

# Children's Law Centre

SUBMISSION

## INQUIRY INTO GAPS IN EQUALITY LEGISLATION

DECEMBER 2024



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This is a submission to The Executive Office inquiry into gaps in equality legislation.

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Children's Rights  
Change Children's Lives

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## INTRODUCTION

**The Children's Law Centre (CLC) is an independent charitable organisation, established in 1997, which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.**

CLC was founded upon the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC) and leads for the NI NGO sector in co-ordinating the submission of evidence to the United Nations Committee on the Rights of the Child to inform their monitoring and reporting work on the UK's compliance with children's rights standards.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we provide a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents as well as a Live Chat service for young people. In the last financial year our advice team dealt with 2,980 children's rights issues and our Live Chat service registered over 11,000 users.

Our model of practice is very different to that provided by solicitors and legal practitioners working in private practice. We operate a child-accessible and jurisdictionally unique free expert legal advice, support and representation service for children, including children with severe and complex health and mental health needs, special educational needs and disabilities, social and emotional or additional learning support needs.

CLC welcomes the Northern Ireland Assembly Committee for the Executive Office instigating this Committee Inquiry into Gaps in Equality Legislation in Northern Ireland and are grateful for the opportunity to contribute to its work by providing this written submission.

# UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

**The United Nations Convention on the Rights of the Child (UNCRC) is widely celebrated as the most complete statement of children's rights ever produced. Ratified by the UK government in December 1991, the UK state party (the UK government and the devolved administrations) has, as a result of that ratification accepted an obligation to respect, protect and fulfil the rights of children as outlined in the UNCRC.**

Despite these obligations, there are many examples of circumstances in which children, particularly vulnerable or disadvantaged children, have had their rights breached. It is therefore imperative that the UNCRC is meaningfully and comprehensively incorporated into domestic legislation to ensure that children and young people can directly vindicate their rights. In the absence of comprehensive steps by the UK government to give legal force to the UNCRC, the Northern Ireland Executive must show leadership by ensuring the UK's ratification of the Convention means something in practice by incorporating it into domestic legislation.

The UNCRC contains four General Principles, which are seen as having overarching importance, these are:

- The right to enjoy all rights without discrimination (Article 2).
- The requirement that the best interests of the child is of primary consideration in all matters concerning the child (Article 3).
- The right to life, survival and development (Article 6).
- The right of the child to be heard and have their views taken into account in all decisions affecting them (Article 12).

In addition, the UNCRC contains a number of important standards, including:

- The child's right to protection from all forms of harm (Article 19).
- The right to health and healthcare (Article 24).
- The right to an adequate standard of living (Article 3).
- The right to education (Articles 28/29)

The Convention also recognises the rights of children with disabilities (Article 23), refugee children (Article 23) and children in conflict with the law (Articles

37 and 40).

The UNCRC therefore provides a comprehensive blueprint for the minimum standards of treatment children should enjoy which the UK government (and therefore devolved administrations) has already ratified, and should be used as the basis upon which to identify gaps in equality legislation in Northern Ireland as they relate specifically to children. Full implementation in Northern Ireland of the substantive rights protected under the UNCRC, read in conjunction with UNCRC Article 2 (the non-discrimination provision) would significantly address the equality gaps experienced by children in this jurisdiction.

It is of course the case that some steps have been taken locally to reflect elements of the UNCRC in particular areas of law and policy. For example:

- **The Commissioner for Children and Young People (NI) Order 2003:** This legislation created the Office of the Northern Ireland Commissioner for Children and Young People. In defining the principal aim of the Commissioner, the legislation sets out that in determining how to exercise their functions, the Commissioner shall have regard to any relevant provisions of the UNCRC.
- **The Children's Services Cooperation Act (NI) 2015:** This Act requires that the UNCRC be taken into account when determining the meaning of "well-being" for children and young people. Specifically the Act states that regard is to be had to the relevant provisions of the UNCRC for these purposes.
- **The Northern Ireland Executive's Children and Young People's Strategy, 2020-2030:** The adoption of a Children and Young People's Strategy is a requirement of the Children's Service's Co-operation Act (NI) 2015. This strategy was approved by the Executive in December 2020 and sets out how the Executive proposes to improve the well-being of children and young people and claims to be rooted in children's rights.
- **The Children (NI) Order 1995:** enshrines the "paramountcy principle" within decision-making around family proceedings, so that all those making decisions must do so in a manner which prioritises the best interests of the child, giving this paramountcy within the relevant factors under consideration. Due to the priority given to this fundamental principle, judicial decisions on family law and on decision-making which impinges upon family law (such as immigration) will inevitably include analysis around the best interests of the child.

Despite these examples we have not yet achieved a wholesale shift in policy and practice in this jurisdiction which respects, protects and fulfils the rights of children without discrimination. On the contrary, it is CLC's experience that in many spheres of public policy and service delivery today the prevailing



culture and practice of duty bearers is one which still fails to recognise children as rights holders.<sup>1</sup>

Our view is that this continued failure is sufficient evidence to demonstrate that a piecemeal approach, adopting aspects of the Convention for specific areas of law and policy or referencing commitments to it in general terms, rather than direct, justiciable incorporation of the Convention in its entirety, is not sufficient to deliver the clearly most desirable outcome: a society which promotes, extends and defends the rights of all children and young people equally and without discrimination.

In comparison, the UNCRC (Incorporation) (Scotland) Bill was unanimously passed in the Scottish Parliament on the 7th December 2023. On the 16th January 2024, Royal assent was granted for the Bill meaning it is now officially an Act of the Scottish Parliament. Most of its provisions came into force on the 16th July 2024, providing substantive protections for children's rights in law in Scotland.<sup>2</sup>

By ratifying the UNCRC, the UK (like all other State parties to the Convention) has accepted a duty to report periodically to the UN Committee on the Rights of the Child in relation to how the standards set out by the Articles of the Convention are being achieved and realised. Following each of these periodic review processes the Committee publishes a series of Concluding Observations and Recommendations.

There are a number of other Human Rights Treaties and Instruments which the UK has ratified and reports to bodies in relation to, for example, the UN Convention on the Elimination of All Forms of Discrimination Against Women and the UN Convention on the Rights of Persons with Disabilities). All of these reporting processes result in contemporary recommendations, which have been informed by a wide range of expert stakeholders, carefully and thoroughly deliberated upon. As CLC has acted as the lead organisation in reporting to the UN Committee on the Rights of the Child on behalf of the NGO sector in Northern Ireland in all but one of the periodic reporting processes since the UK's ratification of the UNCRC, we are particularly disappointed that there has never been a meaningful, consistent or agreed approach to how the Northern Ireland Executive reflects upon and responds to the outcome of these periodic processes.<sup>3</sup>

The most recent examination of the UK's compliance with the UNCRC by the Committee on the Rights of the Child concluded in June 2023 when the Committee published its Concluding Observations and Recommendations. In the time that has elapsed since the Committee published its findings, the Scottish Government has published a formal response,<sup>4</sup> including a child-friendly version.<sup>5</sup> This is also the case in Wales where the Welsh Government has published a response,<sup>6</sup> including a children and young people's version.<sup>7</sup>

Following the restoration of devolution in Northern Ireland in early

2024, the Minister for Education<sup>8</sup> initially indicated in response to an Assembly Question in March that the 2023 Concluding Observations and Recommendations had been circulated to all government departments in June 2023 and that his department would commission, *"...a cross-departmental assessment of the Concluding Observations in the coming weeks..."*.<sup>9</sup>

In May, the Minister then further indicated that the assessment would be completed *"over the summer"*.<sup>10</sup> It was therefore both surprising and disappointing that following the Summer Recess, the Minister, in response to a further Assembly Question stated that he decided, *"that, due to the significant resource pressures currently facing my department, DE will not be carrying out a coordinated assessment across departments at this stage. I will keep this under review."*<sup>11</sup>

That there is no consistent, agreed approach by the Northern Ireland Executive for responding to and acting upon the outcome and recommendations of the periodic review and examination processes in relation to Northern Ireland's obligations under the UNCRC and other human rights treaties is a missed opportunity to take a strategic and meaningful approach to improving the realisation of human rights standards for all people in Northern Ireland as well as in improving transparency in how government operates generally and in so doing addressing the inequality gaps that children experience daily and which they cannot vindicate through current domestic legislation. It is also a damning indictment of how seriously children's rights are taken by government in Northern Ireland, especially when compared to other devolved jurisdictions.

Further, the lack of any meaningful follow up action by government is contrary to repeated recommendations made the Committee on the Rights of the Child, including in 2023 in which they stated:

*"The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented and that a child-friendly version is disseminated to, and made widely accessible for, children, including those in the most disadvantaged situations. The Committee also recommends that the combined sixth and seventh periodic reports and the present concluding observations be made widely available in the languages of the country."*<sup>12</sup>

Additionally, it is important to draw the Committee's attention to the fact that the UN Committee on the Rights of the Child also expressed concern in relation to the persistent discrimination of children in their most recent Concluding Observations and Recommendations:

*"The Committee remains deeply concerned about persistent discrimination, such as through expressions of racism and bullying,*



*against children in disadvantaged situations, including children belonging to minority groups and lesbian, gay, bisexual, transgender and intersex children; insufficient progress in ensuring the protection of all children under 18 years of age against discrimination on the grounds of their age; and the overrepresentation of children of Asian and African descent and Muslim, Roma, gypsy and traveller children in the criminal justice system and the large proportion of these groups of children who are living in poverty.”<sup>13</sup>*

The Committee therefore urged the State party:

*“To take legislative and other measures to ensure the protection of all children below 18 years of age from discrimination on the grounds of their age, particularly in... Northern Ireland, address discriminatory stereotypes against children and promote a positive image of children as rights holders.”<sup>14</sup>*

## BILL OF RIGHTS FOR NORTHERN IRELAND

**The Committee will be aware that the Belfast/Good Friday Agreement set out an expectation that rights, including equality and non-discrimination rights would be safeguarded through a Bill of Rights for Northern Ireland. CLC has previously provided extensive commentary and analysis on this issue, particularly as it relates to the human rights of children.<sup>15</sup>**

A Bill of Rights for Northern Ireland should be developed to mainstream children's rights, contain dedicated children's rights provisions to reflect the fact that children require additional protection and act as a vehicle to incorporate the UNCRC into domestic legislation. A Northern Ireland specific Bill of Rights should also include strong, justiciable equality protections and non-discrimination provisions which would be enjoyed by children as equally as adults.

It is CLC's clear view that the continued failure to deliver a Bill of Rights for Northern Ireland has contributed to an inadequacy of mechanisms to enable children, particularly those who are most vulnerable and disadvantaged, to have their rights, including their equality rights, fulfilled and to vindicate their rights when they are denied.

On a now repeated basis, in its periodic examinations of the UK in 2008<sup>16</sup>, 2016<sup>17</sup> and most recently last year<sup>18</sup>, the UN Committee on the Rights of the Child has recommended a Bill of Rights for Northern Ireland be delivered.

## SECTION 75 OF THE NORTHERN IRELAND ACT 1998

**CLC believes that section 75 of the Northern Ireland Act 1998 (s75) is one of the most significant legislative developments in the promotion of equality of opportunity in this jurisdiction. For almost three decades CLC has sought to promote s75 duties and their meaningful application as a vehicle to achieve equality of opportunity for children and young people. However, we are frequently disappointed in public authorities' failure to discharge their s75 statutory duties and the total ineffectiveness of the available 'remedies' when breaches occur.**

Our recurring concerns about the culture and practice of many public authorities in relation to their application of s75 duties can be summarised as follows:

- I. A failure to screen.
- II. A failure to screen early in the policy development process.
- III. A failure to collect and consequently a lack of relevant disaggregated data to assess the impact of policies.
- IV. A failure to directly consult with s75 groups impacted by policies.
- V. A failure to produce easy read and child friendly documentation to allow young people, people with English as their second language and people with a learning disability to fully engage in the consultation process.
- VI. A failure to properly identify differential adverse impact.
- VII. A lack of suitable mitigations where differential adverse impact is identified.
- VIII. A presumption to screen policies out.

Individually and collectively these issues reflect a broader failure by public authorities to comply with their approved equality schemes and to discharge their statutory s75 duties.

It is our view that equality screenings are often viewed as a 'tick box' exercise, rather than an opportunity to promote equality in Northern Ireland.

One particular example which may illustrate a number of our concerns related to CLC's experience of successfully taking forward a complaint in

relation to a breach of the Department for the Economy's Equality Scheme vis-à-vis the High Street Voucher Scheme.

The High Street Voucher Scheme was launched by the Department for the Economy on 27th September 2021. This was a voucher scheme under which every person in Northern Ireland over the age of 18, could be given a voucher of the value of £100 to spend on the high street in an effort to boost economic recovery.

At the time, concerns raised by CLC included:

- The exclusion of u18s from the High Street Voucher Scheme.
- The absence of any equality screening, until requested by the Children's Law Centre.
- The lack of consideration of u18s in the equality screening documentation, despite age being a protected category under s75 of the Northern Ireland Act 1998 which imposes Northern Ireland's statutory equality duties

The Children's Law Centre supported a number of young people to submit complaints, first to the Department itself and then to the Equality Commission for Northern Ireland (ECNI) in relation to their exclusion from the High Street Voucher Scheme. The Equality Commission investigated, and found that the Department for the Economy failed to comply with its own Equality Scheme. The investigation found that the Department failed to screen at the earliest opportunity and that it also failed to properly assess the impacts of the policy on children under 18. The full report from the Equality Commission can be viewed on their website.<sup>19</sup>

Regrettably, the complaints process was lengthy and convoluted and the considerable delay in the ECNI processing the complaint denied the opportunity to secure an effective remedy for children.

CLC therefore endorses the recommendation of the Equality Coalition<sup>20</sup> that an independent review takes place in regard to the effectiveness of the ECNI exercise of enforcement powers over the Section 75 duties; including the interface between the ECNI advice and enforcement functions; and whether legislative change, including strengthening the powers or an alternative enforcement mechanism, would be more effective.

## SINGLE EQUALITY ACT

**The St Andrew's Agreement in 2006 made it clear for the need for a Single Equality Bill and committed to working “*rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date*”.**<sup>21</sup>

Despite that commitment, there has been no progress in relation to a Single Equality Bill by the Executive.

CLC recommend that equality legislation is consolidated into a Single Equality Act, building on existing provisions, taking cognisance of international human rights treaties and of gaps identified through this inquiry.

## AGE DISCRIMINATION (GOODS, FACILITIES AND SERVICES)

In a previous Assembly mandate, an Age (Goods, Facilities and Services) Bill was proposed, but did not include protections for children under 16 years of age. It was CLC's view that the proposed Bill which purported to address age discrimination, discriminated on the grounds of age by the exclusion of children under 16. The Bill was not progressed while the Assembly was suspended and has not since been reintroduced, despite a commitment in the New Decade, New Approach<sup>22</sup> agreement to bring an Age (Goods Facilities and Services) Bill forward as basis for ensuring that no one is discriminated against because of their age.



## CHILDREN WITH A DISABILITY

**At the end of the 2023-24 financial year, CLC had dealt with almost 3,000 advice queries, of which 1,984 involved disability discrimination in education.<sup>23</sup> This is a staggering figure, given the wide range of legal issues on which CLC provides advice, advocacy and representation in support of children and young people. This surge in discrimination issues being raised reflects a significant and growing issue with the effectiveness of current protections for disabled children generally but also specifically in relation to the rights of children with disabilities to access education.**

Disabled children being treated less favourably than non-disabled children in education, alongside failures to make reasonable adjustments and a complete lack of planning to remove physical barriers as well as social barriers to access are having a cumulative impact upon their rights. Current legislative protections for people with a disability are failing these children.

It is notable that CLC has also secured High Court declarations in relation to two severely disabled children who were unable to access education during the imposition of Covid restrictions and also after these were eased. In these cases, it was agreed and declared that the Education Authority had breached Article 2 of Protocol 1 of the ECHR (no child shall be denied the right to education) in conjunction with Article 14 (discrimination).<sup>24</sup>

This is all evidence that in this jurisdiction, disabled children are not accessing education on an equal basis with non-disabled peers.

Similarly, in terms of school placement of children with special educational needs and disabilities (SEND), there has been an escalation year on year in the situation where a significant number of disabled children remain unplaced in September where they are due to start nursery, Primary 1 or Year 8. The situation is not the same for children who are not disabled and appears to be an issue that has become a major crisis in Northern Ireland.

In September 2023, CLC's client, Aurelia, missed the first 4 months of Year 8, due to the fact that plans were not made in time to ensure she could access a bathroom.<sup>25</sup> In September 2024, CLC took legal action for a disabled child who could not go to school because there simply was no capacity whatsoever in the system to enable her to attend a school with sufficient special provision.

For children with multiple identities, barriers in accessing education are magnified further and CLC has had to intervene challenging instances of such discrimination to vindicate their right to education e.g. where children

are refugees or asylum seekers with disabilities.

There is a cohort of children with severe disabilities evident within CLC's legal casework who exhibit distressed behaviour that is challenging to manage and who have been excluded from access to education, whilst simultaneously losing access to short breaks. This denial of their rights reflects their lived experience of disability discrimination and the failure of duty bearers to properly discharge their s75 equality duty when developing policy and determining allocation of resources, including mitigations to address differential adverse impact.

Disabled children, predominantly those who are younger and non-verbal, have suffered potentially unlawful restraint and seclusion in education settings. These children do not enjoy the same equality of protection from assault when compared to their non-disabled peers.

The systems that serve disabled children in education have been allowed to collapse and the legal remedies available do not match the severity of the impacts upon those children and their families.

There are a number of key issues arising as regards gaps in legislation in Northern Ireland:

1. Children in Northern Ireland have less legal protection against unlawful disability discrimination under the Special Educational Needs and Disability (NI) Order 2005 than children who are covered by the Equality Act 2010. For example, defects in the legal provision around disability related discrimination, caused in part by decision in the *Malcolm* case, were "cured" in England and Wales via the Equality Act. Further, the reasonable adjustments duty is wider under the Equality Act than under SENDO as it covers ancillary facilities and services. There is also a plethora of different legal provisions for different types and phases of education in Northern Ireland which creates greater technical difficulty for children and families in accessing disability equality rights in this jurisdiction.
2. Children with disabilities in education have access to lesser remedies than they do in other environments if their rights are breached e.g. the Special Educational Needs and Disability Tribunal (SENDIST) has no power to order compensation. A child who loses months or years of education will only be able to receive an apology or an assurance regarding staff training. A child who is discriminated against in a shop e.g. if they were not allowed to enter with a guide dog, would be able to claim compensation.
3. Children have lesser protection than adults, which includes disabled children. Children who are young and non-verbal have been subject to restraint and seclusion in education settings. The law in Northern Ireland allows for "reasonable force"<sup>26</sup> to be employed to maintain order and discipline, which is in conflict with human rights and out of step with

modern thinking on the care and treatment of disabled children. The Department of Education has to date failed to repeal and reform the relevant legislation even after a review of these issues.<sup>27</sup>

4. The legal provisions around disability discrimination, and discrimination more generally regarding children in Northern Ireland are piecemeal, disparate and extremely technically difficult to navigate as a result (in comparison to the situation under the Equality Act).
5. The negative impacts of these differences are compounded by the fact that protection for adults is more favourable than for children. A child facing disability discrimination at school may get an apology as a remedy. An adult facing disability discrimination at work may get significant compensation.
6. The public sector equality duty is not working effectively for disabled children in Northern Ireland. CLC have long advocated for proper implementation of section 75 of the Northern Ireland Act 1998. Failure of screening and equality-proofing of education policies that affect disabled children has long been an issue raised by CLC to the Department of Education and the Education Authority and other public authorities, through both policy responses and litigation. It is also important to note that schools are not designated for the purposes of s75.
7. Northern Ireland has been without an effective disability strategy for many years. Strategies that have been produced have not sufficiently covered children's equality rights and this includes a poor record when it comes to development of law and policy to push forward implementation of the UNCRPD in this jurisdiction.<sup>28</sup>

Children with disabilities experience differential adverse treatment in access to health, social care and education. A recent BBC Spotlight programme<sup>29</sup> highlighted, for example, the experience of families who are caring for children with autism and learning disabilities and the crisis in Health and Social Care which is failing them and their children.

CLC supports many children with complex needs, and their families who are being failed by the health and social care system, whether in workforce shortages leading to delays in allocation of social workers, the ongoing decline in respite and residential care provision or the impact of lengthy waiting times resulting in children and young people not receiving timely diagnoses.

In CLC's view, informed by our legal advice and casework, disability discrimination against children has become institutionalised within our education system due to shortcomings in the implementation of the policy of inclusion which became legally regulated through the Special Educational Needs and Disability (NI) Order 2005 (SENDO) but has remained

underdeveloped and underfunded since that time.

CLC's legal advice and casework reveals the normalisation of discriminatory practices which are evident when children with SEND are sent home early from school or placed on part-time timetables for prolonged periods; when they are isolated or segregated from peers; when their school work or physical environment is not adapted appropriately; when they are subject to unregulated restraint; when children with SEND are not allowed to be in the school playground or go on the school trip and when they are excluded from the class photo; when they are so anxious and unwell that they cannot tolerate the thought of putting on a uniform or getting into or out of the car to go into school; and when they are formally suspended or expelled for behaviour arising from disability in the absence of special educational provision.

It is also important for the Committee to note that through CLC's case work and policy engagement there is clear evidence of a total failure on the part of duty bearers to consider the adverse impact on children, especially disabled children, of legislation and policies introduced in response to Covid.

## USE OF RESTRICTIVE PRACTICES

**Children in Northern Ireland are entitled to equal protection of their human rights across all settings, whether they are at home, at school, in a health and social care facility or in the community.**

In recent years parental evidence has highlighted that vulnerable disabled children (particularly younger and non-verbal children) have routinely been subjected to restrictive practices such as use of restraint and seclusion in locked rooms, in special schools and within mainstream schools.<sup>30</sup> There is no regulatory framework in place to prevent or severely limit these discriminatory, potentially harmful and traumatic interventions, or to record and monitor use of restrictive practices where they have been employed.

In a report outlining the situation in different UK jurisdictions, one parent campaigner from Northern Ireland shared photographic evidence of her young son, a placid autistic boy who is non-verbal with no physical disabilities, strapped into a wheelchair with his legs and upper body restrained.<sup>31</sup> The PPS refused to prosecute this as a criminal matter, thus criminal law did not provide any protection. Social Services regarded it as a school issue, rather than a child safeguarding issue, and closed the case. Education law in Northern Ireland contravenes human rights in that it permits use of “reasonable force” for the purpose of maintaining order and discipline under Article 4(1c) of the Education (Northern Ireland) Order 1998. In order to be compliant with human rights protections, force should only be used in a school setting in very limited circumstances to prevent serious physical harm to the child or others.

In May 2021 the Education Committee brought forward a motion calling on the Minister of Education to urgently develop new guidance on the restraint and seclusion of children and young people, particularly those with additional support needs.<sup>32</sup> The Department of Education subsequently issued interim guidance reminding settings that reasonable force/ restraint should only be used as a measure of last resort; all instances should be recorded; parents/carers should be informed, with follow-up support provided to the children and staff involved; a child should never be locked in a room, left unaccompanied or prevented from leaving.

The Department also conducted a review which recommended legislative change to repeal Article 4(1c) of the Education (Northern Ireland) Order 1998. Although a positive development, this has not yet taken place. Significant work is required to ensure equal protection for school children under the law. It is vital that non-human rights compliant measures are repealed immediately, and that appropriate regulation, disaggregated data gathering

and monitoring are established through statutory requirement to give full effect to human rights protections (particularly under Articles 3, 5, 8 together with Article 14 ECHR).

In addition, the Mental Capacity Act (NI) 2016, whilst it has wider coverage than the equivalent provision elsewhere in the UK, including Deprivation of Liberty Safeguards for young people aged 16 and 17 who lack capacity, has not been fully implemented in this jurisdiction. Apart from the Human Rights Act 1998 (including Article 5 ECHR) alongside the inherent jurisdiction of the courts, younger children under the age of 16 have no distinct domestic legislative protection or regulatory system in place to safeguard them from restrictive practices or deprivations of liberty in education settings in a way that enables elimination of potentially unlawful restrictive practices such as those brought into the public domain by concerned parents. Domestic legal regulation and monitoring is needed to protect those aged under 16 in education settings or otherwise who are potentially vulnerable to unlawful restrictive practices, including restraint and seclusion.



## EQUAL PROTECTION OF CHILDREN

**At present in Northern Ireland, it is lawful for a parent or someone caring for or in charge of a child to use physical punishment in domestic settings. This means that children are afforded less protection from assault than adults. This constitutes clear discrimination on the grounds of age.**

Public opinion in Northern Ireland is clear on this issue - the vast majority of adults and parents want to see greater protections for children and more support with parenting.<sup>33</sup>

Legislative change in Scotland, Wales and the Republic of Ireland means that children have greater protections in neighbouring jurisdictions than they have in Northern Ireland.

The UN Committee on the Rights of the Child, in its examination of the UK government in 2023 stated:

*“Recalling its previous recommendations, the Committee recommends that the State party:*

*(a) Explicitly prohibit, as a matter of priority, corporal punishment in all settings, including in the home, throughout the State party... and repeal the legal defence of “reasonable punishment” in...Northern Ireland;*

*(c) Strengthen awareness-raising campaigns for parents, teachers and other professionals working with and for children to promote positive, non-violent and participatory forms of child-rearing.”<sup>34</sup>*

Article 2 of the *Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006*,<sup>35</sup> which provides for the defence of ‘reasonable punishment’ of a child, should be repealed immediately to ensure children enjoy the same protections from assault as adults.

## EXPERIENCES OF MINORITY ETHNIC COMMUNITIES

In recent years CLC's advice service has experienced an increase in the numbers of cases where children have been subject to racial abuse and often as a result, due to concerns for their own safety, are not attending school.

An independent review of hate crime legislation in Northern Ireland concluded in 2020<sup>36</sup> and recommended that:

*"Statutory aggravations should be added to all existing offences in Northern Ireland following the model adopted in Scotland and become the core method of prosecuting hate crimes in Northern Ireland. This would mean that any criminal offence could be charged in its aggravated form."*

*All current protected characteristics in Northern Ireland – race, religion, disability and sexual orientation should continue to receive protection under the proposed model set out in Recommendation 2, together with the new recommended protected characteristics of age, sex/gender and variations in sex characteristics. For the avoidance of doubt, the protected characteristic of sex/gender includes transgender identity. The protected characteristics will be protected for all purposes including any amended public order provisions."*

To date, no legislation has been introduced to give effect to these recommendations thereby resulting in a disparity in protection relating to hate crime between Scotland and Northern Ireland.

In addition to this, through our casework and policy work we are aware of and have previously highlighted several significant challenges faced by minority ethnic children, including migrant, refugee and asylum-seeking children. These issues include systemic discrimination, inadequate support and barriers to accessing essential services like education, healthcare and social opportunities, to which they are entitled.

Our experience of supporting children, and their families in relation to these issues clearly suggests that the existing legal and policy framework in regards to both equality of opportunity as well as anti-discrimination measures are not rigorously enforced nor strong enough to tackle the pervasive scale of racism in our society.

## CONCLUSION

**The Children's Law Centre is grateful to have the opportunity to provide a written submission to the Northern Ireland Assembly Committee for the Executive Office's Inquiry into Gaps in Equality Legislation.**

We hope that our comments have been useful and constructive, we welcome further opportunities to engage with the Committee on the issues raised within this submission.

## REFERENCES

- 1 For example, see Children's Law Centre Briefing Paper: The Children's Services Cooperation (NI) Act 2005. 2024. Accessible at: <https://childrenslawcentre.org.uk/?m-docs-file=7103>
- 2 The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024: <https://www.legislation.gov.uk/asp/2024/1/contents>
- 3 CRC/C/GBR/CO/6-7. United Nations Convention on the Rights of the Child. Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland. 22 June 2023. Accessible at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbol-no=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en)
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