

Equality Commission for Northern Ireland

Shadow Report to the UN Committee on the Elimination of Racial Discrimination (CERD) on the UK Government's 18th Periodic Report

July 2011

Equality Commission

FOR NORTHERN IRELAND

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Executive summary

- i. The Equality Commission, while noting progress in some areas, has identified a number of critical issues in relation to the UK Government's 18th periodic report.
- ii. We have drawn attention to specific issues of compliance with respect to key articles and set out both recommendations and key questions that the Committee may wish to raise with the UK Government and/or the Northern Ireland Executive.
- iii. These are outlined below and identified against each of the relevant articles of the Convention.

Article 2.1 (c) (review and amendment of Government Policy)

- iv. We are concerned that Black Minority Ethnic (BME) individuals in Northern Ireland have **less protection against discrimination, harassment and victimisation** across all racial grounds and in a wider range of areas, than BME individuals in Great Britain.
- v. We highlight the **need for urgent legislative reform**, including the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003. We also recommend the adaptation of the definitions to provide for disadvantage on any **combination of grounds**.
- vi. We note the importance of Government fully adopting recommendations set out within revised guidance associated with Section 75 of the Northern Ireland Act 1998 – specifically to **develop targeted action plans** – so as to deliver outcomes relevant to the Convention.
- vii. We stress the importance of the Executive having effective and properly resourced policies and programmes in place and in ensuring previous **strategies** (such as the Race Equality Strategy 2005 - 2010) **are evaluated and refreshed in a timely manner**.

Article 5(e) Economic, social and cultural rights

- viii. We reiterate our recorded concerns about the failure of Government to provide sufficient, adequate or appropriate **accommodation for Irish Travellers**; and the particular accommodation problems for migrant workers which can be further exacerbated by lack of access, where required, to state support.
- ix. We note longstanding and unparalleled **educational disadvantage** for Traveller children; and the challenges to government in providing appropriate support for BME and newcomer children in education.
- x. We highlight the recent increase in migrant workers to Northern Ireland, and the recommendations from our investigation into the **role of the recruitment agency sector** in the employment of migrant workers and the **barriers faced by migrant workers**.
- xi. With regard to Proposals and Draft Regulations to Implement **EU Directive 2008/104/EC on temporary agency work**, we express concerns that the Executive would adopt a definition whereby typical agency workers, many of whom are migrant workers, may not be afforded the same levels of protection from discrimination as those directly employed by end-users (hirers).
- xii. We note related issues associated with the **social protection** afforded to newcomers and the **health inequalities** for migrant workers and Travellers (the latter reflecting trends not seen in the settled population for over 50 years).

Article 7 Combating Prejudices which lead to Discrimination and Promoting Tolerance in Education, Teaching, Culture and Information

- xiii. We note survey findings with regard to the **prejudices of the general public to ethnic groups and Travellers** and of the clear need to effect cultural change in Northern Ireland. We note the importance of using early intervention in education to combat sectarian attitudes and our **strategy to promote equality of opportunity in the education sector**.

xiv. We also note the importance of **allocating targeted resources** and of the potential of **equality budgeting** processes in assisting Government to ensure that Equality and Good Relations aspects are appropriately resourced to deliver targeted and relevant outcomes.

Introduction

1. The Equality Commission for Northern Ireland ('the Commission') is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and the disability duties under the Disability Discrimination Act 1995. The Commission (along with the Northern Ireland Human Rights Commission), also fulfils the role of Independent Mechanism (in Northern Ireland) required by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
2. The Commission's general duties include:
 - working towards the elimination of discrimination;
 - promoting equality of opportunity and encouraging good practice;
 - promoting positive / affirmative action;
 - promoting good relations between people of different racial groups;
 - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities;
 - keeping the legislation under review;
 - promoting good relations between people of different religious belief and/or political opinion.
3. The Commission welcomes the opportunity to submit a shadow report to the Committee, given the significance of Convention rights in a society which has undergone significant demographic change as a result of inward migration.

Socio-economic context

4. Unlike the rest of Great Britain which has had sizable Black and Minority Ethnic Communities (BME) since the 1950s, Northern Ireland's BME population was relatively small¹. The enlargement of the European Union (EU) after 2004 gave rise to a rapid and unprecedented inward migration primarily from the 8 new member states that joined the EU in 2004² as well as from Romania and Bulgaria, which joined in January 2007.
5. The extent of the inward migration and the accompanying socio-economic and cultural impacts presented major challenges in respect of access to information as well as to public and private sector service provision resulting from these³. Furthermore, a coherent and strategic policy approach to addressing migration in the future economic development of Northern Ireland has been slow to emerge.
6. In 2009 the Equality Commission published a challenge paper⁴ prepared by the Institute of Conflict Research which highlighted these issues and made a series of recommendations. These included the need for planning at a strategic and local level to accommodate demographic change, ensuring that legislative change and a Bill of rights would provide protections for new residents in Northern Ireland, and that arrangements for monitoring the workforce composition under the Fair Employment should additionally cover race and ethnicity.

Compliance with the Convention in Northern Ireland

7. In this document we draw attention to specific issues of compliance with respect to key articles which relate to the remit of the Commission, highlighting key issues which the Committee

¹ *Northern Ireland Census 2001, Key Statistics*, Northern Ireland Statistics and Research Agency. (2001)

² The Treaty of Accession 2003, new EU States, Czech Republic, Estonia, Cyprus, Poland, Lithuania, Latvia, Hungary, Malta, Slovenia and Slovakia joined in May 2004 and Bulgaria and Romania in 2007.

³ Jarman N. *Changing Patterns and Future Migration*, Migration and Northern Ireland, Institute for Conflict Research, ICR Working Paper No. 1, December 2005.

⁴ *New Migration, Equality and Integration Issues and Challenges for Northern Ireland*
[http://www.equalityni.org/archive/pdf/ICRMigrantworkersJanuary2009.pdf#search="jarman](http://www.equalityni.org/archive/pdf/ICRMigrantworkersJanuary2009.pdf#search=)

for the Elimination of Racial Discrimination may wish to consider asking the UK Government representatives. These are outlined below and identified against each of the relevant articles of the Convention.

Article 2.1 (c) [Review and amendment of Government Policy]

8. The UK report outlines provisions in Northern Ireland in respect of anti-discrimination legislation and the positive equality duties arising from Section 75 of the Northern Ireland Act 1998. The Commission has direct responsibility for enforcing the legislation in these equality related areas.

(i) Reform of the Race Relations Order

9. The Equality Commission is of the view that urgent reform of the race equality legislation is required, particularly in light of developments in Great Britain following the implementation of the Equality Act 2010. **The Equality Commission is particularly concerned that Black Minority Ethnic (BME) individuals in Northern Ireland have less protection against discrimination, harassment and victimisation across all racial grounds and in a wider range of areas, than BME individuals in Great Britain.**
10. It is of note that in its most recent report on the United Kingdom, the UN Committee on the Elimination of Racial Discrimination specifically recommended that the UK Government extend existing race equality laws to cover the grounds of colour and nationality; in order to address inconsistencies in the legislation and differing levels of protection on racial grounds
11. In Great Britain, the introduction of the Equality Act 2010 has resolved this. In the absence of similar developments in Northern Ireland, there is now less protection against discrimination, harassment and victimisation across all racial

grounds and in a wider range of areas in Northern Ireland than in Great Britain.

12. The Equality Act 2010:

- harmonised the provisions under the race equality legislation so that there is the same level of protection for discrimination and harassment on the grounds of colour and nationality, as on the grounds of race, ethnic origin and nationality. To date these **inconsistencies remain** in Northern Ireland race equality legislation.
- employers, services providers and public bodies carrying out public functions in Great Britain are allowed (but not required) to take a wider range of special measures or **positive action** measures aimed at alleviating disadvantage experience by under-represented groups. There is currently **more limited scope** for employers, service providers and public authorities in Northern Ireland, than those in Great Britain, to take positive action in the area of race equality.
- strengthened the powers of **employment tribunals** as regards race discrimination complaints (and on other equality grounds). This enables an employment tribunal to make a recommendation which benefits the whole workforce and need not be limited to benefiting the complainant. This extended power **only exists** in Northern Ireland under the fair employment legislation (which covers religious belief and political opinion).
- extended protection for **Councillors** against discrimination on the grounds of race (as well as other equality grounds). Such protection for Councillors in local councils, does not exist in Northern Ireland on the grounds of race.
- strengthened protection for BME **pupils in schools** from victimisation. In particular, there is protection for BME children in schools from being victimised as a result of a protected act (such as making or supporting a complaint of discrimination) done by their parent or sibling. There is no **protection** in relation to this form of victimisation for BME pupils in schools in Northern Ireland.

13. In addition, in Northern Ireland, Black Minority Ethnic (BME) communities in have **less protection** against discrimination by public authorities when exercising their public functions, than BME communities in Great Britain. Currently, under the Race Relations Order (NI) 1997, protection against discrimination by public authorities when exercising public functions is **limited to four areas**, namely: social security, health care, social protection or social advantage. This limitation does not exist in the race equality legislation as it applies in Great Britain. The Commission is of the view that a range of important public functions, such as policing, planning control and licensing are outside the scope of the racial equality legislation in Northern Ireland.
14. The Commission considers that the Northern Ireland Executive should introduce the necessary changes to the RRO 1997 as a matter of urgency, in order to secure the same level of protection against discrimination and harassment across all racial grounds to people in Northern Ireland as exists in Great Britain (GB) and to comply with Committees previous recommendation.
15. In 2009, **The Equality Commission recommended**⁵ that the Northern Ireland Executive take forward harmonisation and strengthening of the race equality legislation so that individuals have the same level of protection against discrimination and harassment on the grounds of colour and nationality, as on the grounds of race, ethnic origin and nationality, when in employment or accessing goods and services or when subject to public functions. In response, the Junior Ministers in OFMdFM indicated that they recognise the need to take steps to strengthen anti -discrimination law so as to ensure that Northern Ireland citizens enjoy the same legal protection as citizens elsewhere and that they are considering how best this might be achieved.
16. **Proposed question:** *What action will the NI Executive take to remove the anomalies between Great Britain and Northern Ireland with respect to the levels of legal protection against racial*

⁵ ECNI Proposals for Legislative Reform, 2009, available at http://www.equalityni.org/sections/default.asp?secid=5&cms=The+Law+Legislative+Reform&cmsid=4_285&id=285

discrimination and comply with the Committees previous Recommendation?

(ii) Section 75 of the Northern Ireland Act 1998

17. In addition to anti-discrimination legislation, equality mainstreaming legislation also applies in Northern Ireland. Section 75 of the Northern Ireland Act 1998 requires designated public authorities in carrying out their functions relating to Northern Ireland to have due regard for the need to promote equality of opportunity to a range of groups, including those of a different racial group.
18. In addition, without prejudice to the above obligations, public authorities are also required in carrying out their functions to have regard to the desirability to promote good relations between persons of different religious belief, political opinion or racial group.
19. Organisations representing BME communities have been able to utilise Section 75 to engage with policy making⁶ and when lobbying for change in policy, provision and delivery of services across a range of sectors.
20. The Equality Commission has developed new and revised guidance on the implementation of the statutory duties to place a more robust emphasis on delivering tangible outcomes. In doing so, **The Equality Commission recommended** that public authorities undertake an audit of inequalities across all their functions and to develop an action plan to target inequalities identified.
21. **Proposed question:** *What specific commitments does the NI Executive have in place, mindful of the duties and revised guidance, to deliver outcomes relevant to the Convention?*

⁶ *Assessing the impact of Section 75 of the Northern Ireland Act 1998 on Individuals*, Equality Commission for Northern Ireland, 2007.

(iii) Collection of data on minority ethnic communities

22. The EU Race Directive, states that the monitoring of workplace practices is an important way of promoting social dialogue and fostering equal treatment⁷. The voluntary collection of such monitoring data is a key recommendation in the Equality Commission's Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment⁸. Further, the Advisory Committee on the Framework Convention for the Protection of National Minorities has recommended⁹ that 'the authorities in Northern Ireland, Scotland and Wales in particular, pursued further their efforts to collect data on the situation of minority ethnic communities in all relevant sectors'.
23. In Northern Ireland, Fair Employment legislation¹⁰ requires registered¹¹ and specified employers to consider the existence or otherwise of fair participation within their workforces between those from a Protestant or Roman Catholic Community background. Accordingly employers monitor the community background and sex of applicants, employees and leavers. There is no requirement to collect monitoring information with regard to nationality and ethnic origin.
24. In 2009¹² **the Equality Commission recommended**, to the Executive, changes to the Fair Employment legislation to extend workplace monitoring requirements placed on registered employers under the fair employment legislation to cover the grounds of nationality and ethnic origin. While the primary reason for the proposed change is to ensure the continuing usefulness of the fair employment Monitoring Regulations, a key

⁷ Council Directive 2000/43/EC, Article 11, Social Dialogue, *Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, Official Journal of the European Communities, 29 June 2000

⁸ *Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment*, Equality Commission for Northern Ireland, 2007.

⁹ Second Opinion on the UK, - Advisory Committee on the Framework Convention for the Protection of National Minorities.

¹⁰ ¹⁰ The Fair Employment and Treatment (Northern Ireland) Order 1998,

¹¹ Registered employers are employers with 11 or more employees. Public Authorities are specified by Order.

¹² ECNI Proposals for Legislative Reform, 2009, available at http://www.equalityni.org/sections/default.asp?secid=5&cms=The+Law+Legislative+Reform&cmsid=4_285&id=285

secondary benefit is that it will facilitate employers to better assess the impact of their employment policies and procedures on particular ethnic groups in the workplace. Further, it would provide a valuable and extensive source of data of the racial composition of employees and applicants to inform high level indicators for monitoring priority outcomes of Government strategies (including the Racial Equality Strategy).

25. Further, for public authorities in Northern Ireland, there is a clear onus¹³ to put in place systems to collect relevant information across the Section 75 equality grounds and to make use of that information for assessing and monitoring the impact of their policies on the promotion of equality of opportunity. In Great Britain, the Equality Act 2010 placed new duties on specified public authorities to publish annually¹⁴, from 2011 onwards, a wide range of equality information including, for example, information on the effect their policies and practices have had on employees¹⁵, service users and others from protected groups (including racial groups).
26. **Proposed question:** *What specific measures will the NI Executive introduce to improve workforce and service provision monitoring in order to capture more accurate, reliable and useful information specifically in terms of nationality and ethnic origin?*

(iv) Multiple Identity Issues

27. The Joint Equality and Human Rights Forum¹⁶ carried out research into the issue of multiple identities¹⁷ which has

¹³ Section 75 of the N.I. Act 1998, *Monitoring Guidance for use by Public Authorities*, ECNI, 2007 <http://www.equalityni.org/archive/pdf/S75MonitoringGuidance0707.pdf>

¹⁴ Public authorities with fewer than 150 employees are not required to publish information on the effect of their policies and practices on their workforce.

¹⁵ In relation to employment, the Guide to the new public sector equality duty has made it clear that information published should include the race, disability, gender, and age breakdown and distribution of its workforce. See, *Equality information and the equality duty. A guide for public authorities*, EHRC, 2011

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/information_guidance.pdf

¹⁶ This forum comprised equality and human rights bodies in Britain, Ireland and Northern Ireland.

¹⁷ *Re-thinking Identity, The Challenge of Diversity*, Commissioned by the Joint Equality and Human Rights Forum, edited by Katherine E. Zappone, 2003.

highlighted deficiencies in equality strategies which did not take into account multiple identities, and recommends the development of new innovative thinking around this issue. The research concluded that it is no longer sufficient or prudent to focus equality strategies on homogeneous groups of people, and that whilst the differences between groups remain a salient consideration, recognition of diversity within groups is equally as important.

28. In the Commission's view¹⁸, complainants facing multiple discrimination have a number of difficulties in seeking legal redress; this is primarily due to the fact that current legal processes solely focus on one prohibited factor at a time and are unable to adequately address in tandem complaints on more than one ground.
29. For example, not only is the experience of a person facing multiple discrimination different from those facing discrimination on a single ground¹⁹.but complainants subjected to multiple discrimination may also face difficulties in identifying an actual or hypothetical comparator with the same characteristics, as required when proving direct discrimination. .A simplification and harmonisation of definitions, tests, exceptions etc. across equality grounds as proposed by the Discrimination Law Review²⁰, will also assist the understanding and application of equality law in multiple discrimination issues.
30. In addition to addressing inadequacies in the way tribunals and courts handle multiple discrimination cases, it is important that consideration is given to how to encourage employers, service providers and others to, not only identify multiple discrimination issues, but also to effectively take action to address these

¹⁸ Equality Commission (2009) Response to GEO consultation on multiple discrimination June 2009 See at <http://www.equalityni.org/archive/word/ResponsetoGEOconsultationonmultiplediscriminationJune2009.doc>

¹⁹ For example, Zappone (2003) noted that the experiences of disabled women differ from those of disabled men, or women who were not disabled; (e.g. in particular they were less likely to be in paid employment compared to disabled men or women who were not disabled).

²⁰ Discrimination Law Review : DLR A Framework for Fairness consultation document London June 2007 - <http://www.communities.gov.uk/documents/corporate/doc/325335.doc>

issues. Consideration needs to be given, for example, to how public authorities, can be encouraged to monitor and review the impact of their policies and practices on multiple equality grounds

31. **Equality Commission guidance recommends**²¹ that public authorities assess whether or not they need to take steps to address gaps in information across the Section 75 grounds, as well as gaps in information relating to individuals with multiple identities, for example, black minority ethnic women. The guidance also recommends that public authorities undertake an audit of inequalities across all their functions and develop an action plan to target inequalities amongst groups identified through this process.
32. **The Commission has also recommended**²² an adaptation of the definition of direct discrimination to provide for disadvantage on any combination of grounds
33. **Proposed question:** *What specific legislative and policy measures will the NI Executive introduce to address issues of multiple identities for BME people in Northern Ireland, including protection from discrimination based on more than one characteristic?*

(vi) Good Relations and Race Equality

34. In 2005 the Northern Ireland Executive launched the 'Racial Equality Strategy'²³ document along with annual and triennial action plans. The Racial Equality Strategy set out the following vision of '*A society in which racial diversity is supported, understood, valued and respected, where racism in any of its forms is not tolerated and where we live together as a society and enjoy equality of opportunity and equal protection*'.

²¹ Section 75 of the N.I. Act 1998. A Guide for Public Authorities, ECNI, 2010.

<http://www.equalityni.org/archive/pdf/DFPDraftSchemeResponse.pdf>

²² Equality Commission (2009) Response to GEO consultation on multiple discrimination June 2009 -

<http://www.equalityni.org/archive/word/ResponsetoGEOconsultationonmultiplediscriminationJune2009.doc>

²³ A Racial Equality Strategy for Northern Ireland, July 2005, Office of the First and Deputy First Minister.

35. While the 'Racial Equality Strategy' however covered only the period 2005 – 2010, Executive officials indicated during the consultation on the CSI programme, that the Strategy will continue to run for an interim period until a new strategy is produced.
36. Recognising the need to protect vulnerable minority groups in an increasingly diverse society, **The Equality Commission recommends**, that the 2005-2010 Racial Equality Strategy should now be evaluated and the results used to inform the prompt development and implementation of a revised and updated strategy.
37. In 2010 the Office of the First and deputy First Minister conducted an extensive consultation²⁴ on the proposals for 'Cohesion Sharing and Integration' (CSI), a policy initiative that addresses Good Relations on both the grounds of religion/community background and Race. The Commission's response²⁵ noted the over concentration of the draft Strategy on "traditional" areas of Northern Ireland community relations policy (namely religious belief and political opinion), to the potential detriment of other relevant areas such as Race.
38. The Executive has also developed good relations baseline indicators in order to monitor and evaluate progress towards the strategic priority areas and objectives established by both strategies. The 'Good Relations Indicators report 2011 Update'²⁶ provides an overview of changes in respect of these baseline indicators during the period 2009/10. While the latest baseline indicator reports show improvements in some areas, there remain significant and persistent problems in others.
39. **Proposed question:** *What actions will be taken by the Executive to evaluate the effectiveness of the Racial Equality Strategy 2005 – 2010, and what timeline is proposed for the implementation of an updated strategy? How will the redrafted*

²⁴ OFMdFM (2010) Consultation on a programme for Cohesion Sharing and Integration - http://www.nidirect.gov.uk/reformatted_final_print_version_csi_-_26.07.10.pdf

²⁵ ECNI (2010) Response to Draft Programme for Cohesion Sharing and Integration, ECNI 2010 see at http://www.equalityni.org/archive/pdf/ECNI_Response_to_draft_CSI_Strategy.pdf

²⁶ Office of the First and Deputy First Minister, (2011) *Good Relations Indicators, 2011-Update*, <http://www.ofmdfmi.gov.uk/index/equality/equalityresearch/research-publications/gr-pubs.htm> January 2011

Cohesion Sharing and Integration ensure race issues are more effectively included?

(vi) The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

40. At present the UK has not ratified the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Convention recognises the critical role of migrant workers, currently largely without legal protection, in the global economy.
41. While efforts have been made by public authorities in Northern Ireland to address issues of service provision to an increasingly diverse population (including a particular emphasis on the provision of translation services, information, advice and support services), nonetheless, adoption of the Convention on the Protection of the Rights of Migrant Workers and their Families would significantly strengthen rights, help to consolidate much of the progress made to date and provide recognition of the invaluable contribution of migrant workers and their families to both the economy and wider Northern Ireland society.
42. To date, the UK has ratified other Conventions concerning, for example, the rights of children, women and disabled people. These group-specific conventions have been useful in highlighting the discrimination experienced by these groups and in outlining the range of measures required to address persistent discrimination. Further, the requirement to periodically report to a Committee regarding Migrant Workers and their Families would play an important part in mapping the experience and circumstances of migrant workers in Northern Ireland and identifying problems particular to this group which require action.
43. **The Equality Commission recommends** that the UK government ratifies the Convention and embodies this in domestic legislation.
44. **Proposed question:** *What further steps will the UK government take to ensure the promotion, protection and monitoring of the rights of migrant workers, including ratification of the UN Treaty?*

Article 5(e) Economic, social and cultural rights

(i) Accommodation for Irish Travellers

45. As noted with regards to legislative protection, In Northern Ireland, Black Minority Ethnic (BME) communities in have **less protection** against discrimination by public authorities when exercising their public functions, than BME communities in Great Britain
46. The lack of protection under the Race Relations Order (NI) 1997 against discrimination in planning control and licensing is of particular concern in light of the difficulties experienced by Irish Travellers in relation to the building of Traveller sites.
47. Currently, decisions on planning applications are made by the Department of the Environment following statutory consultation with local councils. In addition, there is a requirement on the Northern Ireland Housing Executive to obtain a site licence from local councils for Traveller sites. Commission research into Traveller accommodation in Northern Ireland in 2009²⁷ highlights that there was 'an overwhelming view among officials and individuals working with Travellers that decisions at Council level regarding planning permission remained a key stumbling block to site development'. It is also of note that under recent Government proposals, it is proposed that planning functions will transfer to local councils in Northern Ireland.
48. The same research²⁸ also noted that that neither the Race Equality Strategy for Northern Ireland nor previous government initiatives have resulted in sufficient, adequate or appropriate accommodation for Irish Travellers in Northern Ireland and concluded that there are still serious and unacceptable

²⁷ Outlining Minimum Standards for Traveller Accommodation, ECNI 2009, <http://www.equalityni.org/archive/pdf/travguideSDSHWeb100409.pdf>

²⁸ *Outlining Minimum Standards for Traveller Accommodation*, Equality Commission for Northern Ireland, March 2009.

deficiencies with regard to the provision of Traveller accommodation in Northern Ireland. .

49. A number of government planning policies have an adverse impact on the Traveller community. For example, despite recent amendments to planning regulation PPS 21²⁹ (Sustainable Development in the Countryside) there are still significant problems as a result of a related planning regulation PPS 12³⁰ (Local spatial planning) which impact on the issues of Traveller accommodation. In particular the existing planning policy incorporates guidance note HS3 which allows for temporary accommodation in the countryside for Travellers but does not allow planning permission to be granted for a permanent serviced site for a traveller family, even where they have purchased the relevant land. This is being reviewed as part of a current consultation³¹ on PPS12 and the Commission will be monitoring the outcome of the consultation and the proposed changes in the regulations and /or planning guidance. The Commission remains concerned that planning applications for residential accommodation in rural areas is handled through two completely different sets of policies and guidance depending on whether the applicant is a member of the Travelling community or a member of the 'settled' community.
50. **The Commission considers** that an undersupply of appropriate accommodation, the lack of basic amenities on emergency sites and the level of permanence of this provision is central to the high level of social exclusion and poverty that Travellers experience. Adequate provision is imperative in facilitating access to employment opportunities, formal education, healthcare and other key services.
51. Given the relatively small Traveller population³² in Northern Ireland, resolving the accommodation issue should not present

²⁹ Northern Ireland Planning Service, PPS21 *Sustainable Development in the Countryside*.

³⁰ Northern Ireland Planning Service, PPS12 *Local Spatial Planning. Place shaping, land use and related activities*.

³¹ Consultation on draft Policy HS 3 (Amended) 'Travellers Accommodation'. Consultation period runs 7 July 2011 – 30 Sept 2011. Consultation document accessible via the Planning NI website: <http://www.planningni.gov.uk>

³² The Travellers' Accommodation Needs Assessment in Northern Ireland (Northern Ireland Housing Executive, 2008) identified 1,486 individuals in 449 households across Northern Ireland

government with an insurmountable problem, yet the problem persists.

52. **Proposed question:** *Given the undersupply of appropriate accommodation and basis amenities, what meaningful actions will government take to secure the effective provision of appropriate Traveller accommodation?*

(ii) Educational Disadvantage

Irish Traveller Children

53. The Irish Traveller community in Northern Ireland continues to experience a level of disadvantage, discrimination and social exclusion unparalleled with any other disadvantaged group. Despite the report of the Executives Promoting Social Inclusion (PSI) Working Group on Travellers³³ which examined the exclusion experienced by Travellers and made recommendations to address this, there has been little tangible change in respect of educational outcomes for Traveller children and young people over the last decade.
54. Poor educational achievement³⁴ is exacerbated by high levels of non-attendance with a majority of Traveller children dropping out of school post primary³⁵. Research suggests that there are three key reasons for non-attendance: (i) low expectations of some teachers; (ii) fear of bullying; (iii) perceived lack of relevance of the curriculum to Traveller culture and future expectations³⁶.
55. The Commission welcomes the Department of Education's Policy Circular on the Education of Traveller Children. **The Commission recommends** that the implementation of this

³³ *Consultation on the Final Report of the Promoting Social Inclusion Working Group on Travellers*, Office of the First and Deputy First Minister, 2000, Belfast

³⁴ For example, Of those Traveller children who did sit GCSE exams, Department of Education (DENI) statistics record that fewer than five of 41 pupils (less than 12%) achieved 5+ GCSE grades A-C across the years 2003/04 and 2004/05 . This compared with 64% of all Northern Ireland pupils achieving GCSE grades A-C

³⁵ ECNI (2008) Public Policy Statement 2: Mainstreaming Equality of opportunity and Good Relations for Traveller Children, ECNI November 2008 - [http://www.equalityni.org/archive/pdf/TravellerChildreninSchools1208.pdf#search="traveller children"](http://www.equalityni.org/archive/pdf/TravellerChildreninSchools1208.pdf#search=)

³⁶ Connolly, P. *Racial Equality in Education Conference Report*, Equality Commission and the Department of Education, Belfast, 2003.

policy is closely monitored to ensure that tangible outcomes are achieved.

56. The Commission welcomes the establishment by the Department of Education of the Taskforce on Traveller Education and is currently engaged with the Department and other statutory agencies to secure tangible progress. The Taskforce has produced a report making a series of recommendations for action that are awaiting Ministerial approval³⁷. **The Commission recommends** that Minister for Education progresses the matter to public consultation and subsequent implementation as a matter of priority.
57. **Proposed Question:** What steps will the Executive take to ensure the effective monitoring and implementation of the Department of Education's policy on Traveller Education, and recommendations from Taskforce on Traveller Education?

Black and Minority Ethnic (BME) Children and Newcomer Children

58. The Department of Education school census of 2008 identified over 40 languages other than English and Irish represented in schools across Northern Ireland with just under 7,000 newcomer pupils enrolled in schools, the majority of them at primary level.
59. In 2007, the Commission identified concerns with respect to the adequacy of support offered to date for those children for whom English is an additional language³⁸.
60. In April 2009, the Department of Education published 'Every School a Good School – Supporting Newcomer Pupils', in response to the growing number of newcomer pupils enrolling in schools across Northern Ireland. Around the same time (May 2009) the Education and Training Inspectorate³⁹ published 'An evaluation of the Provision to Support Newcomer Pupils in a range of Primary and Post-Primary Schools'⁴⁰. While the report

³⁷ As such, the Draft report of the Taskforce is not yet in the public domain.

³⁸ *Statement on Key Inequalities in Northern Ireland*, Equality Commission for Northern Ireland, 2007.

³⁹ The Education and Training Inspectorate provides inspection services for a number of Government Departments and agencies.

⁴⁰ *An evaluation of the Provision to Support Newcomer Pupils in a range of Primary and Post-Primary Schools*, Education and Training Inspectorate, May 2009.

identified a number of positive developments, it also identified a number of areas where improvements could be achieved, including: strengthened coordination and evaluation of newcomer pupil provision; better assessment and tracking methods to monitor progress; dissemination of good practice both within and across schools.

61. While the number of BME children leaving school with 3 or more 'A' Levels is slightly higher than the general population, it is also the case that a higher proportion of BME children leave school with no formal qualifications⁴¹. Further, and in the context of the recent wave of in-migration, it is also the case that the available attainment data may not yet fully reflect the attainment characteristics of newcomer children.
62. **The Commission considers** that support for Children for whom English is an additional language, as a key component in attaining and improving educational outcomes.
63. **Proposed questions:** *What steps is the Executive taking to ensure that BME and newcomer children are not overrepresented in the numbers leaving school without qualifications? What steps will the Executive take to ensure that EAL support meets demand and need in schools across Northern Ireland? What action will the Executive take to address the areas for improvement identified in the Training and Evaluation Inspectorate report referred to above?*

(iii) Employment

64. A workforce that until recently was predominantly white and indigenous has developed into one comprised of many different nationalities and ethnic groups, speaking a range of different languages and bringing with them many diverse cultures.
65. Current data indicates that race related cases representing the highest percentage of cases supported by the Equality Commission - 36% of all funded/assisted cases in this financial

⁴¹ According to figures from the Department of Education's school census for the period 2006/07, 7.9% and 8.6% respectively of children from the general population and BME children leave school with no formal qualifications and no GCSE's. (*Every School a Good School, Supporting Newcomer Pupils*, Department of Education for Northern Ireland, 2009).

year⁴², continuing the trend over the last three financial years.⁴³ Of all enquiries to the Equality Commission regarding potential race cases the highest proportion was in relation to racial harassment at work or hostile working environments - 22.6% (n= 88)⁴⁴

66. The Equality Commission published the results of a formal investigation into the 'Role of the Recruitment Sector in the Employment of Migrant Workers'⁴⁵. While the investigation did identify examples of good practice in the recruitment sector (on the part of government agencies and community support groups), the research also found that not all recruitment agencies operate within the legislation and barriers to equality of opportunity do exist. Many workers found it difficult to find work which matched their qualifications, and were reliant on irregular and temporary work. Many workers also experienced inconsistency with regard to wage payments and considerable difficulties as a result of language barriers.
67. **The Commission's report recommended** anti-discrimination training; accessible processes for worker registration; provision of translated written information (this should become a Gangmasters Licensing Authority⁴⁶ standard); proper induction for workers with restrictions on the use of a native languages only where necessary; job criteria regarding languages to be objectively justified; that qualification requirements should not be limited to local qualifications; that mechanisms for checking foreign qualification equivalency be made more accessible; that rights based information for migrant workers be better disseminated; and that 'Opt outs' from the Working Time Regulations⁴⁷ should not be routinely included in employment contracts.

⁴² Internal ECNI Information systems

⁴³ *Review of Legal Assistance 2008/09*, Equality Commission for Northern Ireland

⁴⁴ *Review of Legal Assistance 2010/11*, Equality Commission for Northern Ireland.

⁴⁵ *Role of the Recruitment Sector in the Employment of Migrant Workers, A Formal Investigation*, Equality Commission for Northern Ireland, 2010.

⁴⁶ The Gangmasters Licensing Authority (GLA) regulates those who supply labour or use workers to provide services in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging.

⁴⁷ The Working Time Regulations 1998.

68. With regard to Dec 2010 Proposals⁴⁸ and Draft Regulations to Implement EU Directive 2008/104/EC on temporary agency work, **the Commission has expressed concerns**⁴⁹ that the Department for Employment & Learning would adopt a definition whereby typical agency workers, many of whom are migrant workers, may not be afforded the same levels of protection from discrimination as those directly employed by end-users (hirers).
69. **Proposed Question:** *What measures will the Executive adopt to address issues of protection from discrimination, including the definition of an agency worker, language barriers, recognition of qualifications and access to information for migrant workers?*

(iv) Social Protection

70. Access to social protection measures and resources are limited throughout the UK in relation to migrant workers. Aspects of immigration legislation, such as the Workers Registration Scheme, deny many foreign nationals access to state housing support when they are not working, a policy related solely to their nationality. Combined with benefit regulations and rules for eligibility to access social support and finance there is a lack of 'safety net' provisions for migrant workers. This has been exacerbated through the introduction of transitional procedures applying to citizens of EU states that joined the Union in 2005 and 2007.
71. A recent report, 'Za Chlebem'⁵⁰ by the Northern Ireland Council for Ethnic Minorities (NICEM) and the Polish Association of Northern Ireland highlights that during the current economic downturn, unemployment amongst Polish migrant workers was three times higher than the Northern Ireland rate of unemployment. The report also noted that the take-up for social

⁴⁸DEL (2010) Policy Proposals and Draft Regulations to Implement EU Directive 2008/104/EC on temporary agency work. See <http://www.delni.gov.uk/tawd-ni-consultation-document-december-2010.pdf>

⁴⁹ECNI Consultation Response - Letter to Department for Employment & Learning, 14 March 2011

⁵⁰ *Za Chlebem, The Impact of the Economic Downturn on the Polish Community in Northern Ireland*, Northern Ireland Council for Ethnic Minorities and the Polish Association of Northern Ireland, 2009.

welfare benefits was low due to communication barriers, bureaucracy and the Worker Registration Scheme

72. A report⁵¹ commissioned by the Northern Ireland Human Rights Commission into destitution and homelessness among migrants workers has found that the relevant homelessness legislation is unduly restrictive and noted particular impacts on victims of exploitation, refugees, asylum seekers, victims of domestic violence, persons with ill health or disability and victims of racist intimidation
73. **Proposed question:** *What actions will the NI Executive take to address the specific problems of migrant workers with regard to accessing social protections and provisions? What actions will the Executive put in place to address financial hardship experienced by migrants who have no access to public funds under the current system?*

(v) Inequalities in Health and Social Care

Migrant Workers

74. Migrant workers and new residents experience difficulties in accessing health and social care services. There is an emerging pattern of inequalities experienced by migrant workers and new residents here, in particular, unequal access to basic health care. For example, the importance of service delivery and of removal of barriers for migrant workers and their families is supported in recent research⁵². A research report by the NIHRC in January 2011⁵³ has reported difficulties for those from minority ethnic communities trying to avail of public health provision and a lack of legal clarity in relation to who is entitled to free health care in Northern Ireland. This report questions whether the current rules

⁵¹ Northern Ireland Human Rights Commission (2009) *No Home from Home: Homelessness for People with No or Limited Access to Public Funds*, NIHRC, Belfast

⁵² *Improving Government Service Delivery to Minority Ethnic Groups*, Centre for Cross Border Studies et al, 2006.

⁵³ NIHRC (2011) *Denied or Paying When you Shouldn't*, [http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/124/Access_to_publicly_funded_medical_care_\(January_2011\).pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/124/Access_to_publicly_funded_medical_care_(January_2011).pdf)

on access are in fact compliant with international human rights standards.

75. Further, research carried out into developing a strategy to address health needs⁵⁴ in the Belfast Trust area (the largest centre of population in Northern Ireland) has shown a need to improve access to healthcare provision for BME people, a need for training for Health and 'Professions Allied to Medicine' staff and the development of single points of access to health and social care service provision to reduce bureaucracy and confusion.
76. **Proposed question:** *What measures will the Executive introduce to ensure that Migrant Workers are not subjected to inequalities in terms of access and use of health care services?*

Irish Travellers

77. The poor health status of Travellers has been a long standing issue for both adults⁵⁵ and children⁵⁶ (with mortality found rates to be up to ten times that of children from the 'settled' population).
78. The All Ireland Traveller Health study published in September 2010⁵⁷ provides an up to date analysis of Traveller health issues and the key socio-economic factors which impact on health issues. For Traveller men, average life expectancy has decreased since 1987. Suicide rates are almost seven times higher for Traveller men than in the general population. The life expectancy of Traveller women has increased but is still 11.5 years lower than women in the general population (comparable to rates experienced by the general population in the early 1960s). The report also notes mortality rates considerably higher than the general population at all age ranges for both men and women. Traveller infants are 3.6 times more likely to die than

⁵⁴ <http://www.belfasttrust.hscni.net/pdf/Migrant-Health-Strategy.pdf>

⁵⁵ *The Final Report of the Promoting Social Inclusion Working Group*, Office of the First Minister and the deputy First Minister, Belfast, 2000.

⁵⁶ Connolly, P: Keenan, M.: *Consultation with Travellers on the Recommendations of the Final Report of the Promoting Social Inclusion Working Group on Travellers*, Office of the First Minister and the deputy First Minister, Belfast, 2002.

⁵⁷ *All Ireland Traveller Health Study*, University College Dublin 2010 http://www.dohc.ie/publications/aiths2010/ExecutiveSummary/AITHS2010_SUMMARY_LR_All.pdf?direct=1

their counterparts, a deterioration on comparable figures since 1987.

79. **The report recommends** that because this problem is endemic and complex there is a need for ‘a holistic, integrated, long-term approach to improving the lives of Travellers and reducing their deaths’.⁵⁸
80. **Proposed question:** *In light of recent findings from the All Ireland Traveller Health Study, what action does the Executive propose to address critical health issues for Travellers?*

Article 7 Combating Prejudices which lead to Discrimination and Promoting Tolerance in Education, Teaching, Culture and Information

81. In a rapidly changing environment, the educational inequalities which permeate society in Northern Ireland present major challenges for the government, education bodies, key stakeholders and the Equality Commission.
82. In 2008 the Equality Commission published its Equality Awareness Survey⁵⁹ which indicated that the groups most often considered to be treated unfairly in Northern were ethnic groups and travellers. 28% of respondents expressed that they held negative attitudes to members of the Travelling Community and 20% towards Eastern European migrants. With regards to interactions, 38%, 51% and 51% respectively would mind having a Traveller as a work colleague, neighbour or in-law..
83. The development of the Cohesion Sharing and Integration programme noted earlier specifically references the promotion of good relations between racial groups and all public authorities have this duty under s75 of the NI Act 2008. The Commission has supported initiatives such as the “Unite against Hate Campaign” and the “Anti-Racist Workplace week” which seek to

⁵⁸ Ibid.

⁵⁹ Equality Awareness Survey 2008 Research Update ECNI 2008 Equality Commission for Northern Ireland - http://www.equalityni.org/archive/pdf/EC_Summary.pdf

challenge negative views, opinions and stereotypes associated with racial prejudice, however much needs to be done in this area, based on the findings of the Equality Awareness Survey data.

84. **The Commission considers** that there is a clear need to effect cultural change in Northern Ireland and the attitudes that some hold towards minority ethnic communities, if Northern Ireland is to become a more diverse and peaceful place.
85. Further, research by Connolly et al ⁶⁰ has indicated that children in pre school in Northern Ireland are displaying racist and sectarian attitudes, which would suggest that there is a need to focus on early interventions that can reduce the negative impacts of other environmental factors on children's and subsequently adult behaviours.
86. The Equality Commission has developed a strategy⁶¹ to effectively promote equality of opportunity in the education sector. The strategy sets out three key strategic areas in which it wishes to see progress: That every child has equality of access to a rewarding and quality educational experience; that every child is given the opportunity to reach their full potential; that the ethos of every school promotes the inclusion and participation of all children.
87. In addition, the Equality Commission has been examining the use of 'equality budgeting' and considers that such an approach might allow for the more targeted allocation of resources and policies generally and in the context of promoting good relations between ethnic or racial groups. The Procurement Guidance issued by the Department for Finance and Personnel (Central Procurement Directorate) and the Equality Commission in 2008⁶² also illustrates that the intention of the Executive is to use public expenditure as a major lever to promote Equality and Good Relations through all procurement activities.

⁶⁰ Connolly, P., Smith, A., Kelly, B., (2002) Too Young to Notice? The cultural and political awareness of 3 to 6 year olds in Northern Ireland. Community Relations Council.

http://arrts.gtcsi.org.uk/gtcsi/bitstream/2428/5586/1/too_young_to_notice.pdf

⁶¹ *Every Child an Equal Child, An Equality Commission Statement on Key Inequalities in Education and a Strategy for Intervention*, Equality Commission for Northern Ireland, 2008.

⁶² ECNI / Central Procurement Directorate (2008) - Equality of Opportunity and sustainable development in Public Sector Procurement

[http://www.equalityni.org/archive/pdf/ECNIPublicSectorProcurementSummary\(W\).pdf](http://www.equalityni.org/archive/pdf/ECNIPublicSectorProcurementSummary(W).pdf)

88. **The Commission recommends** that the 'Programme for Government' and Government 'Investment Strategies' should specifically focus on inequalities in education; targeting negative attitudes and promoting social cohesion and good relations. The Commission further recommends that Government expenditure on policies should be assessed to ensure that the promotion of good relations and combating prejudice are appropriately targeted and funded.
89. **Proposed question:** What steps will the Executive take to ensure that Government programmes actively promote Good relations on racial and ethnic grounds and to ensure that this is a central focus in spending decisions.

Conclusions

90. The Commission welcomes the opportunity to submit a shadow report to the Committee on the UK Governments performance in implementing the Convention, given significance of Convention rights in a society which has undergone significant demographic change as a result of inward migration.
91. We note some improvements, but also persistent and emerging inequalities and gaps in provision. The Commission is committed to fulfilling its role in terms of protections of rights of both existing and new residents and the active pursuit of equality and good relations for all.
92. The Commission would be happy to discuss further the contents of this report with the members of the Committee for the Elimination of All Forms of Racial Discrimination.