

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Submission to the Committee for the Executive Office on the Age Discrimination (Goods, Facilities and Services) Bill

November 2026

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1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (NIHRC) pursuant to Section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland. The NIHRC is also required, under section 78A(1), 78A(5) and 78A(6) to monitor the implementation of Article 2(1) of the Windsor Framework.[1] Windsor Framework Article 2 is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018.

1.2 In accordance with these functions, the following advice is submitted to the Committee for the Executive Office (Committee), on the Age Discrimination (Goods, Facilities and Services) Bill (the Bill) as introduced by Claire Sugden MLA to the NI Assembly on 30 June 2026 (Bill 46/22-27). The NIHRC welcomes the opportunity to assist the Committee's consideration of the Bill and its proposals to strengthen protection against age discrimination in the provision of goods, facilities and services.

1.3 The NIHRC bases its advice on the full range of internationally accepted human rights standards. This includes the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and other relevant treaty obligations of the Council of Europe (CoE) and United Nations (UN). The regional and international treaties that are relevant to this advice include:

- European Convention on Human Rights (ECHR);[2]
- UN International Covenant on Civil and Political Rights (UN ICCPR);[3]
- UN International Covenant on Economic, Social and Cultural Rights (UN ICESCR);[4]

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1 The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community, 24 January 2020 (UK-EU Withdrawal Agreement) (see The Protocol on Ireland / Northern Ireland was renamed by Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework).

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

3 Ratified by the UK in 1976.

4 Ratified by the UK in 1976.

- UN Convention on the Rights of the Child (UN CRC);[5]
- UN Convention on the Elimination of Discrimination against Women (UN CEDAW);[6] and
- Charter of the Fundamental Rights of the European Union (CRFEU).[7]

1.4 In addition to treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

- UN Principles for Older Persons;
- UN Human Rights Committee General Comment No.18: Non-discrimination;
- UN CESCR General Comment No.6 on the economic, social and cultural rights of older persons;
- UN CESCR General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the ICESCR);
- CEDAW General Recommendation No.5 on Temporary special measures;
- UN CEDAW Committee General Recommendation No.27 of the UN CEDAW Committee on the Rights of Older Women;
- UN CRC Committee General Comment No.1 on the Aims of Education;
- UN CRC Committee General Comment No. 4 on Adolescent health and development in the context on the Rights of the Child;
- UN CRC Committee General Comment No 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6); and
- CoE Committee of Ministers Recommendation on the Promotion of Human Rights of Older Persons.[8]

1.5 The NIHRC confines its response to the protected characteristic of age, the proposed protections against age discrimination and age-related harassment, and clause 9 of the Bill which excludes persons under the age of 16 from the scope of the Bill.

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5 Ratified by the UK in 1991.
6 Ratified by the UK in 1986.
7 Charter of the Fundamental Rights of the European Union, (2000/C 364/01).
8 Recommendation CM/Rec (2014) 2, https://wcd.coe.int/ViewDoc.jsp?id=2162283&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

2.0 Part 1: Protected Characteristic of Age

2.1 The purpose of the Bill is to prohibit unjustified discrimination, harassment and victimisation on the ground of age in relation to the provision of goods, facilities and services.

2.2 Clause 1 establishes age as a protected characteristic for the purposes of the Bill. It further provides that references to a person with the protected characteristic of age are references to a person of a particular age group and clarifies that an age group may be defined by a particular age or a range of ages. The clause also makes clear that references to age include assumed age.

2.3 There are a number of human rights instruments that contain a general (freestanding) prohibition on discrimination. Article 26 of the ICCPR provides that, 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.' Article 26 also stipulates that the law has to prohibit discrimination and ensure equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This is a freestanding provision and therefore its application is not confined to the rights contained within the Covenant.

2.4 There are a range of other provisions that are not freestanding as they apply only when combined with other rights contained within the relevant instruments (known as parasitic provisions). These include Article 2 (1) of the ICCPR,[9] Article 2(2) of the ICESCR[10] and Article 14 of the ECHR which prohibits discrimination in the enjoyment of the rights contained within the Convention on a number of grounds, including sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

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9 Article 2(1) ICCPR provides that 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

10 Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also contains a non-discrimination provision, stating 'the State parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

2.5 General comments of the UN Treaty Bodies have elaborated on the non-discrimination provisions contained within the Treaties. For example, General Comment No.20 of the ICESCR Committee makes it clear that although age is not specifically mentioned in Article 2, it is considered as protected under 'other status'.[11]

2.6 Article 14 of the ECHR does not explicitly refer to age discrimination; however, the European Court of Human Rights (ECtHR) jurisprudence provides useful guidance on the interpretation of the ECHR in this regard. The ECtHR jurisprudence has recognised age as falling within the category of "other status" for the purposes of Article 14. In the case of *Schwizgebel v Switzerland* the ECtHR considered the issue of age under the ambit of other status for the purposes of Article 14 read together with Article 8.[12] The state may permit differential treatment on the grounds of age, if the difference in treatment is objective and reasonable.[13] The ECtHR has also ruled that once an applicant has shown a difference in treatment, the State has a burden of proof to show that the treatment is justified.[14]

2.7 In *Khamtokhu and Aksenchik v Russia* [GC], the ECtHR recognised that age falls within the scope of "other status" under Article 14.[15] The Court reiterated that differential treatment will be compatible with Article 14 where it pursues a legitimate aim and there is an objective and reasonable justification for the distinction, including a reasonable relationship of proportionality between the means employed and the aim sought to be realised.[16]

2.8 In *Carvalho Pinto de Sousa Morais v Portugal*, the ECtHR also recognised that age might constitute "other status" for the purposes of Article 14 of the ECHR.[17] It highlighted the risks associated with decision-making based on age-related stereotypes and criticised domestic judicial reasoning that

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11 CESCR 'General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)' E/C.12/GC/20 para 29.
12 *Schwizgebel v Switzerland*, 10 June 2010, Application No.25762/07. This case involved alleged age discrimination in the State's refusal of her application to adopt a second child.
13 Ibid, Para 97. The Court did not find a violation, finding that the difference in treatment was objective and reasonable and that the State has a broad margin of appreciation as well as the need to protect the best interests of the child.
14 *DH v Czech Republic and Others*, 13 November 2007, Application No 57325/00 at para 177.
15 *Khamtokhu and Aksenchik v Russia* [GC], 24 January 2017, Applications nos 60367/08 and 961/11 at para 62.
16 *Khamtokhu and Aksenchik v Russia* [GC], Applications nos 60367/08 and 961/11, 24 January 2017 at para 64 and 69.
17 *Khamtokhu and Aksenchik v Russia* [GC], Applications nos 60367/08 and 961/11, 24 January 2017 at para 45.

relied on assumptions about the significance of sexuality for older women, finding that such reasoning reflected discriminatory gender and age-based stereotypes.[18]

2.9 In *Spišák v. the Czech Republic*, the ECtHR found that the applicant had been 'treated less favourably than adult detainees prosecuted for similar or comparable crimes when it came to the intervals between the automatic periodic reviews of the lawfulness of his detention, in violation of Article 14 taken in conjunction with Article 5 of the Convention'.[19]

2.10 Article 14 applies to the enjoyment of ECHR rights, which means an ECHR right must first be identified as engaged. There are a number of relevant ECHR provisions that are engaged here, such as Article 6 (the right to a fair trial), Article 8 (the right to respect for private and family life), Article 10 (freedom of expression), Article 11 (freedom of association), Article 12 (the right to marry and found a family), Article 1 of Protocol 1 (the right to property) and Article 2 of Protocol 1 (the right to education).

The Need for a Single Equality Act in Northern Ireland

2.11 In NI, equality protections are dispersed across a number of separate pieces of legislation, creating a complex and fragmented legal framework. In contrast, Great Britain has consolidated much of its equality law within the Equality Act 2010, while Ireland provides protection against discrimination in the provision of goods and services through the Equal Status Act 2000. NI is currently the only jurisdiction within the UK without a single legislative instrument to consolidate, clarify and enhance existing equality protections.

2.12 The UN Treaty Bodies have highlighted the need for a comprehensive equality law. In 2025, the UN ICESCR Committee recommended that the UK Government and NI Executive "ensure the adoption of a comprehensive anti-discrimination and equality law – particularly in NI – in accordance with Article 2(2) of the UN ICESCR… and guided by UN ICESCR

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18 *Carvalho Pinto de Sousa Morais v Portugal*, Application no 17484/15, 25 July 2017, Application no 17484/15, 25 July 2017 at paras 52-54.
19 (Application no. 13968/22) 20 June 2024, para 72.

Committee's General Comment No 20 on non-discrimination in economic, social and cultural rights".[20]

2.13 In 2024, the UN CERD Committee recommended that the UK Government and NI Executive:

> ensure the adoption of comprehensive anti-discrimination and equality legislation in all jurisdictions… particularly in NI… containing a clear definition of racial discrimination, which comprises direct, indirect, structural… forms of discrimination, covering all fields of law in public and private domains, and all prohibited grounds of discrimination in accordance with Article 1 of the UN CERD.[21]

2.14 In 2022, the CoE Advisory Committee on the Framework Convention for Protection of National Minorities called on the UK Government and NI Executive to "effectively guarantee to persons belonging to national minorities the right to equality before the law by adopting comprehensive equality legislation for NI".[22] In 2019, the UN CEDAW Committee recommended that the NI Executive "revise its legislation in NI to ensure that it affords protection to women on an equal footing with women in other administrations of the… [UK]".[23]

2.15 In 2017, the UN CRPD Committee recommended reform of equality law in NI "to protect persons with disabilities in NI from direct and indirect disability-based discrimination and discrimination through association".[24]

2.16 The NIHRC continues to advise of the need for a Single Equality Act for Northern Ireland.

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20 E/C.12/GBR/CO/7, 'UN ICESCR Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 28 February 2025, at para 25(a).
21 CERD/C/GBR/CO/24-26, 'UN CERD Committee Concluding Observations on the Combined Twenty-fourth to Twenty-sixth Reports of the UK of Great Britain and NI', 23 August 2024, at para 14(a).
22 ACFC/OP/V(2022)003, 'CoE Advisory Committee on the Framework Convention for the Protection of National Minorities Fifth Opinion on the UK', 8 December 2022, at para 65.
23 CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 16(a).
24 CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 3 October 2017, at para 17(b).

3.0 Part 2: Prohibited Conduct

3.1 Part 2 of the Bill sets out the prohibited conduct which includes discrimination, harassment and victimisation on the ground of age, (Clauses 2 to 4) as well as provisions on instructions and pressure to discriminate and liability for, and aiding of, unlawful acts (clauses 5 to 8). For the purposes of this submission, the NIHRC confines its comments to clauses 2 and 3 of the Bill.

3.2 Clause 2 prohibits direct and indirect age discrimination and provides that differential treatment will only be lawful where it can be objectively justified as a proportionate means of achieving a legitimate aim.

3.3 Clause 3 prohibits age-related harassment and prohibits unwanted conduct related to age that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. The clause further provides that, in assessing the effect of the conduct, the following must be considered: the perception of the victim; the circumstances of the case; and whether it is reasonable for the conduct to have that effect.

Clause 2 Positive Obligation to Prevent Discrimination

3.4 In *Thlimmenos v Greece*, the ECtHR held that the right not to be discriminated against under Article 14 is violated not only where States treat persons in analogous situations differently without objective and reasonable justification, but also where States fail, without objective and reasonable justification, to treat differently persons whose situations are significantly different.[25] This principle recognises that substantive equality may require positive action by the State to address disadvantage and ensure the effective enjoyment of Convention rights.

3.5 The ECtHR's subsequent jurisprudence has further recognised that effective protection from discrimination may require States to take reasonable and appropriate measures to secure the practical and effective enjoyment of Convention rights, including the provision of effective legal

[25] *Thlimmenos v Greece*, Application no 34369/97, 6 April 2000 at para 44.

protection against discriminatory treatment.[26]

Clause 3 Positive Obligations to Prevent Harassment Generally

3.6 The ECtHR has established that states have positive obligations under Articles 3 and 8 to prevent harassment and protect individuals from violence or degrading treatment by third parties.[27] In relation to the right to life at Article 2, the ECtHR[28] has extended the doctrine of positive obligations to require that authorities enact effective legal frameworks and take operational measures whenever they are, or should be, aware of a real and immediate risk of third-party harm.[29]

3.7 In the workplace context, the ECtHR has held that states must ensure effective protection against harassment, including bullying or sexual harassment, under Article 8. In *C. v. Romania*[30], the ECtHR found a violation of Article 8 due to inadequate investigation of sexual harassment in the workplace.[31]

3.8 In *Dordević v. Croatia*[32], the Court held that the authorities' failure to address serious harassment and violence directed at a disabled person and his mother violated Article 8. The state had a duty not only to respond to past incidents but also to take measures to prevent further harassment.[33]

4.0 Discrimination in the Provision of Goods, Facilities and Services

4.1 Part 3 of the Bill prohibits discrimination in the provision of goods, facilities

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26 *Danilenkov and Others v Russia*, Application No. 67336/01, 30 July 2009 at para. 124; Nachova and Others v Bulgaria [GC], Applications Nos. 43577/98 and 43579/98, 6 July 2005 at paras 145-168; Šečić v Croatia, Application No. 40116/02, 31 May 2007 at paras 66-67.
27 *Sandra Janković v. Croatia*, Application no. 38478/05,5 March 2009, at para 44–47.
28 *Osman v. the United Kingdom*, Application no. 23452/94, 28 October 1998 at para 115–116.
29 *Z and Others v. the United Kingdom* at para 73; see also *Opuz v. Turkey*, Application no. 33401/02 at para 159.
30 *C. v. Romania*, Application no. 47358/20, 30 November 2022.
31 *C. v. Romania*, Application no. 47358/20, 30 November 2022 at para 87 to 88.
32 *Đorđević v Croatia*, Application no. 41526/10, 24 October 2012.
33 *Đorđević v Croatia*, Application no. 41526/10, 24 October 2012 at para 137, 147 to 149. Similarly, in *Ubeda v. Italy* (2026), the Court reiterated that states must discharge their positive obligations under Articles 3 and 8 by responding promptly, assessing risk adequately, and adopting proportionate preventive measures.

and services, but Clause 9 limits its application to persons who have not attained the age of 16.

4.2 The effect of that exclusion is to withhold from those under 16 years the protection from discrimination in the enjoyment of ECHR rights.

4.3 It is worth noting that Clause 9 goes further than the legislation in Great Britain, where such protection has been extended to those aged 18 or over.[34] The NIHRC welcomes the NI approach which more appropriately balances the need to ensure protection against discrimination and the need to protect those who might be vulnerable on the grounds of age. However, the NIHRC remains concerned that a blanket ban that excludes a whole category of people based simply on age, and which takes no account of relevant factors such as capacity will exclude, without justification, protection and fail to comply with Article 1 ECHR.[35]

4.4 While the Bill seeks to address a longstanding gap in protection against age discrimination in the provision of goods, facilities and services, clause 9 creates a further distinction based solely on age by denying the Bill's protections to children under 16.

4.5 The NIHRC considers that the arbitrary exclusion of an entire age group warrants careful scrutiny. In light of international human rights standards, including the principle of non-discrimination contained in Article 2 of the UN CRC, the NIHRC questions whether a blanket exclusion of children under 16 is necessary and proportionate, or whether a more tailored approach could achieve the Bill's objectives while ensuring protection against unjustified age-based discrimination for children and young people.

4.6 Article 1 of the UNCRC provides that for the purposes of the convention, 'a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.' Article 2 requires State parties to respect and ensures the rights contained in the Convention are applied without discrimination. Article 3 of the UNCRC provides that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

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34 Equality Act 2010, section 29.
35 Osman v UK (87/1997/871/1083) 28 October 1998, para 116.

authorities or legislative bodies, the best interests of the child shall be a primary consideration.' Article 15 recognises the right of the child to freedom of association. Article 24 of the UNCRC requires State parties to ensure the right of the child to the highest attainable standard of health. Article 31 recognises the right of the child to rest, leisure, engage in play and recreational activities.

4.7 A number of the UNCRC provisions recognise the concept of the child's evolving capacity. Article 5 calls on State parties to recognise and respect the role of parents and guardians to provide direction and guidance to the child in exercising their convention rights, in a manner consistent with evolving capacity. Article 12 recognises the right of children to express views freely and that the views of the child will be given due weight in accordance with age and maturity.

4.8 The UNCRC Committee in its General Comment Number 1 has elaborated on the concept of evolving capacity. The CRC provides that 'schools should foster a humane atmosphere and allow children to develop according to their evolving capacities.' General Comment no. 4 of the CRC on adolescent health also recommends the need for minimum ages of sexual consent, marriage and the possibility of medical treatment without parental consent that 'closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity.' This reflects the duties of the State in the UNCRC to ensure the child is protected. For example, Article 3 (2) of the UNCRC which states 'States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.' General Comment No.5 on general implementation measures notes that Article 4 of the UNCRC requires that State parties 'take all appropriate legislative, administrative and other measures for implementation of the rights therein.' The General Comment provides that 'ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental.'

4.9 In 2023, the UN CRC Committee found that there was "insufficient progress in ensuring protection of all children under 18 years of age against discrimination on the grounds of their age". The UN CRC Committee recommended that the UK Government and the NI Executive "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… NI".[36]

4.10 The NIHRC recommends that, if children under the age of 16 are excluded from the scope of the Bill (which the NIHRC advises against), the Committee for the Executive Office should seek a formal and time-bound commitment from the Executive to introduce legislation extending protection against age discrimination, harassment and victimisation to children under 16 in respect of the functions and activities covered by the Bill. The NIHRC considers that the absence of statutory protection for children under 16 should be addressed as a legislative priority and should not persist beyond an identified implementation period.

[36] CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seven Periodic Report of the UK of Great Britain and NI', 2 June 2023, at para 19.

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