published](#) data from the Metropolitan Police which showed that 650 strip searches of children between 10 and 17 had been carried out from 2018 to 2020, and that a quarter of these searches took place without an appropriate adult present, contrary to legal requirements. In August 2022, the Children's Commissioner for England [wrote](#) to all police forces in England and Wales to request information about strip searches carried out by them. However, it is clear that the practice of strip-searching of children is certainly not limited to the Metropolitan Police. During the Commissioner's meetings, interlocutors also raised concerns about strip searches in Northern Ireland, Wales, and Scotland. The Commissioner notes that strip searches have the potential to have a particularly harmful impact on children, even more so than regular searches. Several actors have [called](#) for a complete end to the practice of strip-searching children.
102. **Use of force.** In her various discussions, the Commissioner was also informed about the use of force by police against children. There have been numerous international recommendations on this issue, including from the UN Committee on the Rights of the Child, in its 2016 [Concluding Observations](#) on the UK. Among other things, the Committee has called for a prohibition of the use of electric discharge weapons against children. Nevertheless, the Commissioner was informed that the use of

⁸⁹ See, for example, [Report](#) by Commissioner Gil-Robles, on his visit to the United Kingdom (4-12 November 2004), CommDH(2005)6, 8 June 2005; [Memorandum](#) by Commissioner Hammarberg following his visits to the United Kingdom (5-8 February and 31 March-2 April 2008) on juvenile justice, CommDH(2008)27, 17 October 2008; [Letter](#) from Commissioner Hammarberg on the system of juvenile justice in the United Kingdom, CommDH(2012)17, 15 March 2012.

⁹⁰ [UK Government figures](#) show that, between April 2020 and March 2021, almost 700,000 stop and search (not including vehicle searches) were carried out in England and Wales, with the highest rates in London.

⁹¹ The [case](#) involved a 15-year old girl from Hackney, London, being taken out of an exam by the Metropolitan Police searching for cannabis, strip-searched without any appropriate adult present, having to expose her intimate body parts and made to take off her sanitary towel. No drugs were found. A safeguarding report found that the search had been unjustified, and that racism had likely been a factor in the treatment of the girl.

tasers against children continues to be permissible, and these weapons are deployed against children, in different parts of the UK. The Committee on the Rights of the Child has also called for an end to the use of attenuating energy projectiles against children in Northern Ireland, but despite this, rubber bullets have continued to be used against them. The Commissioner was also told of concerns about the use of spit hoods and bite guards on children, and notes that civil society organisations have called for a [ban on these practices](#).

2.3.2. CHILDREN IN THE CRIMINAL JUSTICE SYSTEM

103. **Children in custody.** The situation of children in custody was consistently raised with the Commissioner, by both civil society and human rights bodies. The Commissioner recalls that all children⁹² have the right to be treated in line with the principles of [child-friendly justice](#). In this respect, the Commissioner was concerned to be informed that 16- and 17-year-old children in conflict with the law still often end up in young offenders institutions, which experience a high incidence of violence.⁹³ She also heard evidence of 16- and 17-year-olds sometimes being detained in adult prisons, rather than in non-custodial alternatives, despite some efforts to expand such alternatives. Issues were also raised about the lack of sufficient non-custodial alternatives for children who come into conflict with the law in some parts of the UK. This is reportedly resulting in children being moved across the country (such as from England to Scotland), leading to children potentially falling through the gaps in the different legal systems and the supervisory mechanisms in different jurisdictions.
104. **Minimum age of criminal responsibility.** A key element of ensuring child-friendly justice is setting an appropriate minimum age of criminal responsibility. The Commissioner recalls that both the Parliamentary Assembly of the Council of Europe and the UN Committee on the Rights of the Child have called on member states to ensure that the minimum age of criminal responsibility is set at 14 at the youngest, while noting that higher ages provide better protection for children.⁹⁴ Different actors in the UK have called on relevant authorities for this age to be set at 16 to ensure an appropriate level of protection of the human rights of children who come into conflict with the law. Despite this, the age of criminal responsibility continues to fall short of international standards in all parts of the UK. In England and Wales, as well as in Northern Ireland, the age of criminal responsibility remains at 10, which is amongst the lowest in Europe. During the visit, the Secretary of State for Justice indicated that the UK government does not intend to increase the age of criminal responsibility in England and Wales. In October 2022, the Minister of Justice of Northern Ireland launched a [consultation](#) on a proposal to raise the age of criminal responsibility in that jurisdiction to 14. In Scotland, the [Age of Criminal Responsibility \(Scotland\) Act 2019](#) came into force in December 2021. The Act raises the age of criminal responsibility to 12, but requires a review of this age within three years. During the legislative proceedings leading to this change, the Commissioner shared her [concern](#) that raising the age of criminal responsibility to 12 would still be inadequate from the perspective of international standards. She emphasises that this same concern still applies today, and that a swift review of the age of criminal responsibility should be carried out, so that it can align with international standards.

⁹² The Commissioner emphasises that the CRC defines a child as “every human being *below the age of 18* unless under the law applicable to the child, majority is attained earlier” (Article 1). The European Court of Human Rights has followed this definition. See, for example, [Güveç v. Turkey](#), application 70337/01, judgment of 20 January 2009; and [Çoselav v. Turkey](#), application 1413/07, judgment of 9 October 2012.

⁹³ In a 2020 [report](#), the Committee on the Prevention of Torture (CPT) also noted that, in the establishments it had visited, “the situation had become increasingly insecure over recent years, and this reflected a general increase of violence recorded throughout the youth estate between 2016 and 2019.”, p. 7.

⁹⁴ PACE, [Resolution 2010\(2014\) Child-friendly justice: from rhetoric to reality](#), 27 June 2014, paragraph 6.2; CRC Committee, [General Comment No. 24](#) on children’s rights in the child justice system, CRC/C/GC/24, 18 September 2019, paragraph 22.

2.3.3. EQUAL PROTECTION FROM VIOLENCE

105. Children must be protected from violence in all situations, just like adults, including in the private sphere and at school. The Commissioner [again welcomes](#) the UK's ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention), as the Convention also explicitly protects girls under the age of 18.⁹⁵ In recent years, some further important developments in the protection of children from violence have taken place in the UK. Notably, Scotland and Wales changed their laws to abolish the defence of 'reasonable chastisement'. Unfortunately, this defence remains available in England and Northern Ireland, giving children in those jurisdictions lesser protection against corporal punishment.

2.3.4. CONCLUSIONS AND RECOMMENDATIONS

106. The Commissioner urges all relevant authorities to ensure that children who come into conflict with the law are treated as children first and foremost, with a focus on their rehabilitation and on ensuring restorative justice, rather than on repression and retribution. To this end, they should take full advantage of guidance provided by the UN Committee on the Rights of the Child, as well as the standards developed by different bodies of the Council of Europe, in particular the [Guidelines on Child-Friendly Justice](#) and the commitments relating to child-friendly justice for all children contained in the [Council of Europe Strategy for the Rights of the Child](#).
107. The Commissioner calls on all relevant authorities to urgently carry out a comprehensive children's rights impact assessment of stop and search practices, including strip-searching, and to take all appropriate measures to ensure that children's rights, including their right to private life and personal integrity, and their right not to be discriminated, are fully respected in the context of police searches.
108. The Commissioner calls on all relevant authorities to promptly implement the long-standing recommendations of the UN Committee on the Rights of the Child to prohibit the use of electric discharge weapons (tasers) and, in Northern Ireland, attenuating energy projectiles (rubber bullets) against children, as well as the use of pain-inducing restraints.
109. The Commissioner urges the authorities to set out concrete steps to considerably reduce the number of children in custody, and to accelerate measures to ensure that child-appropriate, non-custodial alternatives become readily available and accessible.
110. The Commissioner calls on all relevant authorities to ensure that all children in conflict with the law, including 16- and 17-year-olds, fully benefit from treatment and procedures that are compatible with the principles of child-friendly justice, which should be delivered through appropriate juvenile justice systems, rather than those intended for adults.
111. The Commissioner calls on all relevant authorities to review the age of criminal responsibility, and to put forward legislative proposals to bring this in line with international standards. In this regard she reiterates that 14 years of age should be considered the lowest limit, but that higher ages, such as 16, provide better protection for children's rights.
112. The Commissioner urges the UK government and Parliament, and the Northern Ireland Executive and Assembly, to introduce and adopt legislation to abolish the defence of reasonable chastisement in England and Northern Ireland, respectively.

⁹⁵ Istanbul Convention, Article 3(f). Since 2018, the UK is also party to the Council of Europe Convention on the Protection of Children and Sexual Exploitation and Sexual Abuse (the Lanzarote Convention).

2.4. THE RIGHT TO PARTICIPATION

2.4.1. OVERVIEW

113. Strengthening the involvement and meaningful participation of children in decision making is [essential for the full realisation of their rights](#), in line with Article 12 CRC. The UK shows many important examples of promoting child participation. For example, the need to take account of children’s views on issues that affect them is acknowledged in some legal frameworks.⁹⁶ The Children’s Commissioners in England, Wales, Scotland, and Northern Ireland also play a key role in fostering child participation in decision-making.⁹⁷ Children’s Commissioners also have their own consultative structures which include children, as do most of the major NGOs working on children’s rights. Other initiatives, such as surveys among children, also help bring the concerns and voices of children to the fore in a systematic way, including for the benefit of policy-making.⁹⁸
114. The UK also has an advanced network of children’s and youth parliaments and assemblies. It has, alongside the UK Youth Parliament, separate children’s and youth parliaments or assemblies in devolved jurisdictions. This includes the Scottish Children’s Parliament (established in 1996), the Scottish Youth Parliament (established in 1999), the Welsh Youth Parliament (established in 2018), and the Northern Ireland Youth Assembly (established in 2021).
115. While there are thus many important good practices, which could also serve as inspiration internationally, the Commissioner observes that there are further opportunities to strengthen child participation in the UK. The points below are based on input by various official bodies and civil society organisations, but also specifically on the Commissioner’s meetings with children and young people.

2.4.2. POSSIBILITIES TO STRENGTHEN CHILD PARTICIPATION IN DECISION-MAKING

116. Children and young people expressed their appreciation for existing opportunities for participation, but they also highlighted that many decisions that completely change their lives are taken by authorities, without them being able to express themselves on these adequately. Children may be heard through NGOs who relay their messages, but their voices are not often heard directly by law- and policy-makers. The Commissioner notes that child participation in decision-making should be systematic, and it should happen at all stages of the decision-making process.⁹⁹ Improvements are also still needed in terms of diversity, as children in vulnerable situations are overall less likely to have their voices heard. Interlocutors called for children of different backgrounds to be better represented in decision-making, including children under 10, children with a disability, care-experienced children, children from minority ethnic backgrounds, and refugee and migrant children.
117. It was also emphasised to the Commissioner that there is often a lack of transparency about how children’s views are taken into account. The Commissioner’s various meetings with children and young people revealed that some had been invited to participate in discussions with law- or policy-

⁹⁶ For example, under the [Children and Young People \(Scotland\) Act 2014](#), in the context of their duties in relation to children’s rights, ministers should have account of children’s views, although only to the extent they consider this “appropriate” and only to views of which they “are aware”, section 1(2). In Wales, promoting and facilitating children and young people’s participation is a duty on local authorities under the [Children and Families \(Wales\) Measure 2010](#), Section 12.

⁹⁷ For example, the Children’s Commissioner for Wales established a framework called ‘[The Right Way](#)’ for working with children, grounded in the CRC, to help public bodies integrate children’s rights into every aspect of decision-making, policy and practice.

⁹⁸ See, for example, the Children’s Commissioner for England’s [Big Ask](#) survey.

⁹⁹ In their respective inputs to the UN Committee on the Rights of the Child, civil society actors in Wales have [flagged](#) that children’s views are not systematically heard, while the NIHRC has [highlighted](#) that engagement with children is usually limited to the consultation stage of a policy proposal and is not embedded within all stages of the policy process in Northern Ireland.

makers, but that these left them feeling that there was no genuine intention to incorporate their views.¹⁰⁰

2.4.3. POLITICAL PARTICIPATION

118. In discussions with the Commissioner, the limits on the formal participation in electoral processes, including of adolescents, was also highlighted. As they are not eligible to vote, children may feel that they are considered irrelevant by political parties, or are seen as not having a stake in political decision-making, even though many decisions affect them deeply. The voting age for the UK general elections is 18, and this same age applies to local elections in England and Northern Ireland. In [Scotland](#) and [Wales](#), by contrast, a lower voting age of 16 applies to elections for the devolved Parliament or Assembly, and for local authority elections and referenda.
119. As the Commissioner has [previously highlighted](#), lowering the voting age can address barriers to youth participation in political life, enhance age diversity in public consultations, and help secure more inclusive policy outcomes. It is also believed to be an [effective tool](#) in generating greater awareness of, and interest in, politics at an earlier age, leading to more political involvement and [higher voter turnout later in life](#). The Commissioner notes that the British Youth Council has recently reignited its campaign '[Votes at 16](#)', which calls on political parties to commit to giving full voting rights to persons from 16 years of age in all national elections and referenda.

2.4.4. CONCLUSIONS AND RECOMMENDATIONS

120. Despite the many good practices in the UK, steps could be taken to strengthen the consistency and the inclusiveness of child participation initiatives related to all issues that affect children. The Commissioner calls for further efforts to establish child-friendly structures, to transform participation processes to be more accessible and inclusive, to increase transparency of outcomes of participation processes, and to train staff of public bodies to better equip them to foster child participation.
121. The Commissioner calls on all authorities working on issues that have an impact on children to rely not only on existing, formal participation structures, but to proactively reach out to children and to encourage in particular the engagement of children who may not have experience with participatory processes and come from groups that are not well-represented within formal decision-making structures.
122. In their efforts to improve existing participation methods, the Commissioner encourages all relevant actors (and especially national and local authorities) to take advantage of available tools, such as the Council of Europe's [Child Participation Assessment Tool](#), which helps to identify the gaps in current participation mechanisms, and *Listen – Act – Change*, the [handbook on child participation for professionals working for and with children on children's participation](#).¹⁰¹
123. The Commissioner encourages the relevant authorities to consider lowering the voting age, where applicable, to enhance the effective participation of children in public life.

¹⁰⁰ In his March 2022 [submission](#) for the Universal Period Review of the UK, the CYCPS underlined that children have consistently told that they feel that: "their participation in processes is tokenistic, often intended to meet diversity requirements, and that they are sometimes heard but do not feel their opinion and lived experiences are considered meaningfully", p. 7.

¹⁰¹ The Handbook is a practical tool combining different modules to explain the concept of child participation in theory and practice, and to guide professionals towards its implementation in different settings - individually, collectively and in specific institutional contexts.

3. SPECIFIC ISSUES RELATING TO NORTHERN IRELAND

3.1. DEALING WITH THE LEGACY OF THE TROUBLES

124. Dealing with the legacy of the Troubles in Northern Ireland is a long-standing human rights issue, which has been addressed by successive Commissioners.¹⁰² In September 2021, the Commissioner wrote [a letter](#) to the Secretary of State for Northern Ireland in relation to the command paper ‘[Addressing the legacy of Northern Ireland’s past](#)’. The command paper set out an approach to legacy issues that departed from previously established principles contained in the [Stormont House Agreement](#) of 2014. It included proposals to introduce a statute of limitations for all Troubles-related crimes, to have a statutory bar on investigations, and to end all judicial activity with regard to criminal and civil cases and inquests. In her letter, the Commissioner warned that these steps would undermine human rights protections, cut off avenues to justice for victims and their families, and lead to impunity for serious human rights violations. In [response](#), the Secretary of State stressed that the command paper was “intended not to represent a final position but rather to inform a process of engagement.” Shortly before the start of the Commissioner’s visit, the UK government published new proposals to deal with legacy issues, in the form of the [Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#) (Legacy Bill). The Bill’s recency and significance reinforced the need to follow up on legacy issues during the Commissioner’s two days of meetings in Belfast.
125. In August 2022, in order to assist the Committee of Ministers in its examination of the execution of several judgments of the European Court of Human Rights (the Court) dealing with the investigations of deaths during the Troubles (the *McKerr* group of cases), the Commissioner [submitted observations](#) (Rule 9) on the Legacy Bill, in particular based on her discussions with various stakeholders in Northern Ireland. In view of this, the Commissioner’s main concerns are summarised below, with further details to be found in her Rule 9 submission. These concerns strongly overlap with those expressed by other international actors, including [UN experts](#) and [PACE](#), as well as by countless domestic actors.¹⁰³ In this respect, the Commissioner especially highlights that the Northern Ireland Human Rights Commission (NIHRC) concludes that “the fundamentals of the entire draft of the present Bill require immediate and thorough reassessment, which should take place through meaningful engagement”, while also stressing that this should lead to “a victim-centred and human rights compliant” result. This result, the NIHRC observes, is not delivered by the Bill.¹⁰⁴ Furthermore, the UK Parliament’s Joint Committee on Human Rights (JCHR) has found that the Bill risks widespread breaches of human rights. It has urged the UK government to “reconsider its approach and to put forward a Convention-compliant solution.”¹⁰⁵

3.1.1. SUMMARY OF THE COMMISSIONER’S CONCERNS ABOUT THE LEGACY BILL

126. During the visit, it was obvious that the approach taken in the Legacy Bill had caused distress and anxiety among victims, family members and survivors. There was deep scepticism about the UK government’s motivation for the Bill, especially in view of its repeatedly stated interest in preventing military and security personnel who had served in Northern Ireland during the Troubles from being investigated and prosecuted. There had been little genuine consultation about the Bill, with many, including victims’ groups, finding that their concerns had been systematically ignored. Furthermore,

¹⁰² See, for example, the [report](#) by Commissioner Gil-Robles, CommDH(2005)6, 8 June 2005, paragraphs 180-185; the speech by Commissioner Muižnieks on legacy issues in November 2014 (reported [here](#)); and Commissioner Muižniek’s [statement](#) at the conclusion of his UK country visit of January 2016.

¹⁰³ See, for example, comments and analyses by the [Bingham Centre for the Rule of Law](#), [Amnesty International UK](#), the [Centre for Military Justice](#), and the [Committee for the Administration of Justice](#), among many others.

¹⁰⁴ NIHRC, [Advice on NI Troubles \(Legacy and Reconciliation\) Bill](#), September 2022 (published 10 November 2022), paragraph 1.4.

¹⁰⁵ JCHR, [‘Northern Ireland Troubles Bill risks widespread breaches of human rights law’](#), 26 October 2022.

the NIHRC had not been asked for its advice ahead of the Bill's publication. The Bill was rejected by virtually all victims' groups, the vast majority of civil society organisations, and by parties across the political spectrum in Northern Ireland. Since the visit, the Commissioner has been informed by the UK government of its commitment to enhancing engagement with all stakeholders on the Bill. The Commissioner welcomes this openness and hopes that any next steps will be taken in close consultation with all key stakeholders, especially victims.

127. **The review mechanism.** The Bill establishes a mechanism to review Troubles-related incidents, to be carried out by an Independent Commission for Reconciliation and Information Retrieval (ICRIR).¹⁰⁶ The Commissioner has strong concerns about the ability of this review mechanism to meet all the elements of an independent and effective investigation, in line with the case law of the Court. The Secretary of State for Northern Ireland's influence on the ICRIR would be considerable. This influence would follow from the Secretary of State's role in funding the ICRIR, as well as his powers to appoint the ICRIR's Commissioners, to set guidance for its work (also in relation to immunity proceedings, see below), and to terminate its work. Significant questions also persist whether the reviews that would be carried out would be adequate. While ICRIR would be able to exercise police powers, it remains unclear how and when these would be deployed.¹⁰⁷
128. **Closure of avenues to truth and justice.** The Bill also foresees the closure, by and large, of existing avenues for seeking truth and justice.¹⁰⁸ Criminal prosecutions would theoretically remain possible, but they will be significantly dependent on the ICRIR, which would act as a gatekeeper.¹⁰⁹ Inquests (unless at an advanced stage),¹¹⁰ call-in investigations, and civil claims would all be discontinued. This would amount to the UK government, which is itself a party in some of these proceedings, unilaterally shutting down options that victims and families highly value and which, in some cases, are finally producing results after many years of delays. Given the crucial interaction between justice, truth-finding and reconciliation, as clarified by the Commissioner in her [earlier letter](#) to the UK government, the shutting down of these mechanisms for justice would also negatively impact on these other key elements of transitional justice.
129. **The conditional immunity mechanism.** The Bill introduces a mechanism to grant conditional immunity from prosecution if perpetrators come forward and make statements to the ICRIR that are true to the best of those persons' knowledge and belief.¹¹¹ This constitutes a very subjective and low bar for immunity from prosecution, leaving no objective way to verify the veracity of statements, and giving victims no opportunity for rebuttal. Victims indicated that granting immunity would not bring closure, as the UK government has suggested, but would rather embolden perpetrators, who would be able to publicly present their version of the facts and to shape the narrative of any violations they were involved in, without offering victims the chance to challenge any statements made. Although the UK government introduced the conditional immunity scheme as an answer to earlier concerns about an amnesty, the low bar for immunity, and the creation of a five-year timeframe for making review requests, could effectively entail a widespread amnesty, especially after that five-year period. The Commissioner agrees with many of her interlocutors that the UK government's assumption that conditional immunity is necessary to foster truth-finding and

¹⁰⁶ Part 2 of the Bill.

¹⁰⁷ Additional concerns include the disclosure of information and the extent to which reviews would be carried out on the state's own motion, see the Commissioner's [Rule 9 submission](#), paragraph 12.

¹⁰⁸ Part 3 of the Bill.

¹⁰⁹ First, by prosecutions only being possible if referred by ICRIR, and second, in view of its power to grant immunity from prosecution.

¹¹⁰ An inquest would only be considered to be "at an advanced stage" if an inquest hearing has begun before 1 May 2023 or the day on which the relevant provisions of the Bill would enter into force (depending on which date would be earlier), see Section 40 of the Bill. Inquest cases that have not yet moved to the hearing stage on that date would not progress.

¹¹¹ Clause 18.

reconciliation is unfounded. In view of the points above, and of the strong interaction between justice, truth and reconciliation, she is concerned that the conditional immunity scheme could in fact have the opposite effect.¹¹²

130. The Commissioner does not share the UK government's [assessment](#) that the Bill would be compatible with international standards on combating impunity for serious human rights violations, especially with the case law of the Court. As explained in her Rule 9 submission, this case law overwhelmingly stresses that there should be no amnesties for these types of violations. Where the UK government discerns a possible opening in the case law, this would likely only apply, if at all, in exceptional circumstances. This necessity, the Commissioner notes, appears to be lacking in view of a peace settlement being in place for more than two decades, and with the threat of future paramilitarism unlikely to be affected by the prospect of immunity.
131. The Commissioner reiterates her conclusion that, in view of the issues above, the approach in the Bill raises serious concerns about its compliance with international human rights standards, including with the ECHR. On this basis, the Commissioner is of the opinion that, by introducing the Bill, the UK government has embarked on a course of action that runs a very significant risk of eventually being found, by domestic courts or the European Court of Human Rights, not to be compliant with the ECHR.

3.1.2. IMPLICATIONS OF THE ADOPTION OF THE BILL

132. If the Bill is adopted, it may very well cause issues with the implementation of the European Court of Human Rights' judgments on legacy cases. It is for the Committee of Ministers to supervise the implementation of judgments and to determine if this has been done satisfactorily. In this connection, the Commissioner notes that, at its meeting from 20 to 22 September 2022, the Committee of Ministers adopted a [decision](#) on the *McKerr* group of cases, in light of the Legacy Bill. It emphasised that it was crucial to ensure that the Bill would be in full compliance with the ECHR, and to ensure public support for its mechanisms. It urged the authorities to amend the Bill, if it is progressed, to allay concerns about its compatibility with human rights standards.¹¹³ The Committee of Ministers also urged the UK to reconsider the conditional immunity scheme, as well as its proposal to prevent civil claims and end inquests which have not sufficiently progressed.
133. Since the Commissioner's visit, the Secretary of State for Northern Ireland has [indicated](#) that changes to the Bill will be made. While this is welcome, the Commissioner also notes that her concerns relate to fundamental elements of the Bill, and that reconsidering the Bill in its entirety may provide more space for adopting a fully human rights-compliant and widely-supported approach. In this respect, the Commissioner reiterates that the basis for such an approach already exists, in the principles set out in the Stormont House Agreement. The UK government's choice to pursue an alternative approach means that precious time will be lost. This choice has an immediate and tangible impact on victims and their families, who have been waiting for decades for truth and justice, and who have seen this delayed time and again. Some of them told the Commissioner that the UK government's insistence on moving forward with the Bill "removes hope". An increasingly large number of victims and family members have regrettably passed away before they were able to see justice done in their

¹¹² The Commissioner also acknowledges the Bill's provisions on reconciliation, including memorialisation. However, in view of the widespread rejection of the Bill's approach, as well as concerns from actors in Northern Ireland about the UK government's control over such reconciliation efforts, it is difficult to see how there will be sufficient buy-in from all parts of society in Northern Ireland to make these effective. The Commissioner also notes that various interlocutors emphasised that they believed that such provisions in the Bill were mainly put in place to give cover for the conditional immunity scheme.

¹¹³ Stressing the following issues as needing attention: "ensuring that the Secretary of State for Northern Ireland's role in the establishment and oversight of the ICIR is more clearly circumscribed in law in a manner that ensures that the ICIR is independent and seen to be independent; ensuring that the disclosure provisions unambiguously require full disclosure to be given to the ICIR; ensuring that the Bill adequately provides for the participation of victims and families, transparency and public scrutiny".

lifetime, and this number will only increase if a system for dealing with legacy issues that is fully compliant with human rights standards is not promptly established.

3.1.3. CONCLUSIONS AND RECOMMENDATIONS

134. In view of the widespread opposition in Northern Ireland, and fundamental questions about the compatibility of key parts of this instrument with the UK's obligations under the ECHR, the Commissioner calls on the UK government to consider withdrawing the Northern Ireland Troubles (Legacy and Reconciliation) Bill.
135. The Commissioner urges the UK government to return to previously agreed principles in the Stormont House Agreement, and to use these principles as a basis to set out an approach to legacy cases that can carry the support of a considerable portion of society in Northern Ireland, that provides for ECHR-compliant investigations into killings and other serious human rights violations during the Troubles, and that prevents impunity for such violations. This approach must be brought forward promptly to ensure that truth-finding and justice are no longer delayed.
136. The Commissioner stresses that any further steps on legacy must place the rights and needs of victims at its heart. To this end, timely, open and genuine consultations must be held with all stakeholders, but especially victims and their families, as well as victims' groups.

3.2. WIDER ISSUES OF HUMAN RIGHTS PROTECTION IN NORTHERN IRELAND

3.2.1. OVERALL FRAMEWORK FOR HUMAN RIGHTS PROTECTION IN NORTHERN IRELAND

137. In Chapter 1, the Commissioner noted the anxiety about human rights developments in the UK that she had encountered during her visit. This anxiety was even more present in Northern Ireland, and was fuelled by the Legacy Bill, but also by other developments. These include the ongoing debate about the Northern Ireland Protocol to the EU Withdrawal Act, and the aftermath of Brexit more generally, which has created significant levels of uncertainty across society. The Protocol was not addressed by the Commissioner.¹¹⁴ However, the discussion about the Protocol did act as a backdrop to the political context of the visit, especially in view of the role it has played in the impasse around the Northern Ireland Executive and Assembly.
138. Interlocutors in Northern Ireland were also particularly worried about the UK government's proposal to repeal the HRA and to replace it with a Bill of Rights. After all, the ECHR (which is given effect in domestic law through the HRA) plays a key role in the peace settlement under the Belfast/Good Friday Agreement. The Belfast/Good Friday Agreement includes a commitment to incorporate the ECHR in Northern Ireland law "with direct access to the courts, and remedies for breach of the Convention." Notwithstanding the UK government's stated commitment to the Belfast/Good Friday Agreement, many interlocutors in Northern Ireland were deeply concerned about the changes to the way human rights cases could be brought to domestic courts, and the divergence with the case law of the Court that the Bill would bring.¹¹⁵ They also highlighted the potential of these proposed changes, together with the other developments discussed above, to destabilise Northern Ireland's peace settlement.
139. The Belfast/Good Friday Agreement also provides for work to be carried out on a Bill of Rights for Northern Ireland, which would include an elaboration of rights, supplementary to those in the ECHR, to reflect the particular circumstances of Northern Ireland, reflecting the principles of mutual respect for the identity and ethos of both communities, and of parity of esteem.¹¹⁶ The Agreement mandated

¹¹⁴ She notes, however, that issue has been addressed by others. PACE has recently adopted a [resolution](#) covering the topic.

¹¹⁵ See section 1.2.

¹¹⁶ Strand 3, Rights, Safeguards and Equal Opportunity, paragraph 4.

the NIHRC to consult and advise on the scope of such a Bill of Rights for Northern Ireland. The NIHRC submitted its [advice](#) in 2008, but no Bill has been put forward in almost 15 years that have followed it. After the publication of the [New Decade, New Approach](#) document in 2020, the Northern Ireland Assembly set up an [Ad Hoc Committee on a Bill of Rights](#). In June 2021, the Ad Hoc Committee agreed it supported the creation of a Bill of Rights for Northern Ireland, but it made any further decisions contingent on the advice from a panel of experts, which would have to be created for this purpose. This panel was not established due to political disagreement. The Committee delivered a [report](#) in February 2022, but could not make a decision on what approach a Bill of Rights for Northern Ireland should take in view of the afore-mentioned issues. Whilst the Belfast/Good Friday Agreement provides that a Bill of Rights for Northern Ireland must be legislated for by the UK Parliament, the UK government has declined to put forward legislation until consensus is reached in Stormont, which is unlikely in view of the deep divisions and current political stalemate.

3.2.2. THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION

140. The NIHRC is Northern Ireland’s National Human Rights Institution. Through its statutory functions under the Northern Ireland Act 1998,¹¹⁷ the NIHRC plays an essential role in the protection of human rights in Northern Ireland. During her visit, the Commissioner was informed about problems in the appropriate resourcing of the NIHRC, and the Commissioner understands that the NIHRC is currently working with a skeleton staff. Funding has been allocated to the NIHRC to carry out its new functions in relation to the UK’s withdrawal from the EU and the non-diminution of rights. However, its overall work on human rights monitoring, advice, litigation, and engaging with international bodies is under considerable strain.
141. Currently, the NIHRC is accredited with an A-status in relation to its compliance with the [Principles Relating to the Status of National Human Rights Institutions](#) (Paris Principles). In October 2021, the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI), which is responsible for reaccrediting the NIHRC with its status under the Paris Principles, already [warned](#) that limited funding and further planned budget cuts would “impact on [the NIHRC’s] ability to fulfil its core mandate” under these Principles. It deferred a decision on the NIHRC’s status for one year. In October 2022, this decision was [again deferred](#) until 2023, in view of an independent review of the NIHRC that was initiated by the Secretary of State for Northern Ireland. The Commissioner is concerned that, as of yet, no concrete measures have been taken that would lead to a quick resolution of the budget issues faced by NIHRC. The Commissioner is concerned that this is preventing the NIHRC from fulfilling its crucial role in the protection of human rights in Northern Ireland effectively and independently, and could lead to the revocation of the NIHRC’s A-status under the Paris Principles.
142. The Commissioner is also concerned that the views of the NIHRC are not consistently sought, or sufficiently taken into account, by the political actors in the UK and in Northern Ireland that the NIHRC is specifically mandated to advise.¹¹⁸ She also notes that human rights issues unfortunately continue to be seen by some as representing sectarian interests. In this context, the independent

¹¹⁷ These include reviewing the adequacy and effectiveness of law and practice relating to the protection of human rights, providing advice to the UK government and Parliament and Northern Ireland Executive and Assembly on human rights issues, conducting investigations on systematic human rights issues, promoting understanding and awareness, providing legal assistance to individuals and initiating strategic cases, monitoring the implementation of international human rights treaties and reporting to international bodies (including the Council of Europe), and working in partnership with the Irish Human Rights and Equality Commission (IHREC). The NIHRC is also part of the dedicated mechanism to oversee the UK government’s commitment on the non-diminution of rights and equality in accordance with the Northern Ireland Protocol, a role it carries out together with the Equality Commission of Northern Ireland (ECNI) and in part with the IHREC. In July 2022, NIHRC and ECNI [published](#) their first annual report in relation to this mandate.

¹¹⁸ Also see the Commissioner’s [Rule 9 submission](#), paragraph 6, on the lack of consultation of NIHRC ahead of the Legacy Bill.

expertise of the NIHRC on human rights is particularly crucial. All relevant actors should therefore take full advantage of this expertise in shaping their decision-making.

3.2.3. CONCLUSIONS AND RECOMMENDATIONS

143. The Commissioner calls on the UK government and the Northern Ireland Executive to fully uphold the UK's commitment to ensure that there is no diminution in the field of human rights and equality due to its withdrawal from the EU, and to promptly implement the recommendations of the NIHRC and the Equality Commission for Northern Ireland (ECNI) in this regard.
144. The Commissioner urges the UK government to refrain from any steps that would undermine the provisions of the Belfast/Good Friday Agreement, especially in relation to the full and continuing incorporation of the ECHR into domestic law, and the ability of the people of Northern Ireland to claim their rights under the ECHR in domestic courts and to have recourse to remedies for any breaches of those rights.
145. The Commissioner calls for the work on a Bill of Rights for Northern Ireland to be resumed, and for concrete steps to put forward such a Bill (as foreseen in the Belfast/Good Friday Agreement) to be taken.
146. The Commissioner calls on the UK government to take urgent measures to ensure that the NIHRC can carry out its functions in full compliance with the Paris Principles, in particular by promptly providing the NIHRC with adequate resources to fulfil its mandate independently and effectively.

3.3. MEDIA FREEDOM, SAFETY OF JOURNALISTS, AND THREATS TO OTHER GROUPS

3.3.1. OVERVIEW

147. A free media is essential to any democratic society. Reporting by independent and free media is particularly crucial in a post-conflict society with continuing deep divisions, such as Northern Ireland. Journalists have played a key role in truth-finding related to the Troubles, and they continue to report regularly on unresolved issues. They have often done so at high risk to their personal safety. During the Troubles, journalists were frequently the target of attacks by paramilitary groups. But even after the formal end of the conflict, journalism has remained a perilous profession in Northern Ireland. This has been particularly true for journalists investigating issues relating to paramilitary groups and (associated) organised crime. The most tragic examples of this include the killing of the Sunday World journalist Martin O'Hagan in 2001, and of Lyra McKee in 2019, who was reporting on a riot in Derry/Londonderry. During her visit, the Commissioner met with family members and partners of the murdered journalists. They were deeply concerned that all the circumstances of these murders would not be fully investigated. More than twenty years after Martin O'Hagan's murder, no one has been held accountable. A Police Ombudsman's report into the case remains unpublished. In September 2022, the National Union of Journalists (NUJ) and Amnesty International [called](#) for an independent investigation into the killing. In the case of Lyra McKee, several arrests were made and several suspects were charged, and while the proceedings are still ongoing, the Commissioner was informed that the postponement of hearings has contributed to delays. The Commissioner stresses that it is imperative that the authorities do everything possible to ensure that justice is done, and that impunity is not allowed to persist.
148. Beyond the horrific killings, journalists in Northern Ireland face a variety of threats or barriers to their work, including from state authorities or elected officials. A prominent example of this occurred in August 2018, when the homes and offices of documentary makers Trevor Birney and Barry McCaffrey were raided, and the two men were arrested. Although the Police Service of Northern Ireland (PSNI) [issued an apology](#) over the treatment of the men in July 2020, this incident sent a worrying signal to other media professionals, and shone a light on the difficult environment in which

journalists in Northern Ireland work. Other forms of harassment may come in the form of [lawsuits](#) by politicians aiming to obstruct journalistic work on issues of public interest, or [verbal attacks](#) by elected officials.

149. Journalists also frequently face abuse and threats, including death threats, both online and offline. For example, threatening [graffiti](#) aimed at journalists appeared in Belfast in March 2022. The NUJ [condemned](#) the death threats made by a paramilitary group against a Northern Ireland journalist in June 2022. In recent years, female journalists reporting on issues related to the legacy of the Troubles or paramilitary groups, including [Leona O’Neill](#), [Allison Morris](#), [Patricia Devlin](#) and [Suzanne Breen](#), have also been the target of misogynistic abuse, threats of sexual violence against their children, or death threats. These and other threats are made against journalists to silence them and to prevent them from imparting information and ideas on all matters of public interest. These attempts to undermine media freedom go against well-established international human rights standards, including the case law of the European Court of Human Rights, which imposes a positive obligation on the authorities to protect freedom of expression and journalists’ safety.¹¹⁹
150. Threats, like those discussed above, also remain a distinct reality for others in Northern Ireland, including people specifically working on human rights issues or on issues relating to the political situation in Northern Ireland. In this context, the Commissioner notes that there have been multiple situations in which human rights lawyers have been threatened. In March 2022, UN experts [expressed concern](#) that a smear campaign against Colin Harvey, Professor of Human Rights at Queen’s University Belfast (whom the Commissioner [met](#) during her visit) could spark physical violence against him. The Commissioner welcomes that the PSNI is [engaging](#) with the University over staff safety, but she is concerned that Professor Harvey continues to be threatened. Civil society organisations working on legacy issues or on human rights more broadly also remain vulnerable to abuse and threats.

3.3.2. CONCLUSIONS AND RECOMMENDATIONS

151. The Commissioner calls on the Northern Ireland authorities to ensure that all circumstances in relation to the killings of Martin O’Hagan and Lyra McKee are fully investigated, that all those responsible are identified and brought to justice, and that impunity for these crimes is prevented.
152. The Commissioner urges the authorities to take all necessary steps to protect journalists in Northern Ireland from violence and threats. All threats must be promptly and effectively investigated, and where necessary, additional steps should be taken to ensure the safety of the journalists in question and their families. In this regard, she calls on the authorities to fully implement the Council of Europe [Recommendation on the Protection of Journalism and Safety of Journalists and Other Media Actors](#).
153. The Commissioner calls on all politicians in Northern Ireland to use their public visibility to clearly and unreservedly condemn any threats made to journalists, and to ensure that their own public statements promote media freedom and do not contribute to hostility towards journalists.
154. The actions outlined above should also be extended to other individuals facing threats or abuse, especially in view of their work on human rights issues, including lawyers, academics, and staff of civil society organisations.

¹¹⁹ For a comprehensive overview of the Court’s case law, see its [case law guide](#) on Article 10 ECHR, freedom of expression, 31 August 2022.

3.4. OTHER HUMAN RIGHTS ISSUES IN NORTHERN IRELAND DISCUSSED DURING THE VISIT

3.4.1. CHILDREN'S RIGHTS

155. The Commissioner was keen to meet with children and young people from Northern Ireland to discuss issues of importance to them, as well as with organisations working on children's rights. In this context, they talked extensively about many of the issues that have already been addressed more generally in this report, such as poverty¹²⁰ and mental health issues (and specifically about the lack of sufficient mental health support).¹²¹ Another topic of discussion was the interaction of children and young people with the police, especially in view of the long-standing distrust between young people and the PSNI. On this topic, issues of stop and search and the use of restraints such as spit hoods and bite guards against children, as well as the deeply concerning practice of strip-searching children, were highlighted.¹²² Other issues mentioned in relation to criminal justice included the low age of criminal responsibility in Northern Ireland,¹²³ although the launch of a [consultation](#) on raising this age is a welcome development. The issue of violence against children also remained a concern, including the fact that the defence of reasonable chastisement is not yet banned in Northern Ireland.¹²⁴ Young people further highlighted that they felt that the issues important to them were insufficiently catered for in schools. Here, they particular referenced the absence of, or considerable gaps in, the provision of quality relationships and sexuality education.¹²⁵ While Northern Ireland has some very good examples of child participation,¹²⁶ children also stressed the need to strengthen and diversify this approach further. Recommendations on these points in the previous sections should also be implemented in Northern Ireland.
156. Finally, the issues of dealing with the legacy of the past, as well as the safety of different groups (discussed above) also need to be put into the specific context of children's rights. For example, an October 2021 [report](#) by the Commissioner for Victims and Survivors (CVSNI) and Queen's University Belfast's Centre for Children's Rights addresses in detail the ongoing impact of the Troubles across generations even two-and-a-half decades after the Belfast/Good Friday Agreement. Regarding legacy issues, victims and survivors expressed their concern that the suffering inflicted on them due to the lack of justice for violations carried out during the Troubles would be passed on to their children and grandchildren, thus giving rise to inter-generational trauma. The insecurity created by ongoing paramilitary activity also has a specific impact on children's rights, with the above-mentioned report highlighting that "intimidation, abuse and exploitation of children by paramilitary-style groups remains a reality."¹²⁷

3.4.2. TOWARDS A MORE INCLUSIVE EDUCATION SYSTEM

157. The question of how to foster a more inclusive education system drew the Commissioner's specific attention during the visit.¹²⁸ The education system in Northern Ireland remains extremely segregated

¹²⁰ Section 2.2.

¹²¹ Section 2.2.3.

¹²² Also see section 2.3.1.

¹²³ Section 2.3.2.

¹²⁴ Section 2.3.3.

¹²⁵ See the recommendation on this point in section 1.5.3.

¹²⁶ Section 2.4.

¹²⁷ S. McAllister et al, ['It Didn't End in 1998': Examining the Impacts of Conflict Legacy Across Generations](#), CVSNI/QUB, October 2021, p. 24.

¹²⁸ While the discussion below focuses on the inclusion of children from Protestant and Catholic communities, discussions with the Commissioner also identified the need to enhance inclusive access to education for children with disabilities, including by tackling transport problems they may face in rural areas. Furthermore, it was highlighted that Northern Ireland is an ethnically diverse society, and that this is sometimes overlooked in a school system which is dominated by a Protestant-

along community lines. In 2016, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, following his [visit to the UK](#), expressed concern that approximately 92% of children in primary and post-primary schools were educated separately on the basis of religious background. In 2022, the proportion of children educated in either exclusively Catholic or exclusively Protestant schools had not significantly declined.¹²⁹ This educational segregation, in combination with the existence of parallel services for different communities, housing segregation, and other factors, may lead to children from one community growing up without any contact with children from the other community.¹³⁰

158. The Commissioner recalls that states have a positive obligation – firmly enshrined in international human rights law – to tackle school segregation.¹³¹ Education is also a key to moving forward as an inclusive society where children can flourish and peacefully co-exist. A more inclusive approach to education can play a vital role in reconciliation in post-conflict societies, thus contributing to transitional justice. In this respect, the Commissioner notes that the Belfast/Good Friday Agreement also recognises the role of education in the promotion of tolerance.
159. The notion of ‘integrated education’ in the Northern Ireland context can play a particularly important role in moving towards an inclusive system. While different definitions of integrated education exist, these commonly refer to children from Protestant, Catholic, and other backgrounds being educated together in the same school, which is not based on the ethos of one particular community over another. This model is distinct from ‘shared education’, which involves children from different schools being educated together on a specific subject for a limited time.¹³² The Commissioner welcomes efforts by the Northern Ireland Executive to [mainstream](#) shared education, and she encourages the Executive to continue this work, as it can provide an important boost to improving contacts between children from different communities. Ultimately, however, she believes that the expansion of truly integrated education must be at the centre of efforts of all relevant actors, as this will be crucial in moving forward as a post-conflict society. Although support in society for integrated education is high and important work is being done, only 7.5% of schools in Northern Ireland are currently integrated. Parents, as well as specific organisations dedicated to promoting integrated education, have done tremendously important work on this, but buy-in from the Executive and all parties in the Assembly is necessary to make integrated education the norm across the Northern Ireland education system. The Commissioner welcomes the adoption of the [Integrated Education \(Northern Ireland\) Act](#) in April 2022, which places a statutory duty on the Department of Education to encourage, facilitate and support integrated education, and which requires education bodies to consider integrated education when planning new schools. The provision of additional funding by the Secretary of State for Northern Ireland to support integrated education is also a very important step. However, the Commissioner notes that more action is still needed to expand and support efforts to set up integrated schools and to eliminate long-standing school segregation.

3.4.3. SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

Catholic divide. As such, more efforts to include children from ethnic minority backgrounds and to combat discrimination also remain crucial.

¹²⁹ Also see PACE [doc. 15615](#), 23 September 2022, part 3.4.

¹³⁰ One young person meeting with the Commissioner noted that the first time he met someone from another community was when he was 17 years old.

¹³¹ For an overview, see the Commissioner’s Position Paper [Fighting school segregation in Europe through inclusive education](#), September 2017.

¹³² Section 3 of the Shared Education Act 2016 requires the Department of Education to encourage, facilitate and promote shared education. On differences between integrated education and shared education, see, for example, M Milliken, [Same Difference? Shared Education and Integrated Education](#), Transforming Education Briefing Paper 13, Ulster University, November 2021.

160. In October 2019, amendments were introduced to the legal framework governing access to safe and legal abortion services in Northern Ireland. Prior to these amendments, rules on access to abortion were amongst the most restrictive in Europe, severely impacting on the sexual and reproductive health and rights of women.¹³³ These changes resulted in the decriminalisation of abortion care, a moratorium on abortion-related criminal prosecutions, and a duty on the UK government to introduce a new legal framework guaranteeing safe and legal access to abortion care in Northern Ireland to comply with the [recommendations](#) by the UN Committee on the Elimination of Discrimination Against Women (CEDAW). [Regulations](#) were introduced by the UK government in March 2020 to allow access to abortion care on request up to 12 weeks of pregnancy.¹³⁴ Abortion is also allowed up to 24 weeks if the continuation of the pregnancy involves a risk or injury to the physical or mental health of the pregnant woman that is greater than if the pregnancy is terminated.¹³⁵ No upper limit applies in case of a risk to life or to prevent grave permanent injury to the physical or mental health of the pregnant woman, and in case of severe foetal impairment or fatal foetal abnormality.¹³⁶
161. Despite these welcome reforms, the Commissioner was informed about ongoing problems for women seeking access to safe and legal abortion services, especially because the Northern Ireland Executive failed to commission those services. In May 2022, the Secretary of State laid down [regulations](#) that obliged the Northern Ireland Department of Health to commission and fund abortion services, and that gave the Secretary the power to directly intervene to ensure that these services are implemented. Considering the lack of action by the Department of Health, on 24 October 2022, the Secretary of State [announced](#) that the UK government will ensure the commissioning of abortion services. This is a very welcome development in view of the ongoing barriers that women in Northern Ireland experience. However, the Secretary of State has stated that the responsibility for the funding of abortion services remains with the Northern Ireland Executive. In view of the ongoing political impasse in Northern Ireland, the Commissioner is concerned that this may cause new obstacles to the full enjoyment of sexual and reproductive health and rights in Northern Ireland. The Commissioner also notes that public awareness about how to access abortion services, and even about the mere fact that abortions are lawful in Northern Ireland, is reportedly extremely low.¹³⁷ Concerns were also raised with the Commissioner about the potential of sexual and reproductive health and rights being rolled back in the future, especially given the continued political opposition among some parties in Northern Ireland to the decriminalisation of abortions.

3.4.4. CONCLUSIONS AND RECOMMENDATIONS

162. The Commissioner calls on the Northern Ireland Executive to implement the recommendations made in relation to the protection and strengthening of children's rights that have been set out in this report, where these fall within its devolved powers. In addition to those recommendations, the authorities in Northern Ireland should redouble their efforts to protect children from violence, intimidation, abuse or exploitation by paramilitary groups.
163. The Commissioner calls on the Northern Ireland Executive and the Secretary of State for Northern Ireland to take steps to achieve a significant expansion of the number of integrated schools, with a

¹³³ See, for example, the Issue Paper [Women's sexual and reproductive rights in Europe](#), published by the Commissioner's Office in 2017, p. 32-33.

¹³⁴ The Abortion (Northern Ireland)(No. 2) Regulations 2020, section 3. Access to abortion services is subject to a certification by a medical professional that the pregnancy has not been longer than 12 weeks.

¹³⁵ *Ibid.*, section 4.

¹³⁶ *Ibid.*, part 3.

¹³⁷ For example, a poll commissioned by Amnesty International UK shows that just 47% of adults (and only 46% of women) polled are aware that abortion is currently lawful in Northern Ireland, and that a mere 10% of women polled said they knew how to access abortion services. See, Amnesty International UK, ['Northern Ireland: fewer than half of women realise abortion is lawful – new poll'](#), 21 October 2022.

view to making them the norm in the years to come, and to increase efforts to combat school segregation.

164. The Commissioner urges all relevant authorities to guarantee that safe and legal abortion services are readily available and accessible in all parts of Northern Ireland, in particular through the provision of adequate funding for these services. In this regard, she calls on the UK government to ensure that, in the case the Northern Ireland Executive does not or cannot fulfil its responsibility to further fund abortion services, such funding is nevertheless sustained. The Commissioner furthermore calls for measures to ensure that adequate public information on sexual and reproductive health and rights is provided, including in relation to where and how abortion services can be accessed. The Commissioner calls on members of the Northern Ireland Assembly to continue the progress achieved in guaranteeing access to abortion care in Northern Ireland by bringing laws and practices into line with human rights standards and international best practices,¹³⁸ and to resist any attempt to roll back protections in this field.

¹³⁸ In this process, it should particularly take the recent [abortion care guidelines](#) of the WHO into consideration.