



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Secretariat of the Lanzarote Committee
Children's Rights Division**

Directorate General of Democracy and Human
Dignity
Council of Europe

By email to: lanzarote.committee@coe.int

6 December 2023

Dear Secretariat,

**Thematic monitoring round on the protection of children against sexual
exploitation and sexual abuse in the circle of trust**

The Northern Ireland Human Rights Commission (the Commission) welcomes the opportunity to provide information to the Lanzarote Committee's thematic monitoring round on the protection of children against sexual exploitation and sexual abuse in the circle of trust.

I note with concern that Northern Ireland is not reflected within the UK State Party reply to the above thematic monitoring round. I write to highlight this omission to the Committee, and to briefly note the current legal framework in Northern Ireland in respect of the protection of children against sexual exploitation and abuse in the circle of trust.

The two relevant pieces of legislation in Northern Ireland are the Sexual Offences (Northern Ireland) Order 2008, which is the main sexual offence framework for Northern Ireland, and the more recent Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022. A provision within the 2022 Act amends the 2008 Order to bring the categories of 'sport' and 'religion' within scope of the existing abuse of position of trust offences. Prior to this legislative change, the abuse of position of trust offences only applied to those adults in a

position of trust of young people within the statutory sector, such as in education, health environments, youth detention and social service care.¹

During the passage of the Justice (Sexual Offences and Trafficking Victims) Bill, a number of stakeholders raised concern at the narrow scope of the proposed extension to the abuse of position of trust offence, noting the 'loopholes' created by extending only to the sport and faith sectors.² In its submission to the Northern Ireland Assembly Committee for Justice on the draft Bill, the Commission welcomed the intention to extend the scope, noting that the definition of position of trust found at Article 28 of the Sexual Offences (Northern Ireland) Order 2008 was not consistent with the requirements of the Lanzarote Convention.³ The Commission also outlined further comments from the Lanzarote Committee, noting the recommendation in the Committee's first implementation report for a "broad interpretation" of the concept of relationships of trust;⁴ that domestic legislation is only in conformity with the Convention if it provides an "open-ended enumeration" of situations involving abuse of trust to ensure that there is "enough flexibility to determine on a case-by-case basis whether the alleged perpetrator abused his or her position of authority, influence or trust"⁵; and the recommendation that "legislation be worded in a manner to allow enough margin of appreciation to the judicial authorities to decide on a case-by-case basis".⁶

Whilst the relevant provisions became law, in response to concerns raised the Minister for Justice pledged to carry out a review of this area to explore whether there was evidence to support a further change to the law to widen the scope; a consultation to this effect was launched in 2022.⁷ However, there is currently no commitment to amend the law. It should also be noted that Northern Ireland's devolved Executive has not sat since February 2022, with the legislative Assembly currently suspended.

¹ Department of Justice, 'Call for Evidence document – abuse of position of trust', October 2022. Available at: [Abuse of Position of Trust Offences: Extension of the Law – A Call for Evidence | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/abuse-of-position-of-trust-offences-extension-of-the-law-a-call-for-evidence)

² Committee for Justice, 'Report on the Justice (Sexual Offences and Trafficking Victims) Bill', January 2022. Available at: [Report on the Justice Bill \(niassembly.gov.uk\)](https://www.niassembly.gov.uk/report-on-the-justice-bill)

³ Northern Ireland Human Rights Commission, 'Response to Committee for Justice Call for Evidence on Justice (Sexual Offences and Trafficking Victims) Bill', October 2021. Available at: [Publication – Response to Committee for Justice Call for Evidence on Justice \(Sexual Offences and Trafficking Victims\) Bill | Northern Ireland Human Rights Commission \(nihrc.org\)](https://www.nihrc.org/publication-response-to-committee-for-justice-call-for-evidence-on-justice-sexual-offences-and-trafficking-victims-bill)

⁴ T-ES (2015) 'Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 'First implementation report: protection of children against sexual abuse in the circle of trust', 8 January 2016, at para 19.

⁵ Ibid, at para 23.

⁶ Ibid, at para 24.

⁷ Department of Justice, 'Call for Evidence document – abuse of position of trust', October 2022. Available at: [Abuse of Position of Trust Offences: Extension of the Law – A Call for Evidence | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/abuse-of-position-of-trust-offences-extension-of-the-law-a-call-for-evidence)

In addition, Northern Ireland’s specific legal context post UK withdrawal from the EU is not reflected in the State report. Under Article 2 of the Windsor Framework (previously known as the Ireland/Northern Ireland Protocol)⁸ to the UK-EU Withdrawal Agreement 2020, the UK Government committed to ensuring no diminution of rights, safeguards and equality of opportunity set out in the relevant chapter of the Belfast (Good Friday) Agreement 1998, as a result of the UK’s withdrawal from the EU.⁹ This means that EU law, binding on the UK on 31 December 2020, which underpins a relevant right, safeguard or equality of opportunity protection, continues to set standards below which the law in NI must not fall. The Commission has identified EU law, including the EU Child Sexual Exploitation Directive¹⁰ and the EU Trafficking Directive,¹¹ as falling within scope of the non-diminution commitment.¹²

The Child Sexual Exploitation Directive recognises the Lanzarote Convention as a crucial step in the process of enhancing international cooperation to protect children from all forms of sexual exploitation and abuse and that the best interests of the child must be a primary consideration.¹³ Similarly, the Preamble to the Convention recognises the supportive framework of earlier iterations of EU law in the area of combatting child sexual exploitation and human trafficking.¹⁴

Article 3 of the Child Sexual Exploitation Directive requires member states to take the necessary measures to ensure that an abuse of a recognised position of trust, authority or influence over the child is punishable by a maximum term of imprisonment of at least 8 – 10 years.¹⁵ In addition, where an offence against a

⁸ The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement and all references to the Protocol have been updated to reflect this change. (see Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework).

⁹ Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020.

¹⁰ Directive 2011/92/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011.

¹¹ Directive 2011/36/EU ‘Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011.

¹² See Appendix to NI Human Rights Commission and Equality Commission NI, ‘Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol’ (NIHRC and ECNI, 2022). (Available at: <https://nihrc.org/publication/detail/nihrc-and-ecni-working-paper-the-scope-of-article-21-of-the-ireland-northern-ireland-protocol>.) The UK Government has accepted that the EU Victims’ Directive (Directive 2012/29/EU, ‘EU Directive of the European Parliament and of the Council of the EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012) falls within scope of the no diminution commitment. NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in NI: What Does it Mean and How Will it be Implemented?’ (NIO, 2020), at para 13.

¹³ Recitals 5 and 2, Directive 2011/92/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011.

¹⁴ Preamble to the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007, referencing EU Council Framework Decisions on combating the sexual exploitation of children and child pornography (2004/68/JHA); the standing of victims in criminal proceedings (2001/220/JHA); and combating trafficking in human beings (2002/629/JHA).

¹⁵ This term of imprisonment is of at least 8 years if the child has not reached the age of sexual consent, and at least 3 years of imprisonment if the child is over that age. Further, in circumstances of coercion, force or threats the maximum term of imprisonment should be of at least 10 years. Member states should also consider the need for short- and long-term assistance to child victims. Due to the nature of the harm caused by sexual abuse and sexual exploitation, such

child is committed by a family member, a person cohabiting with the child or person who has abused a recognised position of trust or authority, this should be regarded as an aggravating factor in the offence.¹⁶ As noted above, the Commission has highlighted the Committee's concern that the current legal framework in Northern Ireland does not provide for enough flexibility to determine on a case-by-case basis whether the alleged perpetrator abused his or her position of authority, influence or trust.¹⁷ Where Northern Ireland law was out of alignment with EU law before UK withdrawal, the absence of transposing legislation is not an insurmountable obstacle to demonstrating a diminution of Windsor Framework Article 2.¹⁸

Finally, I also refer the Committee to the Commission's recent submission to the UN Committee on the Rights of the Child, which may provide useful context on the situation within Northern Ireland with regard to these matters.¹⁹ The Commission's submission, at paragraphs 21.1 – 21.18, focuses on child sexual exploitation, trafficking and child marriage, in which the Commission makes recommendations related to the experience of child victims of sexual offences within the criminal justice system. In its concluding observations, published in June 2023, the UN CRC Committee is explicit in its recommendation for the State party to "Strengthen the implementation of legislation protecting children from "abuse of trust" in all environments and extracurricular activities in Northern Ireland".²⁰

The Lanzarote Committee may therefore wish to consider the specificities of Northern Ireland as part of its thematic review, in particular the comparatively narrow scope of the current abuse of trust legislation and whether that reflects the requirements of the Lanzarote Convention, as well as the impact of the

assistance should continue for as long as necessary for the child's physical and psychological recovery and may last into adulthood, if necessary. (Articles 18 and 19 and Recital 31, Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011).

¹⁶ Article 9, Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011. Member states should ensure that aggravating circumstances are available for judges to consider when sentencing offenders (Recital 21).

¹⁷ Northern Ireland Human Rights Commission, 'Response to Committee for Justice Call for Evidence on Justice (Sexual Offences and Trafficking Victims) Bill', October 2021. Available at: [Publication - Response to Committee for Justice Call for Evidence on Justice \(Sexual Offences and Trafficking Victims\) Bill | Northern Ireland Human Rights Commission \(nihrc.org\)](#)

¹⁸ See NI Human Rights Commission and Equality Commission NI, 'Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol' (NIHRC and ECNI, 2022), at para 5.10. Available at: <https://nihrc.org/publication/detail/nihrc-and-ecni-working-paper-the-scope-of-article-21-of-the-ireland-northern-ireland-protocol>.

¹⁹ Northern Ireland Human Rights Commission, 'Submission to the UN Committee on the Rights of the Child: Parallel Report to the Pre-Session on the Combined Sixth and Seventh Reports of the UK of Great Britain and Northern Ireland', December 2022. Available at: [Publication - Submission to the UN Committee on the Rights of the Child: Parallel Report to the Pre-Session on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI | Northern Ireland Human Rights Commission \(nihrc.org\)](#)

²⁰ CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 2 June 2023, at para 33(j).

political impasse in Northern Ireland on the ability to enhance legislation to ensure the protection of all children in a wide range of environments.

Whilst I have focused on legislation relating to the abuse of position of trust, the Commission would be happy to engage further with the Committee on issues related to child sexual exploitation more generally.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'A. Kilpatrick', written in a cursive style.

Alyson Kilpatrick BL
Chief Commissioner