

# Bill of Rights Children's Working Group

## FINAL REPORT

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# Bill of Rights Children's Working Group

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### Working Group Membership

Convenor: Sorcha McKenna (Children and Young People's Sector)

Legal Advisor: Dr Linda Moore (University of Ulster)

Name	Sector	Organisation
Liam Larmour	Sexual Orientation	CoSo
Dr Bronagh Byrne	Disability	Disability Action
Pip Jaffa	Comm/Voluntary	Parents Centre Advice
Lindsay Conway OBE	Churches	ICC
Paddy Kelly	Children and Young People	CLC/STC
Jenny Palmer (Cllr)	Political	DUP
Sue Ramsey MLA	Political	Sinn Fein
Roy Beggs MLA	Political	UUP
Matthew McDermott	Political	SDLP
Anna Lo MLA	Political	Alliance

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### Process to Date

The Forum initially decided that one Working Group should deal with Women, Children and Young People. This group was comprised of five political and five civil society representatives and was jointly convened by Margaret Ward of the Women's Sector and Sorcha McKenna of the Children's Sector. The Women and Children's Working Group met on July 27<sup>th</sup> and August 28<sup>th</sup> to discuss process and core documents. By this stage the enormity of the task facing the Working Group had become apparent and a case was put to the Secretariat of the Forum to split the group into two separate Working Groups. When the group met on Sept 7<sup>th</sup> it informally split into two subgroups; one dealing with women chaired by Margaret Ward and the other dealing with children chaired by Sorcha McKenna. A decision was taken and approved by the Forum to formally split the group in two and allocate new members to each.

In order to progress the work the Children's Working Group, then consisting of only five members, met on two further occasions to discuss the right to health, education, and standard of living. New members and a legal advisor were then appointed to the Working Group which met for the first time on the 19<sup>th</sup> October. Subsequent meetings took place on the 9<sup>th</sup>, 16<sup>th</sup> and 28<sup>th</sup> of November with constant email contact in between in order to arrive at the proposals contained within the draft report. The Draft Report of the Working Group was submitted to the Forum Secretariat on Dec 6<sup>th</sup> 2007. On the 7<sup>th</sup> January 2007 the draft report along with a background document was sent out for consultation by Sorcha McKenna via email to 200 groups and individuals as well as being posted on NICVA news.

The Draft Report of the Children's Working Group received a high number of endorsements from civil society organisations and political representatives as well as several written submissions

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commenting on the recommendations. The Children's Working Group reconvened on Jan 8<sup>th</sup> 2008 to discuss amendments to the draft report in preparation for the submission of the final report to the Secretariat on Jan 15<sup>th</sup> 2008. The following report contains the latest recommendations of the Children's Working Group

It is the position of the Convenor of the Children's Working Group that the following recommendations provide a strong and inclusive protection to the rights of all children in the province. The recommendations contained in this report draw from international standards and domestic research to address gaps in the promotion and protection of the rights of all children in Northern Ireland. The Convenor of the Children's Working Group, with the support of the majority of the Working Group and the endorsement of the list of consultees contained within, strongly advocates for the inclusion of the substance of this report as a separate chapter within the Bill of Rights for Northern Ireland.

### Schedule of Meetings

<u>Meeting</u>	<u>Date</u>
1 <sup>st</sup> Meeting	27 <sup>th</sup> July, 2007
2 <sup>nd</sup> Meeting	28 <sup>th</sup> Aug, 2007
3 <sup>rd</sup> Meeting	7 <sup>th</sup> Sept, 2007
4 <sup>th</sup> Meeting	21 <sup>st</sup> Sept, 2007
5 <sup>th</sup> Meeting	5 <sup>th</sup> Oct, 2007
6 <sup>th</sup> Meeting	19 <sup>th</sup> Oct, 2007
7 <sup>th</sup> Meeting	9 <sup>th</sup> Nov, 2007
8 <sup>th</sup> Meeting	16 <sup>th</sup> Nov, 2007
9 <sup>th</sup> Meeting	28 <sup>th</sup> Nov, 2007
10 <sup>th</sup> Meeting	8 <sup>th</sup> January, 2008

All minutes for the above dates are available on the Bill of Rights Forum website.

Draft Recommendations

Introduction

The Children's Working Group is firmly committed to ensuring that the best interest of the child is a fundamental consideration in all aspects of law, policy and practice in Northern Ireland. Recognising that a Bill of Rights is not intended to replace the role of legislation the Children's Working Group has devised a number of recommendations which are designed to act as a benchmark against which current and future legislation can be measured. The recommendations contained within this report are based on international standards and best practice, domestic policy and research concerning the particular issues affecting children in Northern Ireland. The Working Group acknowledged throughout its discussions that no right, save the right to be free from torture, inhuman and degrading treatment is absolute, and as such the implementation of some of the rights contained in the Bill of Rights could be subject to the test of reasonableness and the availability of resources.

Whilst some of the recommendations contained in this report may appear to be common sense or already covered by legislation it is important to remember that the Bill of Rights is intended as a long lasting document and one which will see countless governments come and go. It is impossible to predict what law and policy future governments may introduce as such it is necessary that the Bill of Rights contain the strongest possible protections for all children both in the present and in the future. Equally however the Children's Working Group recognises that the Bill of Rights is a living document and one which will be open to interpretation in line with the evolution of our society. To this end this document contains detailed rationales for every provision and is supported by lengthy minutes both of which are intended for use as interpretive tools.

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In order to promote and protect the rights of all children in Northern Ireland the Children's Working Group believes that children's rights should be mainstreamed throughout the Bill of Rights in addition to having a dedicated child specific chapter which should contain the provisions set out below.

#### Preambular Clause

##### The Children's Working Group

Recognising that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10), the UN Convention on the Rights of the Child and its Optional Protocols, and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Respecting the obligations extended, as a minimum, by international law,

Responding to the lack of domestic legislation to protect and promote the rights of the child,

Bearing in mind the specific reference in the Belfast (Good Friday) Agreement to the particular difficulties suffered by children as a result of the conflict in Northern Ireland,

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Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of children, should be afforded all of the necessary protection and assistance it needs to promote and protect the rights of the child,

Have agreed as follows:

1. DEFINITION OF THE CHILD

“For the purposes of the Bill of Rights a child means every human being below the age of eighteen years.”

Rationale

This provision is based primarily on Article 1 of the UN Convention on the Rights of the Child and represents almost universal consensus on the definition of the child. For the purposes of ensuring the optimum level of protection in the Bill of Right the term child is intended to refer to all children and young persons up to the age of eighteen years. The Working Group recognises that individuals under the age of eighteen, particularly teenagers, may not consider themselves to be children however for the purposes of ensuring the maximum level of protection the group adopted the universal definition.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision.

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2. NON-DISCRIMINATION

1. "Every child has the right to equality and to equal protection and benefit of the law.
2. The Public Authority shall respect and ensure the rights set forth in this Bill of Rights to each child within the jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's, carers or legal guardian's age, 'race', 'colour', sex, gender, language, religion, political or other opinion, national, ethnic or social origin, economic status, disability, sexual orientation, birth status, current or previous legal or other status."

Rationale

Equality and non discrimination are basic principles underpinning all human rights. The Working Group intend that all of the provisions contained in this document be read against the right to non-discrimination and the principle of the best interests of the child. In a survey of young people conducted by the NIHRC in 2002 the "right to equality was the number one named right" respondents felt should be included in a Bill of Rights for Northern Ireland (NIHRC, 2002). The group ensured that every provision was as inclusive as possible but again felt the need to spell out the right of all children not to be discriminated against in any way. The Working Group considered each of the grounds on which a child in Northern Ireland can be discriminated on including gender, ethnicity and sexual orientation. The terms sex and gender were included together to reflect the particular rights and needs of those persons with Gender Identity Disorder. The Working Group also discussed that fact that children can be discriminated against based on the ethnicity, political opinion, religion etc of family members and carers and thought it necessary to explicitly protect against this.

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The reference to 'current or previous legal status' is intended to refer to people who may be illegal immigrants or who may for whatever reason have been imprisoned. A discussion took place around the overlap between the groups mentioned in the provision and those covered by section 75 but it was established that there may be some degree of repetition the provision also identified groups for example carers or linguistic minorities which are not contained under current equality legislation. During this discussion the purpose of the Bill of Rights was clarified as an instrument not intended to replace legislation but a tool against which legislation can be framed and amended for the protection and benefit of people in Northern Ireland.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision however Roy Beggs, MLA (Ulster Unionist Party) is of the belief that the Equality Commission already sufficiently addresses non-discrimination and that immigration is an agreed matter which is therefore beyond the remit of the Working Group. On this point the Convenor of the Working Group reiterates the fact that the Bill of Rights is intended to be a long standing document and whilst immigration is currently an accepted matter this may not always be the case.

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3. BEST INTERESTS OF THE CHILD

"In all actions and decisions, including policy and legislative decisions, concerning or impacting on children, whether undertaken by public or private institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the paramount consideration."

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Rationale

The best interest of the child is a principle which is fundamental to children's rights and requires that the State through its bodies ensures that in all matters concerning or impacting on children that the best interests of the individual child or children be given priority. This principle along with the right to non-discrimination should be read alongside every other provision in this report. In discussing this provision the Working Group considered such examples as the planning of roads and housing developments which might impact on children's access to safe play. Other examples considered included the relocation of convicted sex offenders within communities which could impact on the child's right to protection or the restriction of transport services or the closing down of community leisure facilities. The best interest principle was at the fore of the Working Groups' deliberation of all provisions but given the fundamental nature of the principle they felt it necessary to include a specific provision to this effect. In Northern Ireland, much of the legislation relating to children and young people continues to prioritise welfare rather than best interests. For example the principle of the best interest of the child is not currently incorporated into youth justice <sup>1</sup>, policing <sup>2</sup>, mental health <sup>3</sup>, education <sup>4</sup> or immigration legislation. The

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<sup>1</sup> Article 53 of the Justice (Northern Ireland) Act 2002 states that the principal aim of the youth justice system is to protect the public and that authorities should have regard to the welfare of children affected by the exercise of their functions

<sup>2</sup> The Police and Criminal Evidence (PACE) (Northern Ireland) Order 1989 was recently amended by the PACE (Northern Ireland) Order 2007. By virtue of article 18 of this Order, 17 year olds will now be treated as juveniles rather than adults. There is no explicit reference to the best interests of children in the PACE legislation.

<sup>3</sup> The Mental Health (Northern Ireland) Order 1986 remains in force. The independent Review of Mental Health and Learning Disability (Northern Ireland) (Bamford, 2006) recommended that new legislation should be compliant with the standards of the UNCRC, including the best interest principle

<sup>4</sup> Article 17 of the Education (Northern Ireland) Order 2003 places a statutory duty on the Boards of Governors of grant aided schools to safeguard and promote the welfare of registered pupils.

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Working Group strongly believes that this needs to be remedied as a matter of urgency and recognises the need to balance the best interests of the child with the right of every child to participate in matters affecting them and to have their views respected.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision. Roy Beggs, MLA (Ulster Unionist Party) suggested that older children have responsibilities as well as rights and that the suggested provision might inhibit the ability of the Public Authorities to deal with anti social behaviour. The Working Group did engage in discussions early on in the process around balancing rights and responsibilities and chose to focus on protecting the rights of all children. By requiring the Public Authorities to prioritise the best interests of the child the Working Group is not suggesting that children should be absolved of all responsibility rather that they should be dealt with in a matter appropriate to their age, needs, understanding and maturity in a manner consistent with the best interests of the child.

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4. FAMILY

"The Public Authority shall respect the rights, responsibilities and duties of the parents, legal guardians and carers to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of their rights."

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Rationale

The vital role of the family in terms of the care and development of children was a paramount consideration in the discussions of the Working Group. The purpose of including this provision was to recognise the central role of parents in the realisation of the rights of children. This provision clearly recognises that parents have rights as well as their children. The promotion of children's rights is not intended to undermine the rights of parents rather ensure that children are raised in a manner which reflects the best interests of each child. It is anticipated that the rights of parents will be balanced with the rights of children however where there is any conflict the best interests of the child shall be paramount. The word 'respect' in the context of this report is intended to mean 'to protect, ensure and give effect to'. This provision requires the Public Authorities to assist and facilitate parents in helping the children in their care to realise their rights e.g. the right to education, healthcare, play and leisure etc.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision however Roy Beggs, MLA (Ulster Unionist Party) believes that this right is incompatible with the ECHR which gives priority to parental rights. The Convenor explained that at the time of drafting the ECHR the rights of children had not yet been conceived and as such children no attention in the Convention.

Earlier drafts on family included a more detailed set of socio economic and civil and political rights but these were moved to a separate heading 'right to an adequate standard of living'.

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5. EDUCATION

1. "Every child has the right to education."

2. "The Public Authority undertakes to adopt all necessary measures to protect the child's right to education and the safety and well being of pupils in the educational environment, to respect their privacy and their right to participate."

3. "The Public Authority shall ensure that the education is inclusive and respects the rights and best interests of all children without discrimination including children with disabilities, children with special educational needs, children in care, children in detention, child carers, children with differing sexual orientation, children of ethnic minorities, Traveller children and children living in poverty or other status. To this end, the Public Authority shall take all necessary measures to combat all forms of discrimination and promote equality in education and shall ensure that all children have the right to full access to the curriculum, as well as to receive an education which is aimed at the fulfilment of their potential and the realisation of their talents. The Public Authority shall promote and encourage the development of different forms of education, and ensure equality of opportunity and access to educational institutions for all children."

4. "The Public Authority shall ensure that school exclusions are only imposed as a measure of last resort and for the shortest period of time, and only after consideration of all alternatives bearing in mind the fundamental nature of the right to education. Children excluded or suspended from school have the right to be informed promptly of the grounds for their exclusion or suspension and of their right to participate in any process associated with that

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suspension or exclusion, together with their parents carers and legal guardians or other representatives. The child retains their right to education during exclusion or suspension and should be encouraged by the educational institution to return as soon as possible."

5. "Children have the right to seek, receive and impart information and guidance in a timely and accessible manner on issues affecting their social, spiritual and moral well being and physical and mental health."

### Rationale

The Working Group sought to establish the highest possible right of all children to education and in doing so identified groups, based on local data, whose rights in this area are currently being denied or diluted including travellers, ethnic minorities, disabled children and children in the care of the State, particularly those in detention. A recent report by NICCY for example details how traveller children are being denied their right to education as a result of lack of access and bullying resulting in poor attendance and early school leavers.

The Working Group did not focus on pre school education or higher education since it did not want to be too prescriptive. However in line with the rest of this report they anticipate that the best interests of the child and the right to non-discrimination shall be considered paramount in any question of provision or access to such services.

The Working Group strongly considered the issue of bullying and the need to protect the victimised child and to ensure that the offending child is not denied their right to education. To this end lengthy discussions took place around the use of suspensions and expulsions as a matter of last resort. Where a school takes an action to suspend or exclude a child it was agreed that the

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child should be fully included in the process and subject to certain rights in terms of access to information and representation. Reference to different forms of education is intended to include such projects as those which educate early school leavers, teenage parents, etc with a view to promoting the right of all children to education.

The Working Group also spent a considerable amount of time debating issues around access to information specifically within the educational setting and paragraph 5 is intended to refer to all kinds of information including but not limited to such topics as careers, vocational training, sexual and reproductive health, sexuality, and other matters impacting on their lives. The inclusion of the word 'timely' is deliberate to ensure that such information is delivered in line with needs and wishes of children and not left to the discretion of teachers or parents. Provision 6 on health is more explicit in terms of the need for the Public Authorities to provide specific information to children young people.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision with the exception of Roy Beggs, MLA, (Ulster Unionist Party) who felt that the provision went beyond the remit envisaged by the Belfast Agreement.

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6. HEALTHCARE

1. "Every child has the right to enjoy the highest attainable standard of health without discrimination and shall enjoy the right to access all appropriate healthcare services including but not limited to primary care, child and adolescent mental health services and oral health."

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2. "The Public Authority shall take all appropriate measures to protect the right to health and social care specific to all children without discrimination including children with disabilities, children in the care of the Public Authority, those with special educational or mental health needs, children from ethnic minorities, child carers, Traveller children and those living in a position of social deprivation."

3. "The Public Authority shall take all appropriate measures to ensure the child's right to accessible, age and understanding appropriate education and information to promote prevention and early intervention measures to address such social issues as child abuse, drug and alcohol misuse, mental health, sexual and reproductive health issues and pregnancy."

### Rationale

The Working Group carefully considered the challenges currently facing children in Northern Ireland in terms of access to necessary healthcare services. Recent research has identified that the provision of child and adolescent mental health services is particularly poor, a fact which is supported by the high rate of child suicide and self harm in the province. Access to oral health particularly by migrant children and those living in areas of socio-economic deprivation was also identified as being particularly poor. The proposal is aimed at ensuring that every child in Northern Ireland has the right to access the highest attainable level of health. Furthermore the Working Group extended the right to appropriate information by specifically requiring the Public Authority to take action to prevent child abuse, drug and alcohol misuse, unwanted pregnancy, and sexually transmitted infections through the provision of age and understanding appropriate information. The importance of timing in this instance is crucial taking for example the issue of teenage

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pregnancy which is particularly high in Northern Ireland. Provision of formal sex/ sexuality education in Northern Ireland is limited. It occurs within a context emphasising morality rather than informed choices, and reinforces the predominance of heterosexuality and reproduction. There is a need for the delivery of sex education to be timely and tailored to the needs of every child in Northern Ireland without discrimination to the needs of the LGBT community. The timing of information is also extremely important in relation to the prevention of child abuse since the majority of abuse, particular sexual abuse, commences when the child is 3-5 years of age. The provisions of age and understanding appropriate information on 'appropriate touch' for example could allow children to recognise and disclose abuse at an early age.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision however Roy Beggs, MLA (Ulster Unionist Party) is of the belief that the provision goes beyond the remit envisaged by the Belfast Agreement and is concerned about the fiscal implications of such a provision. The Working Group continuously returned to the issue of budgeting and agreed that its role was to set the benchmark against which legislation would be framed and amended and not to consider the financial aspect of implementation. Paddy Kelly explained that in many cases the implementation of rights is subject to the test of reasonableness and the availability of resources and that no right, other than the right to freedom from torture, is an absolute right.

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7. STANDARD OF LIVING

1. Every child has the right to grow up in a stable, safe and secure family environment and to this end, the Public Authority shall provide all appropriate support and resources necessary to assist parents, carers and legal guardians to carry out their child rearing responsibilities and shall support them in enabling children to grow up to realise their full potential. The Public Authorities obligation under this provision shall end only when it is no longer required and shall in all circumstances be based on the best interest of the child.
2. A child for whatever reason who is deprived of that environment is entitled to special protection and assistance from the Public Authority. The choice of alternative care shall be determined by the best interests of the child alone and should be provided within a reasonable time. Children in alternative care shall enjoy, as a minimum, the same rights and conditions bestowed on children in the criminal justice system as detailed under provision 14. Children leaving the care of the Public Authority should be prepared for and supported towards independent living.
3. All children have the right to the highest attainable standard of living including appropriate and culturally sensitive housing which is determined by the best interests of the child to enable the child to realise their full potential.
4. The Public Authority shall take all necessary measures to ensure the right of all children to the highest attainable standard of living, ensuring the right to appropriate levels of housing, health, education, income and if appropriate social care services.

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Rationale

In its discussions the Working Group highlighted the importance of a safe and secure family environment to the well being of children and the need for care givers to be supported in every way by the State including through the provision of maternity and paternity leave as well as child care assistance. The Northern Ireland Childminding Association (NIMCA, 2007) has noted: "the right of families to have access to affordable, quality childcare is fundamental to Northern Ireland's future economic prosperity, to tackling child poverty, and to achieving the best possible outcomes for all children". The Working Group discussed all aspects of living standards and recognised the relationship between low levels of income and social deprivation. The existing levels of inequality which currently face Traveller families in relation to the provision of emergency accommodation was considered. Particular attention was therefore paid to the most appropriate form of accommodation which should be provided bearing in mind that some groups including Travellers may not want houses but should still be entitled to suitable shelter which meets their needs and adheres to the standards contained in this provision. The Working Group spent time considering the situation of children in care and reiterated once again the need to prioritise the best interests of the child. Rather than restate the provisions relating to the care of children in youth justice the Working Group simply states that children in alternative care should enjoy as a minimum the same conditions as those set out under provision 14.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision.

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8. RIGHT TO PLAY AND LEISURE

1. The Public Authority shall promote and protect the right of every child to rest and leisure, to engage in play, sport and recreational activities appropriate to the child.
2. The Public Authority shall promote and protect the right of all children to participate fully and freely in cultural and artistic life and shall ensure the provision of all appropriate resources and guarantee the right of every child to access cultural, artistic, recreational, sport and leisure activity.

Rationale

In recent years research in Northern Ireland has demonstrated that one of the primary concerns of children in the province is the lack of access to leisure services and safe play areas particularly in rural communities. The Working Group discussed the benefits of play, sport and recreation to the health and well being of children as well as the fact that the lack of appropriate services can lead children to hang around the streets and in some cases get into trouble.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision.

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9. RIGHT TO PARTICIPATE

1. The Public Authority shall promote and protect the right of every child to participate in all matters or decisions affecting them in a manner consistent with the age, understanding and maturity of the child.

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2. The views of the child shall be respected and considered and given due regard, taking into consideration the age, understanding, maturity and evolving capacities of the child.
3. For this purpose, the child shall in particular be informed of their right to participate and to be provided with appropriate opportunities to be heard in any proceedings, including judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of law.
4. Children shall have the right to freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. In seeking, receiving and imparting such information children shall be protected from information and material injurious to his or her well-being or safety.

### Rationale

This provision is based on Article 12 of the UNCRC and was amended by the Working Group to reflect the situation in Northern Ireland where there is a statutory duty on public authorities to consult with children. Between 2002 and 2007, the Children's Law Centre monitored consultation exercises carried out by public bodies in relation to matters which will impact on the lives of children and young people. Direct consultations with children and young people happened in just 6 out of 60 consultation exercises, and child-accessible documentation was made available in only 4 of the 60 exercises. The Working Group recognised the right of all children to be involved in all matters affecting them in particular school hearings, custody cases,

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criminal cases and to have their views respected and taken into consideration.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision however Roy Beggs, MLA, (Ulster Unionist Party) is of the opinion that this provision goes beyond the remit envisaged in the Belfast Agreement. .

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10. PROTECTION FROM ABUSE AND EXPLOITATION

1. Every child has the right to be protected from all forms of violence, abuse, maltreatment, neglect and exploitation including sexual abuse, child prostitution, trafficking and involvement in pornography.
2. The Public Authority shall act in the best interests of the child in taking all appropriate legislative, administrative, social and educational measure to protect every child from all forms of physical, mental and emotional violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including, but not limited to such acts or omissions while in the care of the parent(s), legal guardian or any other person who has the responsibility for or care of the child in whatever capacity.
3. Such protective measures should, as appropriate, include appropriate and effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of or responsibility for the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child mistreatment and, as

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appropriate, for judicial involvement. In determining such protective measures the best interest of the child should be of paramount consideration.

4. "The Public Authority shall ensure the media recognise their responsibility in the promotion of child rights and the protection of children."

### Rationale

This provision is intended to protect all children in Northern Ireland from every form of violence and exploitation, other than economic exploitation which is dealt with separately. The Working Group paid particular attention to modern forms of slavery in particular the sexual exploitation of children. A somewhat invisible, but no less real, form of exploitation in Northern Ireland is the enforced prostitution of minors and their exploitation through pornography. The Children's Working Group feels that it is imperative that the Bill of Rights address these issues through the implementation of strong legislation and a victim orientated system of protection and assistance which adheres to the best interests of the child.

A particular issue in Northern Ireland is the lack of supervised care afforded to trafficked minors who, due to lack of available places, can be left in unvetted bed and breakfasts without constant supervision, leading to children slipping through the system and being re-trafficked. The care and, if necessary detention, of unaccompanied minors should always be consistent with the principle of the best interests of the child. The issue of deporting or returning trafficked persons to their country of origin should be carefully considered given the high likelihood of re-trafficking and violence to the individual and their family. Paragraph 4 deals with the potential dangers of modern technology an issue which arose during a discussion on child

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protection. The aim of this paragraph is to ensure that the media, including new media (internet, mobile technology etc) recognise the potential threat such technology poses to children, including but not limited through online bullying and grooming, and takes all necessary action to ensure that children are protected from such acts.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision.

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11. EMPLOYMENT PROTECTION

1. "The Public Authority recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to interfere with the physical, mental, spiritual, moral or social development. In particular the Public Authority shall ensure that the education, development and general well-being of young carers is not affected by caring responsibilities. In all such considerations the best interests of the child should be paramount."

2. "The Public Authority shall without discrimination take all necessary legislative, administrative, social and educational measures to ensure the implementation of the present provision including guaranteeing the child's right to advocacy. To this end, and having regard to the relevant international instruments, the Public Authority shall in particular:

- a) Provide for a minimum age or minimum ages for admission to employment;

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- b) Provide for age appropriate regulation of the hours, terms and conditions of employment;
- c) Provide for appropriate penalties or other sanctions to ensure effective enforcement of the present provision.

Rationale

The Working Group agreed that children have a right to work however they acknowledged that current employment legislation in Northern Ireland is poorly implemented therefore placing both indigenous and non-national children at risk of exploitation and unsafe practices. Despite the abolition of slavery two hundred years ago men, women and children continue to be subjected to slavery in a variety of means including bonded and enforced labour, domestic servitude, enforced prostitution and enforced begging. This is a particularly live issue in Northern Ireland where the persons are trafficked into, through and out of this jurisdiction. Children are commonly seen begging on the streets, playing music or selling flowers late into the night.

It was agreed that the Bill of Rights should oblige the State to strengthen child labour legislation and implement it effectively so as to protect all children working in Northern Ireland. The inclusion of the phrase "the physical, mental, spiritual, moral or social development" is intended to cover all aspects of children 's lives including education, health, leisure and emotional wellbeing. Among the issues discussed by the group was the number of children working after hours in the catering industry, particularly in family run businesses, and the way in which this can impede on the child's other rights including the right to education and the right to play and leisure. The Working Group also considered the position of child carers and strongly agreed that whilst child should be allowed a caring responsibility the

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State should not allow them to be primary carers as this would impact negatively on other aspects of their lives.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision.

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12. CHILDREN AND ARMED CONFLICT

1. The Public Authority shall not conscript any child into their armed forces.
2. The Public Authority shall ensure that persons who have not attained the age of 18 years are not recruited into their armed forces.
3. The Public Authority shall ensure that children shall not be directly engaged or involved in any capacity in hostilities, including their use as informers.
4. The Public Authority shall take all necessary measures to protect every child from all violence resulting from armed conflict.
5. The Public Authority shall take all necessary measures to guarantee that children affected by violence and conflict have access to prompt and appropriate support and all necessary services for their physical and psychological recovery and their social integration which is in accordance with the best interests of the child.
6. The Public Authority shall take all necessary measures to prevent children being recruited or otherwise involved with any non-state armed group.

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Rationale

This provision is based primarily on the international standards contained in the UNCRC and its Optional Protocol concerning the involvement of children in armed conflict. Whilst the Working Group recognised the UK's commitments under international law it also sought to include issues which were particular to Northern Ireland for example the use of children as informers.

In line with international best practice, and to protect the best interests of the child, it was decided that every effort should be made to raise the age of recruitment into the armed forces to 18 in line with the age of recruitment for the police. In 2005 the House of Commons Defence Committee noted the concerns of child rights advocates around the appropriateness of recruiting minors into the armed forces and recommended that the Ministry of Defence examine the potential impact of raising the age of recruitment for all three services to 18.<sup>5</sup> The MoD later demonstrated a reliance on the recruitment of minors in sustaining its armed forces based on the fact that adults had already made certain life and career choices and were more difficult to recruit at entry level. Recent research has demonstrated that the UK is extremely rare in its reliance on the recruitment of minors. In a 2004 survey of 53 states in Europe and Eurasia the UK was one of only three states which allowed the recruitment of 16 year olds and likely the only of the three states to actually practice this policy.<sup>6</sup> The trend in Europe in recent years has been to phase out conscription and raise the age of voluntary recruitment to 18 with thirteen European states currently not including under 18's in their trained strength. The UK has become increasingly isolated in terms of its recruitment policies an issue which the overwhelming majority of the

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<sup>5</sup> House of Commons Defence Committee, Duty of Care (Vol 1) (London: The Stationary Office 2005), 7.

<sup>6</sup> The other countries were Serbia and Montenegro and Russia

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Children's Working Group feel needs to be addressed in the Bill of Rights.

The Working Group also highlighted the need for the State to protect children from violence arising as a result of conflict this could impact for example on the types of weaponry used by security forces. The responsibility of the authorities to provide appropriate medical and support services to child affected by conflict was also recognised by the group as being particularly relevant to Northern Ireland given the legacy of the conflict here.

Finally in paragraph 6 the Working Group considered the involvement of children in paramilitary groups but decided to widen this provision through the use of the term 'non state armed group' to protect children from other criminal gangs. The reference to non-state armed groups is intended only to cover illegal groups and not sports clubs which would be subject to health and safety and child protection legislation.

Level of Agreement

All members of the Children's Working Group, including the convenor and legal advisor, are agreed on the entire content of this provision with the exception of Jenny Palmer and Roy Beggs. Jenny Palmer (Democratic Unionist Party) felt that paragraph 2 should not prevent those children who voluntarily enlist with the army and are properly trained from taking part in armed conflict below the age of 18. Roy Beggs (Ulster Unionist Party) shares this position.

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13. CHILD WITNESSES AND VICTIMS OF CRIME

1. The Public Authority shall take all necessary measures to ensure that child witnesses should be supported throughout

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the court process to ensure that they feel safe, are heard in court and are able to give evidence effectively.

2. This support shall be provided by a State funded independent agency ensuring that:
  - a. Children shall be continuously and appropriately informed throughout the process;
  - b. Children shall be dealt with in a respectful manner in a child appropriate environment free from exploitation, intimidation and abuse;
  - c. Children shall only be cross-examined by trained individuals with child specific expertise;
  - d. The court process should be taken forward without delay."

Rationale

The purpose of including this provision is to address the needs of children who are involved in the criminal justice system as victims and witnesses. There is currently no province wide support available to children in Northern Ireland to enable them to give their best evidence and to support them before, during and after what is potentially one of the most traumatic experiences of their lives.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision.

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14. YOUTH JUSTICE

1. Every person under the age of eighteen years should be treated as a child for the purposes of the administration of criminal justice.
2. The Public Authorities recognise the right of every child alleged to, accused of, or recognised as having infringed the criminal law to be treated in a manner consistent with the promotion of the child's human rights and dignity, which reinforces the child's respect for their human rights and the rights of others and taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
3. In all decisions taken within the context of the administration of youth justice, the best interests of the child shall be the paramount consideration.
4. The Public Authority shall ensure that children are held responsible for any infringement of the law in a manner appropriate to the age, understanding and maturity of the child.
5. No child under the age of 16 will be held criminally responsible. The Public Authority shall progressively increase the age of criminal responsibility to 18.
6. The Public Authority shall provide effective alternatives to the criminalization of children including family based support and community based diversion, which are in the child's best interests. All programmes or initiatives should be effectively regulated and monitored by the Public Authority to protect the child.

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7. The Public Authority shall guarantee that every child questioned, detained or charged with an offence shall:
- a) have criminal charges, subsequent process, their rights and the consequences of their actions explained to them in an accessible, appropriate and timely manner.
  - b) the right to have access to appropriate legal and other assistance in the preparation of a defence;
  - c) the right to have any criminal charge determined without delay by a competent, independent and impartial tribunal in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is contrary to his or her best interests and taking into account his or her age or situation, of his or her parents or legal guardians;
  - d) the right to have an appropriate adult present to represent the interests of the child even if a solicitor or responsible adult is also present;
  - e) the right to be tried for a criminal offence in an appropriate setting and manner, having regard to the child's age, maturity, needs, vulnerability and understanding;
  - f) the right to have measures taken to ensure his or her participation in and understanding of the criminal proceedings; and
  - g) the right to have his or her privacy respected before, during and after the proceedings."
8. "The detention of a child must occur only in exceptional circumstances and in accordance with the law. Detention shall

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be used only as a measure of last resort and for the shortest appropriate period of time. A variety of dispositions and alternatives to institutional care shall be available to ensure that children are always dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the alleged offence."

9. "Every child deprived of liberty shall have the following minimum rights:
- a) To be treated with respect for his or her dignity and human rights in a manner which takes into account his or her particular needs.
  - b) The right to be separated from adults in detention and (if they have not received a determination) from children who have already been sentenced;
  - c) The right to access education, including the right to access the Northern Ireland Curriculum;
  - d) The right to access medical services;
  - e) The right to receive care, protection and all necessary support and services, social, educational, vocational, spiritual, psychological, medical and physical care that they may require in view of their age, sex, personality, maturity and understanding;
  - f) The right to prompt access to appropriate legal and medical assistance and pastoral care;
  - g) The right to privacy and respect for his or her communications;

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- h) The right to maintain regular and direct contact with parents, guardians or other family members and friends, save in exceptional circumstances;
10. Girls should be detained separately from boys and shall enjoy the right to receive all appropriate services, care protection, assistance and treatment specific to their gender.
11. The detention of a child must occur only in exceptional circumstances and in accordance with the law. Detention shall be used only as a measure of last resort and for the shortest appropriate period of time. A variety of dispositions and alternatives to institutional care shall be available to ensure that children are always dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the alleged offence.
12. No child subject to the administration of the Criminal Justice shall be subject to the use of force or instruments of restraint save where all other methods have been exhausted, and only in exceptional circumstances and where there is a danger to the child or others. Physical restraint and use of force should not cause physical injury, humiliation or degradation, and should only be used for the shortest period of time.
13. The child shall have the right prior to release from an institution to have agreed and resourced an appropriate aftercare and resettlement programme with the appropriate authority to prepare for his or her re-integration into society following release.

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Rationale

The Working Group spent several meetings considering the two major issues contained in this provision; the age of criminal responsibility and the detention of children. In Northern Ireland the current age of criminal responsibility is 10 which is among the lowest ages in Europe a situation which has led to severe criticism from the United Nations Committee on the Rights of the Child (CRC). The UNCRC requires states to establish a minimum age below which children shall be "presumed not to have the capacity to infringe the penal law" but does not state what this age should be. The Beijing Rules provides guidance requiring that "[i]n those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the fact of emotional, mental and intellectual maturity. In a General comment on children and the justice system (February 2007) the Committee on the Rights of the Child stated that setting the age below 12 was "not internationally acceptable" and praised states with the "commendable high age of 14 – 16". Bearing in mind the international standards and the negative and long lasting implications of criminalisation the Working Group arrived at 16 as the new age of criminal responsibility with a view that this would be progressively increased to 18.

Provision 14(4) above reflects the fact that whilst the Working Group does not support the criminalisation of children we do believe that children should be held "responsible" for their actions in line with the concept of evolving capacities and our strong advocacy or respect for children's views in all aspects of their lives. The Working Group gave particular consideration to the model of child hearings in operation in Scotland.

The Working Group also considered international standards in relation to the rights of children in detention. The ECHR provides children with some mainstreamed protection with regard to the

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criminal justice system: the most relevant articles are the Right to Life (Art 2); freedom from torture, inhuman and degrading treatment (Art 3); right to Fair Trial (Arts 5 & 6), Right to private and family life (Art 8). International human rights standards provide much greater protection for children in respect of access to appropriate information, fairness of trial, the importance of prevention of youth criminality, alternatives to custody, rights of children in custody, rehabilitation and resettlement. The Working Group sought to include and supplement these rights in their draft provision to reflect the situation of children detained in Northern Ireland. Of particular relevance to the situation in Northern Ireland is the need for the equal provision of services to females in detention and the high level of detained children suffering from poor mental health and learning difficulties. The Working Group also considered recent research relating to the physical restraint of children, the use of pain compliance techniques and the practice of strip searching all of which are dealt with under provision 14(12) above.

It should be noted that in the context of the current report the Working Group have intended the word 'personality' to include such aspects of a person's individuality as interests, beliefs, language, religion and culture. The Working Group also felt it necessary in 14(7)(d) to distinguish between a responsible adult and an appropriate adult. A responsible adult could be the child's older sibling or a parent, family member, social worker with no particular interest in the proceedings or in the best interests of the child. A solicitor could be randomly appointed with no experience of working with children or of interpreting the best needs of the child. As such it is necessary that an appropriate person, e.g. a representative from a child orientated organisation could be present to represent the particular needs of the child.

The Working Group, as demonstrated in 14(7)(a), were acutely aware of the need for all information, assistance and guidance to be delivered to children in a timely and accessible manner.

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Accessible in this sense is intended to mean that all information in whatever form, e.g. written or oral etc, is appropriate to the age, understanding and maturity of the child. Accessible is also intended to mean that children are provided with interpretation and/ translation service, large print text, sign language or whatever other methods necessary to meet their individual needs. Provision 14(7)(b) above regarding the preparation of a defence is not intended to be limiting in terms of the provision of assistance rather it is meant to reflect the chronological order of process which occurs once a person is charged i.e. that they would be required to prepare a defence or decide on a plea.

The Working Group recognised the critical importance of appropriate resettlement programmes, incorporating education and training, in addressing the best needs of children and subsequently preventing recidivism.

Level of Agreement

All members of the Children's Working Group are agreed on the content of this provision with the exception Roy Beggs and Jenny Palmer who are opposed to raising the age of criminal responsibility to 16 with progressive realisation to 18. Jenny Palmer was concerned that lowering the age of criminal responsibility would mean children who commit offences below this age do not have their offences recorded in a criminal record. It was explained that children who committed offences may not have a criminal record but their offences would be recorded elsewhere in educational, medical or social services records which would be accessible in a similar manner to current criminal records. Roy Beggs felt that whilst a review of youth justice policy may be needed to deal with particularly young offenders the Bill of Rights was not the appropriate place to address the issue since it does not fall within the remit envisaged by the Belfast Agreement.

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Notes for Consultation

To date the draft document (issued in Dec 2007) has been circulated via email to 200 interested individuals and organisations as listed in the appendix. Sincere thanks to all of those individuals organisations who took the time to endorse the draft report and forward comments. The Convenor of the Children's Working Group intends to submit the final report to at least the same list and welcomes further comments in her capacity as children's sector representative to the Bill of Rights Forum.

For further information on this document please contact

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Appendix 1

List of consultees;

1. Age Concern
2. Aisling Centre
3. Alliance Party
4. Amnesty International
5. Assumption High School, Ballynahinch
6. Atlas Centre
7. Ballyclare Secondary School
8. Ballymurphy Women's Centre
9. Belfast Brook
10. Belfast Door
11. Belfast Institute
12. Black Youth Network
13. Boys and Girls Clubs NI
14. Bytes
15. Carers NI
16. Catholic Guides
17. Cedar Foundation
18. Challenge for Youth
19. Child Care in Practice
20. Children Express
21. Children in Northern Ireland
22. Cinemagic
23. City and Guilds
24. Community Dialogue
25. CORI Northern Ireland
26. CoSo
27. Craigavon & Banbridge Women's Aid
28. Craigavon Travellers
29. Cullybackey High School, Ballymena
30. Cunamh
31. Dean Maguire College, Carrickmore
32. Derry Children's Commission

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33. Disability Action
34. Down's Syndrome Association
35. Donard King Solicitors
36. Drumcree Trust
37. Drumglass High
38. Dungannon Integrated College
39. DUP
40. Equality NI
41. Extern
42. Falls Women's Centre
43. FACT Northern Ireland
44. Fostering Association
45. Future Voices
46. Generation Y
47. Girl Guiding Ulster
48. GFS Platform
49. Glenmona
50. Gay Lesbian Youth Northern Ireland
51. Green Park Northern Ireland
52. Ground Work Northern Ireland
53. HIV Support Centre
54. Home Start
55. Housing Rights Northern Ireland
56. Include Youth
57. Inclusion Matters
58. Integrated College, Dungannon
59. Irish Army
60. Kathryn Stevenson, solicitor
61. Koram Centre
62. Larne Community Care
63. Laura McMahon, Barrister
64. Law Centre Northern Ireland
65. Law Centre North West
66. Little Flower
67. Magherafelt High School
68. Malone College, Belfast

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69. Melmount Forum
70. Ministry of Defence
71. Mother's Union
72. National Children's Bureau
73. New Woman
74. NIACRO
75. NIACRAS
76. NICCY
77. NICEM
78. NICVA
79. NIPPA
80. NIPSA
81. Northern Ireland Hospice Care
82. Northern Ireland Human Rights Consortium
83. Northern Ireland Human Rights Commission
84. Northern Ireland Students Union
85. Northern Ireland Youth Federation
86. Northern Ireland Women's Aid
87. Norsum
88. NSPCC
89. Nucleus Centre
90. Oakgrove College, Derry
91. Omagh Forum
92. Omagh High School
93. Parents Advice Centre
94. Peace Wall
95. Play, Belfast City Council
96. Playboard
97. Police Federation NI
98. Probation Board NI
99. Public Achievement
100. Rafferty Boyle Solicitors
101. Rainbow Project
102. Raleigh
103. Relate NI
104. Relatives for Justice NI

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105. Rethink
106. RCN
107. Sargent
108. Save the Children
109. Saver Naver
110. SDLP
111. Simon Community
112. Sinead Mulhern, solicitor
113. Sinn Fein
114. Springboard
115. Starting Point
116. Steer Mental Health
117. Step NI
118. St Dominic's High School, Belfast
119. St Joseph's, Coalisland
120. St Joseph's, Crossmaglen
121. St Joseph's, Donaghmore
122. St Louise's, Belfast
123. St Mary's, Derry
124. St Mary's Youth Centre
125. St Patrick's, Armagh
126. St Patrick's Boys, Dungannon
127. St Peter's, Derry
128. St Roses, Belfast
129. Sure Start
130. Tara Caul, solicitor
131. Tar Anall
132. Taughmonagh Community Centre
133. Threshold Services
134. Transitional Justice Institute
135. Triangle Housing
136. UNISON
137. UUP
138. Victim's and Survivors Trust
139. Volunteering NI
140. Volunteer Service Board

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141. VOYPIC
142. Wave Belfast
143. Wave Derry
144. Wheel Work
145. Women's Club 24
146. Women's Support Centre
147. Women's Rural Development Association
148. Youth Action
149. Youth Council NI
150. Youth Initiatives
151. Youthnet

The Consultation document was also sent to a further 50 individuals via email based on their support for a strong and inclusive bill of rights for children. The email addresses are held by the Convenor of the Children's Working Group and for the purpose of data protection are not listed in this report.