

**Submission regarding the List of Issues  
concerning the Initial Report of the  
United Kingdom of Great Britain and  
Northern Ireland on the Optional  
Protocol to the Convention on the Rights  
of the Child on the Sale of Children, Child  
Prostitution and Child Pornography**

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## **1. Introduction**

- 1.1. The Northern Ireland Human Rights Commission (the Commission) is a statutory public body established in 1999 to promote and protect human rights. In accordance with the Paris Principles<sup>1</sup> the Commission reviews the adequacy and effectiveness of measures undertaken by the UK Government to promote and protect human rights, specifically within Northern Ireland (NI). The Commission is one of the three A status National Human Rights Institutions in the UK.
- 1.2. As part of the Commission's engagement with the United Nations and Council of Europe treaty monitoring processes, it presents this submission regarding the United Kingdom's compliance with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (the Protocol) to the Committee on the Rights of the Child (the Committee).
- 1.3. In this submission the Commission provides information on the following:
  - inadequacies in the State party report and the need for updated, comprehensive information to be provided by the UK Government.
  - gaps in the legislation implementing the Protocol in Northern Ireland, in particular with regard to the requirement to disprove reasonable belief regarding the age of a child victim of a number of relevant crimes.
  - the establishment of the National Crime Agency and its impact on the protection against the crimes identified in the Protocol in Northern Ireland.
  - requirement of support for child victims of crimes addressed in the Protocol in Northern Ireland.

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<sup>1</sup> <http://www2.ohchr.org/english/law/parisprinciples.htm>.

- the need for “particular attention” regarding children in care in Northern Ireland in order to ensure compliance with the Protocol.

## **2. State Party Report**

2.1. The Commission advises that the State party report<sup>2</sup> has not provided comprehensive information on measures taken to implement the provisions of the Protocol, as required under Article 12(1) and the Revised Guidelines regarding Initial Reports to be submitted by States parties.<sup>3</sup>

2.2. Information provided by the UK Government is incomplete in a number of areas, including:

- Data in relation to the prohibition of “The offering, delivery or accepting, by whatever means, a child for the purpose of: transfer of organs of the child for profit” (Article 3(1)(a)(ii)(b)); “The offering, delivery or accepting, by whatever means, a child for the purpose of: engagement of the child in forced labour.” (Article 3(1)(a)(ii)(c); and “Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption” (Article 3(1)(a)(ii).

Specifically in relation to Northern Ireland:

- No data has been provided, as required pursuant to the Revised Guidelines regarding Initial Reports to be submitted by States parties.<sup>4</sup>
- Article 9 - prevention and detection (paras. 81-92)
- Article 3(1)- legislation (paras. 94-105)

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<sup>2</sup> Initial Report of the United Kingdom of Great Britain and Northern Ireland, Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, CRC/C/OPSC/GBR/1, 14 November 2012.

<sup>3</sup> Revised Guidelines regarding Initial Reports to be submitted by States parties under Article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, CRC/C/OPSC/2, 3 November 2006.

<sup>4</sup> Revised Guidelines regarding Initial Reports to be submitted by States parties under Article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, CRC/C/OPSC/2, 3 November 2006, paras. 6-12. *See also*, Joint Committee on Human Rights, *Human Rights of unaccompanied migrant children and young people in the UK*, First Report of Session 2013-14, HL Paper/HC Paper 196, 12 June 2013, paras. 143-146.

- Article 3(2) – attempt, complicity and participation (paras. 106-107) (the Criminal Attempts Act (1981) does not extend to Northern Ireland)
- Article 3(3) appropriate penalties (paras. 108-109)
- Article 7 – Seizure and Confiscation (paras. 125-133)<sup>5</sup>
- Victim support (paras. 134-139)
- Young victims of crime (para 140)
- Article 8(1) - Protecting the rights and interests of child victims (paras. 144-156)
- Article 8(2) – age of victims (Section 53 of the Youth Justice and Criminal Evidence Act 1999,<sup>6</sup> does not extend to Northern Ireland<sup>7</sup>)
- Article 8(3) – best interests of the child (paras. 160-162)
- Article 8(4) – training (paras. 163-166)
- Article 9(4) – victim compensation (paras 176-178) (the Criminal Injuries Compensation Scheme does not extend to Northern Ireland)
- Article 9(5) – prohibiting the production and dissemination of material (paras. 179-182)

2.3. The Commission further notes that the State report does not provide comprehensive information regarding relevant legislation and initiatives in NI, including some which have occurred after the report was submitted. For example, the adoption of the Criminal Justice Act (Northern Ireland) 2013, which specifically addresses a number of issues in relation to human trafficking, and the establishment of an Engagement Group on Human Trafficking and an Organised Crime Task Force: Immigration and Human Trafficking Subgroup.

**The Committee should request that the UK Government supplement its report to provide comprehensive information regarding measures taken to implement the provisions of the Protocol in Northern Ireland.**

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<sup>5</sup> This issue is of particular relevance in light of the establishment of the National Crime Agency, addressed below. The Chief Constable of the Police Service of Northern Ireland (PSNI) has stated that “we have lost from October all powers in relation to civil recovery of criminal assets and that’s a major problem as well.” BBC News, *Crime agency block 'will hamper policing'*, 14 May 2013, available at: <http://www.bbc.co.uk/news/uk-northern-ireland-22524011>. See also, Minister of Justice response to AQW 22995/11-15, 13/05/2013.

<sup>6</sup> State party report, para. 157.

<sup>7</sup> Youth Justice and Criminal Evidence Act 1999, section 68.

### **3. Legislation in Northern Ireland**

#### *Requirement to disprove reasonable belief regarding the age of a child victim*

- 3.1. The Commission advises that at present, it is illegal in NI to pay for the sexual services of a prostitute of any age where the prostitute has been subject to exploitation.<sup>8</sup> However, after conducting an extensive evaluation of the UK, the Council of Europe Group of Experts on Action against Trafficking in Human Beings noted that, 'the UK authorities have recognised that this offence is difficult to prove and is generally charged when accompanying other more serious offences'.<sup>9</sup>
- 3.2. In the absence of exploitation, it is an offence in NI: to intentionally pay for the sexual services of a child under 13 years old; and, to intentionally pay for the sexual services of a child under 18 years old where the purchaser did not reasonably believe the child to be 18 years or over.<sup>10</sup> In the latter context, it is for the prosecution to prove that the purchaser did not reasonably believe the child to be 18 years old or more.<sup>11</sup>
- 3.3. It is an offence in NI to intentionally cause or incite a child under 13 years old to become a prostitute or to be involved in pornography and, to intentionally cause or incite a child under 18 years old to become a prostitute or to be involved in pornography where the perpetrator did not reasonably believe the child to be 18 years or over.<sup>12</sup> In the latter context, it is for the prosecution to prove that the perpetrator did not reasonably believe the child to be 18 years old or more.<sup>13</sup>
- 3.4. It is also an offence in NI to intentionally control the activities of a child under 13 years old relating to that child's prostitution or involvement in pornography; and, to intentionally control the activities of a child under 18 years old relating to that child's

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<sup>8</sup> Section 15, Policing and Crime Act 2009, inserting Article 64A, Sexual Offences (Northern Ireland) Order 2008.

<sup>9</sup> See Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), 'Report concerning the implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings in the United Kingdom: first evaluation round' (12 September 2012), para 316.

<sup>10</sup> Sexual Offences (Northern Ireland) Order 2008, article 37.

<sup>11</sup> See Explanatory Memorandum to the Sexual Offences (Northern Ireland) Order 2008, article 37.

<sup>12</sup> Sexual Offences (Northern Ireland) Order 2008, article 38.

<sup>13</sup> See Explanatory Memorandum to the Sexual Offences (Northern Ireland) Order 2008, article 38.

prostitution or involvement in pornography where the perpetrator did not reasonably believe the child to be 18 years or over.<sup>14</sup> In the latter context, it is for the prosecution to prove that the perpetrator did not reasonably believe the child to be 18 years old or more.<sup>15</sup>

- 3.5. In NI it is an offence to intentionally arrange or facilitate the prostitution or involvement in pornography of a child under 13 years old; and, to intentionally arrange or facilitate the prostitution or involvement in pornography of a child under 18 years old where the perpetrator did not reasonably believe the child to be 18 years or over.<sup>16</sup> In the latter context, it is for the prosecution to prove that the perpetrator did not reasonably believe the child to be 18 years old or more.<sup>17</sup>
- 3.6. In NI it is an offence to meet a child following sexual grooming, however, this offence will only have been committed if the child is under 16 and the perpetrator “does not reasonably believe” the child to be 16 or over.<sup>18</sup>

**The Committee should request that the UK Government provide information regarding NI and how the requirements of the Protocol are satisfied with respect to the criminalisation of the sale of children, child prostitution and child pornography. The Commission recommends that this issue should be included on the List of Issues.**

*Definition of Payment for sexual services of a child*

- 3.7. The Commission notes that the Optional Protocol defines Child Prostitution as “the use of a child in sexual activities for remuneration or any other form of consideration.”<sup>19</sup> It advises that, in the Sexual Offences (Northern Ireland) Order 2008 with respect to child prostitution “payment” is defined as “any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.”<sup>20</sup>

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<sup>14</sup> Sexual Offences (Northern Ireland) Order 2008, article 39.

<sup>15</sup> See Explanatory Memorandum to the Sexual Offences (Northern Ireland) Order 2008, article 39.

<sup>16</sup> Sexual Offences (Northern Ireland) Order 2008, article 40.

<sup>17</sup> See Explanatory Memorandum to the Sexual Offences (Northern Ireland) Order 2008, article 40.

<sup>18</sup> Sexual Offences (Northern Ireland) Order 2008, article 22.

<sup>19</sup> Article 2(b).

<sup>20</sup> Article 37(2).

**The Committee should request that the UK Government provide information regarding NI and in particular its compliance with the prohibition of child prostitution in accordance with the Protocol. The Commission recommends that this issue should be included on the List of Issues.**

*Non-UK nationals arranging trafficking from NI*

3.8. The Commission advises that under the Protection of Freedoms Act 2012 a non-national who arranges the trafficking of a child outside the jurisdiction commits a crime in England and Wales.<sup>21</sup> However, the Protection of Freedoms Act does not extend to NI.

**The Committee should request that the UK Government provide information regarding how it seeks to address this issue in Northern Ireland.**

**4. Establishment of the National Crime Agency**

4.1. The State party report outlines the role of the Serious Organised Crime Agency (SOCA) in the implementation of the Protocol.<sup>22</sup> SOCA also leads the UK Human Trafficking Centre (UKHTC).<sup>23</sup> However, the Crime and Courts Act 2013 provides for the establishment of a National Crime Agency (NCA) for the United Kingdom;<sup>24</sup> this will replace SOCA, which will be abolished pursuant to the Act.<sup>25</sup>

4.2. Regarding the impact of the establishment of the NCA in NI, the Minister of Justice in Northern Ireland has stated that

[his] request for a Legislative Consent Motion (LCM) [for the Crime and Courts Bill] was turned down by the [NI] Executive... In the absence of an LCM the NCA will only have powers to operate in the non-devolved sphere within this jurisdiction... Unless steps are taken to address the gap left by the inability of the NCA to operate in the organised crime

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<sup>21</sup> Protection of Freedoms Act 2012, s. 109-110.

<sup>22</sup> State Party report, paras 54-55.

<sup>23</sup> See, <http://www.soca.gov.uk/about-soca/about-the-ukhtc>.

<sup>24</sup> Crime and Courts Act 2013, Part 1.

<sup>25</sup> Crime and Courts Act 2013, section 15(1).

arena the law enforcement effort here will be significantly diminished in a number of respects."<sup>26</sup>

4.3. The Police Service of Northern Ireland (PSNI) has issued a statement regarding the establishment of the NCA stating that

It is the PSNI view that if the NCA is unable to operate fully in Northern Ireland, this will have a detrimental impact on our ability to keep people safe. The precise extent of this impact is difficult to quantify at this stage but it will definitely have an adverse impact on PSNI performance in combating serious and organised crime. Organised crime is an international problem and Northern Ireland is a target for international crime groups.<sup>27</sup>

In this regard the Committee should note that NI is the only UK jurisdiction to share a land border with another State.

4.4. The Child Exploitation and Online Protection Centre<sup>28</sup> will be incorporated as one of four operational commands of the NCA. The Minister of Justice in Northern Ireland has explained that "[a]s things stand, the NCA will not have powers in the devolved sphere in Northern Ireland and therefore CEOP officers will not be able to conduct investigations here."<sup>29</sup>

**The Committee should request that the UK Government provide information regarding the operation of the NCA in NI and in particular the impact of this change on the protections provided for the crimes referred to in the Protocol. The Commission recommends that this issue should be included on the List of Issues.**

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<sup>26</sup> See Minister of Justice response to AQW 19056/11-15 . 29/01/2013. See also, BBC News, *Blocking new crime agency 'is mistake' says David Ford*, 28 January 2013, available at: <http://www.bbc.co.uk/news/uk-northern-ireland-21236151>; Minister of Justice response to AQW 22996/11-15 13/05/2013; Minister of Justice response to AQW 19072/11-15 . 06/03/2013.

<sup>27</sup> *PSNI statement on National Crime Agency*, 14 May 2013, available at: [http://www.psni.police.uk/general\\_\\_psni\\_statement\\_on\\_national\\_crime\\_agency\\_14\\_05\\_13](http://www.psni.police.uk/general__psni_statement_on_national_crime_agency_14_05_13). The Chief Constable of the PSNI has raised concerns that the NCA will not be fully operational in Northern Ireland and describing "Northern Ireland as 'poor cousins to the rest of GB in terms of what the NCA can do.'" BBC News, *Crime agency block 'will hamper policing'*, 14 May 2013, available at: <http://www.bbc.co.uk/news/uk-northern-ireland-22524011>.

<sup>28</sup> State party report, para. 183.

<sup>29</sup> Minister of Justice response to written question, AQW 22998/11-15, 13/05/2013.

## **5. Identification of, and Support for, Victims**

- 5.1. The State party report states that “Victims of crime are legally entitled to minimum standards of support under the Code of Practice for Victims of Crime.”<sup>30</sup> The State party report further states that “Child trafficking victims also have access to legal advice, education, medical and psychological support.”<sup>31</sup> However, the Code of Practice and the Children and Young Persons Act 2008, referenced in the report,<sup>32</sup> do not extend to NI.<sup>33</sup>
- 5.2. The Commission advises that in Northern Ireland the Department of Justice is currently developing draft legislation which is intended to make statutory provision for support to potential victims of human trafficking, however, this legislation has not yet been made available for consultation.<sup>34</sup> The Commission notes that domestic legislation does not require the assignment of a guardian to unaccompanied child victims of trafficking.<sup>35</sup>

**The Committee should request information from the UK Government regarding NI and in particular with respect to the identification of, and provision of support for, victims of the crimes addressed in the Protocol. The Commission recommends that this issue should be included on the List of Issues.**

## **6. Children in Care**

- 6.1. The Commission notes that children in care in Northern Ireland “are especially vulnerable” to the offences referred to in the Protocol.<sup>36</sup> A 2011 report into the sexual exploitation of children and young people within Northern Ireland found that “more than half (53.3 per cent) of

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<sup>30</sup> State party report, para. 134.

<sup>31</sup> State party report, para. 143.

<sup>32</sup> State party report, para. 143.

<sup>33</sup> See, Northern Ireland Human Rights Commission and Equality Commission, *The Nature and Extent of Human Trafficking in Northern Ireland: A Scoping Study*, 2009, p. 47-51.

<sup>34</sup> Department of Justice NI, ‘Minutes of Engagement Group on Human Trafficking’ (25 April 2013), para 4.1.8.

<sup>35</sup> Committee on the Rights of the Child, General Comment No. 6: para 33: “States are required... to secure proper representation of an unaccompanied or separated child’s best interests. Therefore, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory.” See also, EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, article 16(4); Council of Europe, Convention on Action Against Trafficking in Human Beings, article, 10(4); Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), ‘Report concerning the implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings in the United Kingdom: first evaluation round’ (12 September 2012), paras 246-7.

<sup>36</sup> Article 9(1).

... young people in residential care were assessed to be at significant risk of sexual exploitation..."<sup>37</sup> The State report provides only limited information on actions in NI to address this issue.<sup>38</sup>

**The Committee should request information from the UK Government regarding the State party's efforts in NI to comply with Article 9(1) with respect to children in care and the protection of these children. The Commission recommends that this issue should be included on the List of Issues.**

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<sup>37</sup> Beckett, *'Not a world away', The sexual exploitation of children and young people in Northern Ireland*, Barnardo's Northern Ireland, October 2011, p. 34.

<sup>38</sup> State party report, paras. 60-71.