Response to Department of Health Northern Ireland on the Mental Capacity Act (Northern Ireland) 2016 Code of Practice

22nd February 2019

1. Introduction

The Commissioner for Children and Young People (NICCY) was created in accordance with ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The Commissioner’s remit includes children and young people from birth up to 18 years, or 21 years, if the young person is disabled or in the care of social services. In carrying out her functions, the Commissioner’s paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

NICCY has scrutinized ongoing developments in relation to the introduction of mental capacity legislation since the then Department of Health and Social Services and Public Safety (DHSSPS) first introduced its draft policy proposals in 2009. NICCY has had ongoing engagement with and provided advice to both the then DHSSPS and the Department of Justice (DoJ) throughout the development of the legislation and given written and oral evidence to the then Northern Ireland Assembly Committee for Health, Social Services and Public Safety and the Ad Hoc Committee on the Mental Capacity Bill with regard to the progression of the legislation.

NICCY has consistently expressed its concern regarding the proposed application of the Mental Capacity Act (Northern Ireland) 2016 only to those aged 16 and over, thus denying young people under 16 access to the protections and safeguards under the Act. More recently, NICCY expressed serious concerns in its response to the consultation on the draft Children’s Chapter of the Code of Practice in April 2017 about the position of 16 and 17 year olds under the Act. NICCY also raised these concerns at a meeting with Mr Chris Matthews, the then Director of Mental Health, Older People and Disability with the Department of Health (DoH) on 26th January 2018. At this meeting NICCY received assurances that unintended consequences caused during the legislative drafting process which had resulted in 16 and 17 year olds now falling almost entirely outside of the scope of the Act would be rectified through the identification of a legislative vehicle. It is of grave concern to NICCY that this has not yet been resolved and that the current version of the Code of Practice appears to consolidate the current error caused in the drafting process, thus affording 16 and 17 year olds less protection than any other group.

Given the Commissioner’s remit, NICCY is concerned with the provisions proposed for all young people aged under 21 years.

2.0 International Children’s Rights Standards

The Mental Capacity Act provides a number of important safeguards and protections for people who lack decision making capacity. A comprehensive review of mental health and learning disability – the Bamford Review of Mental Health and Learning Disability was carried out in Northern Ireland in 2002. The Bamford Review made a number of recommendations regarding necessary reform of the system of mental health and learning disability in Northern Ireland in order to render it human rights compliant.

The UNCRC must serve as the underpinning framework for all legislation, policy and decisions concerning children’s lives. The Convention is an international human rights treaty which provides children and young people with a comprehensive set of rights and places obligations on governments to ensure these are realised. A number of these rights are particularly relevant to the Mental Capacity Act and its associated Codes of Practice, indeed, the Bamford Report, *“A Vision of a Comprehensive Child and Adolescent Mental Health Service”* stated that,

*“Any proposals for a comprehensive child and adolescent health service need to take account of the rights contained in the UNCRC”*.[[1]](#footnote-1)

NICCY has consistently emphasised the need to ensure that the Mental Capacity Act and associated Codes of Practice conforms with the UNCRC, particularly Articles 2 – non-discrimination, 3 – best interests of the child, 6 – right to survival and maximum development, 12 – right to be heard and have views taken into account, 23 – right of a disabled child to a full and decent life and 24 – highest attainable standard of healthcare. NICCY has also consistently highlighted the need for the new legislative and policy framework relating to Mental Capacity in Northern Ireland to be compliant with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), in particular Article 7, which refers to the right of children with disabilities to enjoy all human rights and fundamental freedoms on an equal basis with other children and Article 12 which states that the aim of the UNCRPD is full and equal legal capacity for everyone.

There is also a statutory obligation on the Department to ensure that the Code of Practice is in compliance with the European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998. NICCY has concerns that the current version of the Code of Practice is, in part, in direct conflict with the ECHR for 16 and 17 years olds. This is elaborated upon below and requires urgent attention and immediate rectification by the DoH.

3.0 General Comments

NICCY has repeatedly expressed its concern about the failure to publish and consult on the Codes of Practice for the Mental Capacity Act prior to the finalisation and passing of the Act. The Code of Practice, as expected, contains a lot of the necessary detail required to ensure the implementation and operation of the Act. It remains difficult to provide fully informed comment about the impact of the Code of Practice when considering the Code in isolation to the revised Code of Practice for the Mental Health Order 1986 which will apply to children under 16. With regard to children and young people, the current Code of Practice applies to 16 and 17 year olds, but as stated by the then Director of Mental Health for the DoH, unintended consequences caused during the drafting process have resulted in the erroneous position of 16 and 17 year olds coming almost entirely outside of the scope of the Act. Despite this, the Code of Practice attempts to fit 16 and 17 year olds into the process as drafted which will, in NICCY’s view have a raft of further potentially extremely damaging unintended consequences for this very vulnerable group of children.

The continued failure by the DoH to publish and consult on a revised Code of Practice for the Mental Health (NI) Order 1986 has hampered NICCY in issuing informed advice on the position of children and young people under the Act. This approach is extremely unhelpful in attempting to get a clear sense of the likely impact of the Mental Capacity Act and amendments to the Mental Health (Northern Ireland) Order for all children and young people, regardless of age and interaction between the two legislative frameworks which must occur as children get older. The fragmented nature of the consultation process to date on the mental capacity framework for Northern Ireland has presented significant challenges to those engaging in the process. It is extremely difficult to ensure that all areas which will impact on children and young people can be adequately considered without sight of both the Code of Practice and the revised Code of Practice for the Mental Health (Northern Ireland) Order in their entirety. **NICCY strongly advises the Department to develop both Codes of Practice which will relate to children and young people as a matter of priority so that consultees can have access to the complete Code of Practice framework when offering comment on its likely operation and impact on children and young people in Northern Ireland of all ages.**

In addition, NICCY is challenged as to the accessibility of the Code of Practice and associated documentation. The current consultation comprises over 400 pages of extremely complex information. The focus of the Code of Practice is the protection from liability for the professionals who will have legal responsibilities upon commencement of the Act. The document states that,

*“The Mental Capacity Act covers all areas of health and social care and there is therefore an expectation on all health and social care staff to be aware of the Act, its requirements, and to ensure the safeguards and additional safeguards are complied with, as appropriate in the individual circumstances.”[[2]](#footnote-2)*

Given the size and complexity of the Code of Practice and associated documentation, NICCY has concerns regarding the capacity and understanding of professionals to implement and effectively operate it. It will therefore be essential that there is a programme of in depth training provided to everyone who will have legal responsibilities upon commencement of the Act. There is an extremely serious issue with the Act placing legal obligations which may attract liability on a huge number of people who may be entirely unaware of the extent of these obligations. NICCY believes that this issue must be urgently addressed if the Mental Capacity Act is to be implemented in a manner which has a significant impact on the lives of everyone who come within its scope. NICCY therefore wishes to request information on the proposed training schedule for health and social care staff as well as information on the budget being set aside to deliver this programme of training. We would also recommend that children’s rights training is provided as part of this training programme in line with Article 4 of the UNCRC to ensure where health and social care staff are working with a child or young person under the age of 18 that professionals are fully cognisant of the children’s rights obligations which they are under by virtue of the UNCRC and the ECHR.

The Bamford Review was clear about the reduced impact that the principles of the Mental Health (Northern Ireland) Order 1986 had as a result of the delay in the publication of the Codes of Practice and failure to deliver an associated training programme. It stated that,

*“The impact of the principles in the Code of Practice for the 1986 Order was reduced because of delay in publication and a failure to deliver an associated training programme. Principles must be incorporated into the new law and elaborated upon in Codes of Practice. The new legislation, the Codes of Practice and related training programmes must be introduced at the same time.”*[[3]](#footnote-3)

It is very important that in the implementation of reforms to mental health and mental capacity legislation in Northern Ireland that these lessons are learned and taken cognisance of to ensure that they are not repeated. Therefore, **NICCY wants to see the Code of Practice and revised Code of Practice for the Mental Health (Northern Ireland) Order being published together for widespread public consultation, including consultation with children and young people in line with Article 12 of the UNCRC and section 75 of the Northern Ireland Act 1998**, **so that it can be published at the same time that the Mental Capacity Act is commenced and the amendments to the Mental Health (Northern Ireland) Order come into operation.**

**We also wish to see the implementation and widespread roll out of a robust training programme which informs everyone who will be impacted upon by the implementation of the Act and associated Codes of Practice of the obligations they are under by virtue of the Act to ensure its meaningful implementation.**

The language used in the Code of Practice is of concern. The Code of Practice is intended to give guidance to anyone who works with people who lack or may lack capacity. Given the legal obligations the Act places on a huge number of people which may attract liability, it is vital that the Code is clear and specific in its language so that people working with those who lack or may lack capacity are completely confident about the legality of the actions they are taking. Throughout the Code statements are made which are undefined and open to interpretation such as, ‘practical’, ‘appropriate’, ‘as far as practicable’ and ‘reasonable belief’ and there are many instances where the Code states that the particular circumstances of the particular situation will dictate the actions of professionals. This lack of clarity and use of vague and undefined terminology requires a degree of subjectivity. It does not provide the necessary level of certainty for professionals who will be responsible for making extremely serious and life changing decisions for extremely vulnerable people who lack the capacity to make decisions for themselves. Professionals who are tasked with the operation of the Act need to rely on the Code of Practice to ensure that they acting in accordance with the law. The Code, as currently written, does not provide enough clarity or certainty for professionals who work with people who lack or may lack capacity under the Act. Uncertainty like this will give rise to an unacceptable degree of subjectivity in decision making. This will result in decisions being taken which are outside of the law, decisions not being taken due to uncertainty in the law and legal challenge. NICCY recommends that the language in the Code is urgently revisited to provide a much greater degree of clarity and certainty for professional who will be relying on it in the course of their employment. This is of particular priority given the interaction of the Act and associated Code with fundamental human rights, including the right to life, the right to liberty, the right to respect for private and family life.

There is a very clear emphasis in the Code on the protection from liability. The Code is clear that it is not designed to provide help and support for P or P’s relatives or friends nor to explain or provide the reasoning behind the provisions of the Act.[[4]](#footnote-4) While it is entirely appropriate that the Code is designed for those who will have responsibility for the operation of the Act, it will be important that documentation which does provide help and support for P or P’s relatives or friends and explains and provides the reasoning behind the provisions of the Act is produced and made widely available. The Act is an extremely large and complex piece of legislation. Relatives and friends of people who come within the scope of the Act will need to have access to help and support and clear and accessible guidance on the Act itself. NICCY therefore requests information from the DoH about what documentation it intends to produce for P and P’s relatives and friends, the timeframe for publication and whether it is intended to subject this documentation to a full public consultation.

4.0 Section 75 of the Northern Ireland Act 1998

Throughout the process of developing the Mental Capacity Act, NICCY has expressed concerns at the manner in which the Department has discharged its statutory equality obligations under section 75 of the Northern Ireland Act 1998 to have due regard to the need to promote equality of opportunity between the nine equality categories of persons outlined in the legislation. We continue to have similar serious concerns in relation to the current consultation on the Code of Practice.

Section 75 of the Northern Ireland Act 1998 applies to the ‘policies’ of designated public authorities. Under Schedule 9 of the Northern Ireland Act 1998, designated public authorities such as the DoH is required to submit an equality scheme to the Equality Commission for approval. An equality scheme is a statement of the public authority’s commitment to fulfilling its section 75 statutory duties and should include a commitment to assess and consult on the likely impact of policies on the promotion of equality of opportunity. To properly identify adverse impacts on the promotion of equality of opportunity and address them, including by identifying areas where it is possible to further promote equality of opportunity as is required by section 75, or through mitigation of the adverse impacts and the adoption of alternative policies, it is necessary in the first instance to screen the policy. Where the potential for adverse impact or opportunities to further promote the enjoyment of equality of opportunity is identified, it is then necessary for public authorities to carry out a comprehensive Equality Impact Assessment (EQIA) on the policy proposals in line with its statutory duty and the commitments contained in its approved Equality Scheme.

The term ‘policies’ covers all the ways in which an authority carries out or proposes to carry out its functions relating to Northern Ireland. This definition is intentionally very wide and in practice “policy” has tended to cover most, if not all work undertaken by designated public authorities.[[5]](#footnote-5) It is therefore clear that the Code of Practice for the Mental Capacity Act is a policy for the purposes of section 75 of the Northern Ireland Act 1998.

In order to assess the impact of a policy on the promotion of equality of opportunity among the nine section 75 categories, public authorities must firstly screen the policy to determine whether there is potential for adverse impact on any members of the nine groups and where necessary an EQIA should be carried out. NICCY has a number of very serious concerns about the operation of the Act as detailed in the Code for children and young people aged 16 and 17 and we do not believe that this group will be able to enjoy equality of opportunity as a result. NICCY is certain that the position regarding 16 and 17 year olds as detailed in the Code will have significant adverse impacts on the enjoyment of equality of opportunity of this group. The Code therefore must be subject to screening and equality impact assessment, including carrying out direct consultation with 16 and 17 year olds as the group most likely to be impacted upon in line with the statutory equality obligations on DoH under section 75 of the Northern Ireland Act 1998.

NICCY has scrutinized ongoing developments in relation to the introduction of mental capacity legislation since the then Department of Health and Social Services and Public Safety (DHSSPS) first introduced its draft policy proposals in 2009. NICCY has had continuing engagement with and provided advice to both the Department of Health and the Department of Justice (DoJ) throughout the development of the legislation and given evidence to the Northern Ireland Assembly Committee for Health, Social Services and Public Safety with regard to the progression of the Mental Capacity Bill on numerous occasions. At **no stage** in the development of the legislation or its related policy proposals, including during any of the statutory equality consultations, has there ever been any suggestion or public consultation on the current position that 16 and 17 years olds who lack capacity will find themselves under as a result of the Act. It is entirely disingenuous to suggest that,

*“This has been the policy of the Department throughout the Bill development and remains so now.”*[[6]](#footnote-6)

There has been a considerable investment of time and resources over many years by NICCY and other children’s advocates in the development of this legislation. As stated above, NICCY has been informed by the then Director of Mental Health lead within the Department that the current position for children and young people aged 16 and 17 is a mistake caused in the drafting process and is an entirely unintended consequence. NICCY was also informed that discussions had taken place with a member of the judiciary to address this mistake and given assurances that this would be rectified. It is therefore a wholly untenable position that the Department now appears to be taking in its letter of 26th February 2019 where there is a clear implication that the current position was part of previous consultations. The letter states that,

*“This wider issue of capacity and children was noted in the public consultation in 2014, and throughout the Assembly process in 2015 and 2016, including at Committee hearings and during the Assembly stages.”*

NICCY is fully aware that the issue of capacity of children formed part of the previous consultations, however the issue of 16 and 17 year olds having no legal framework regarding their mental health as a result of the Age of Majority (Northern Ireland) Act 1969 did not. While NICCY has been assured that the current position for 16 and 17 year olds is a mistake that will be rectified, the current version of the Code is drafted as if there is no intention to rectify this error. As a result anyone with parental responsibility will be asked to consent to all acts relating to a 16 or 17 year old. This will mean that 16 and 17 year olds who come within the scope of the legislation due to their lack of capacity will be unable to access any of the protections and safeguards in the Act unless **all** persons with parental responsibility for withhold their consent to an act. This is extremely unlikely to happen in many cases, meaning that the vast majority of 16 and 17 years olds will have no access to the protections and safeguards contained in the legislation.

NICCY believes that this position places 16 and 17 year olds at a significant disadvantage in terms of access to protections and safeguards for some of their most fundamental human rights, including their right to life, their right to liberty and their right to respect for private and family life. The significant adverse impact on the enjoyment of equality of opportunity of this group as a result needs to be urgently and meaningfully addressed through mitigation or the adoption of alternative policies as required when carrying out an EQIA under section 75 of the Northern Ireland Act 1998. NICCY therefore wishes to request copies **by return** of the screening documentation relating to the Code and any documentation relating to the consideration which the DoH is bound to have given to carrying out an EQIA of the Code. If screening of the Code has not been undertaken NICCY firmly recommends that it is carried out immediately and a full and comprehensive EQIA carried out, including direct consultation with children and young people without delay.

It is vital that the direct involvement of children and young people is facilitated as part of this consultation process. These proposals will undoubtedly directly affect children and young people and so children and young people must be directly consulted with in relation to them. Such consultation is essential in ensuring compliance with section 75 of the Northern Ireland Act 1998, and also in ensuring the Government’s compliance with Article 12 of the UNCRC, which provides all children with the right to express their views freely in relation to all matters that affect them, with those views then being given due weight.

The DoH, as a designated public body for the purposes of section 75, is under a statutory obligation to ensure that child accessible and easy read documentation is available in order to facilitate consultation with children and young people in circumstances such as these. These obligations are outlined in the DoH’s approved Equality Scheme.[[7]](#footnote-7) DoH states in its approved Equality Scheme that it will consider the accessibility and format of every method of consultation used in order to remove barriers to the consultation process. It also states that specific consideration will be given as to how best to communicate with children and young people, people with disabilities (in particular people with learning disabilities) and minority ethnic communities. It also states that it will take account of existing and developing good practice, including the Equality Commission’s guidance ‘‘Let’s Talk Let’s Listen’’.[[8]](#footnote-8) **NICCY wishes to see the DoH discharging its statutory duty by undertaking a comprehensive programme of direct consultation with children and young people in order to ensure that their views are heard and taken into account in the development of the Code of Practice for the operation of the new legal framework for children and young people with mental illness and /or learning disability in Northern Ireland.**

**NICCY also wishes to request an urgent meeting with the Department to get clarity on its position regarding 16 and 17 year olds. Any suggestion that the Department’s intention was always to leave 16 and 17 year olds in the current position is extremely dismissive of the time and resources that have been invested in the development of this legislative framework by NICCY and others. There is a clear breach of section 75 of the Northern Ireland Act 1998 and the common law duty to consult. NICCY will be seeking legal advice on this issue.**

5.0 16 and 17 year olds

Para 10.4 states that,

*“16 and 17 year olds are children and are as such afforded special protection under international agreements, including the United Nations Convention on the Rights of the Child.”*

We welcome the inclusion of this statement in the Code of Practice but strongly recommend the inclusion of additional safeguards for children under the age of 18 with regard to decisions which may be life-threatening or cause permanent injury. For the purposes of the realisation of the rights enshrined in the UNCRC, Article 1 of the UNCRC states that, *“...a child means every human being below the age of eighteen years”*. It is therefore important that the Code of Practice reflects the fact that 16 and 17 year olds are still children and require special protections. NICCY has a number of concerns with regard to the ability of 16 and 17 year olds with capacity to make unwise decisions which may not be in their best interests, particularly where such decisions may be life-threatening or cause permanent injury. In order to adequately protect 16 and 17 year olds from irreversible harm NICCY recommends that the Department in its Code of Practice on the Mental Capacity Act replicates section 19.71 of the Code of Practice for the Mental Health Act 1983[[9]](#footnote-9) which is currently in operation in England and Wales. Section 19.71 deals with life-threatening emergencies and under 18s and states that,

*“A life-threatening emergency may arise when treatment needs to be given but it is not possible to rely on the consent of the child, young person or person with parental responsibility and there is no time to seek authorisation from the court or (where applicable) to detain and treat under the Act. If the failure to treat the child or young person would be likely to lead to their death or to severe permanent injury, treatment may be given without their consent, even if this means overriding their refusal when they have the competence (children) or the capacity (young people and those with parental responsibility), to make this treatment decision. In such cases, the courts have stated that doubt should be resolved in favour of the preservation of life, and it will be acceptable to undertake treatment to preserve life or prevent irreversible serious deterioration of the child or young person’s condition.”*

Such treatment is qualified in section 19.72 which states that the treatment given must be no more than necessary and in the best interests of the child or young person. This is vitally important when one considers that the test for detention under the Mental Capacity Act is capacity based. This means that children who are suicidal can only be detained under the Act when they are deemed to lack capacity. This places health professionals in an extremely difficult position. Without any other legal means to protect extremely vulnerable children, professionals will be faced with the prospect of either finding that a child with capacity lacks it in order to allow their detention under the Mental Capacity Act, which will result in legal challenge or finding that the child has capacity and cannot be lawfully detained. This will then result in suicidal children who require treatment not receiving it and being failed entirely by the state, which will result in legal challenge. This is particularly the case given that the Department has repeatedly stated that children under 18 require special protections under the UNCRC. The Department has therefore acknowledged that it has legal obligations to children under the UNCRC, not least to ensure their right to protection from harm, their right to life and their best interests are upheld. NICCY has repeatedly and consistently raised this issue with the Department and there has been a total failure to address this to date. NICCY has no doubt that its advice to Government on this issue will be relied upon in any future legal actions where a child with capacity who requires treatment to preserve their life cannot receive it as a result of the test for detention being capacity based. NICCY again strongly advises the Department to take cognisance of its obligations to children under the UNCRC and include provisions similar to the above in the Code of Practice in order to adequately protect children as is **required** by the UNCRC.

Para 10.5 states that,

*“It is recognised that as children 16 and 17 year olds are not adults. As such the parents or guardians of a 16 or 17 year old have a role to play in the decision making process and it is assumed that the greatest protection of the rights of the child are provided by the parents.”*

While this is the case for the majority of parents and children, unfortunately this is not the case for all. It is NICCYs view that in this assumption by the Department is a dangerous one. As currently drafted, the Code does not propose any assessment of parents and the best interests of the child, nor is any assessment proposed regarding the parents ability to make decisions or consent on behalf of their children. It is also entirely unclear what will occur where there is a disagreement or dispute between two parents or guardians with responsibility for a child regarding the issue of consent. Again, medical professionals will be left to address this situation without any Guidance, creating further potential for legal liability and uncertainty, the very things that the Code is supposed to avoid.

Para 10.6 states that while the Age of Majority (Northern Ireland) Act 1969 provides that a person who is 16 or over may consent to surgical, medical or dental treatment without parental consent, it does not remove the right of the parent or guardian to consent on behalf of a 16 or 17 year old.

Section 4(1) of the Age of Majority (Northern Ireland) Act 1969 states that,

*“The consent of a minor who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian.”*

Para 10.7 of the Code refers to the section 9(6) of the Mental Capacity Act and states that,

*“For avoidance of any doubt section 9(6) of the Act provides that protection from liability is only required if an act is done “without P’s consent and without any consent that could be given by a parent or guardian of P”."*

Para 10.8 states that,

*“...****if a person is 16 or 17 years old and lacks capacity a parent or guardian can consent or his or her behalf without relying on the protection from liability and without complying with any of the safeguards.*** *Only if a parent or guardian does not provide consent, or refusal of consent, do the protection from liability and the safeguards apply.”*

This paragraph goes on to state that,

*“Recent court cases have indicated that the parental right to make decisions on behalf of their child covers all areas, including deprivation of liberty.”*

It is extremely concerning that where a 16 or 17 year old lacks the capacity to consent to an act which requires their consent, responsibility for the provision of consent will transfer to their parents. Only upon a refusal or failure to provide the consent will the safeguards and protections of the Act apply. This will mean that 16 and 17 years olds who lack capacity will only have access to the protections and safeguards of the Act in very limited circumstances. In addition, the issue of parents consenting to a deprivation of liberty of their child has never been consulted on to date. In the consultation on the Children’s Chapter of the Code in April 2017 deprivation of liberty was not consulted upon as within the scope of parental consent. Again we are seeing the apparent disregard by the Department of its obligations to consult on changes to policy and new policy as required by section 75 of the Northern Ireland Act 1998. NICCY does not believe that the right to liberty comes within the scope of parental consent. Liberty is such a fundamental human right that to deprive anyone of it requires significant justification. To suggest that 16 and 17 year olds can be deprived of their liberty merely through parental consent seriously undermines the fundamental importance of this human right, which is not age based. There will undoubtedly be legal challenge on this issue given the Department’s new and, as yet not consulted upon, interpretation of the legal position regarding deprivation of liberty of minors and parental consent.

NICCY wishes to reiterate its position with regard to 16 and 17 year olds and the position that they now find themselves in as outlined in the current version of the Code. NICCY has been involved in the development of the mental capacity legislation since the then Department of Health and Social Services and Public Safety (DHSSPS) first introduced its draft policy proposals in 2009. NICCY has had continuing engagement with and provided advice to both the Department of Health and the Department of Justice (DoJ) throughout the development of the legislation and given evidence to the Northern Ireland Assembly Committee for Health, Social Services and Public Safety with regard to the progression of the Mental Capacity Bill on numerous occasions. At **no stage** in the development of the legislation or its related policy proposals, including during any of the statutory equality consultations, has there ever been any suggestion that this should be the position for 16 and 17 years olds who lack capacity. This will mean that 16 and 17 year olds who come within the scope of the legislation due to their lack of capacity will be unable to access any of the protections and safeguards in the Act unless **all** persons with parental responsibility for them fail or refuse to give their consent to an act. This is extremely unlikely to happen in many cases, meaning that the vast majority of 16 and 17 years olds will have no access to the protections and safeguards contained in the legislation.

As 16 and 17 year olds are the age group most likely to be in hospital receiving treatment for a mental illness, this will place the greatest number of the most vulnerable group in the position of having no protections and safeguards. We do not envisage children under 16 who lack capacity due to a mental illness or learning disability being in such an isolated and unprotected position.

As stated above, NICCY received assurances that the current position would be rectified and is an unintended consequence which came about as a result of the drafting process. However, the current version of the Code and the Department’s letter of 26th February 2019 gives no such assurances and appears to entrench the position that most 16 and 17 years olds who lack capacity will have no access to the safeguards and protections of the Mental Capacity Act. Children aged 16 and 17 who lack capacity are an extremely vulnerable group. This was recognised by the Bamford Review of Mental Health and Learning Disability which recommended additional protections for under 18s. The Comprehensive Legislative Frameworkreport of the Bamford Review stated that,

***“The special vulnerabilities and developmental needs of all those children and young people under the age of 18 years who may fall under the proposed approach to substitute decision-making will require special rights and protections.”*[[10]](#footnote-10)**

NICCY is concerned that the exclusion of 16 and 17 years olds from having immediate access to the protections and safeguards of the Act is not compliant with the Government’s obligations under the UNCRC, particularly Articles 2 – non-discrimination, 3 – best interests of the child and 12 – right to be heard and have views taken into account. In addition, we are concerned that this may not be compliant with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), in particular Article 7, which refers to the right of children with disabilities to enjoy all human rights and fundamental freedoms on an equal basis with other children and Article 12 which states that the aim of the UNCRPD is full and equal legal capacity for everyone.

The Department of Health[[11]](#footnote-11) has produced a, *“Reference Guide to Consent for Examination, Treatment or Care”*[[12]](#footnote-12) which provides guidance for health professionals with regard to consent and refusal of treatment. It states that,

*“5.1 Where a young person of 16 or 17 who could consent to treatment in accordance with section 4 of the Age of Majority Act (Northern Ireland) 1969 or a child under 16 but Gillick competent, refuses treatment, such a refusal can be over-ruled either by a person with parental responsibility for the child or by the court. If more than one person has parental responsibility for the young person, consent by any one such person is sufficient, irrespective of the refusal of any other individual.*

*5.2 This power to over-rule must be exercised on the basis that the welfare of the child/young person is paramount. As with the concept of best interests, "welfare" does not just mean physical health. The psychological effect of having the decision over-ruled must also be considered. While no definitive guidance has been given as to when it is appropriate to over-rule a competent young person’s refusal, it has been suggested that it should be restricted to occasions where the child is at risk of suffering "grave and irreversible mental or physical harm".”*

As the Mental Capacity Act only applies to those who lack capacity, this situation will remain for children and young people who are competent to make decisions. In the case of children and young people who do not have the capacity to make a decision, the Guidance goes on to state,

*“6.1 Where a child lacks capacity to consent, consent can be given on his or her behalf by any one person with parental responsibility or by the court. As is the case where individuals are giving consent for themselves, those giving consent on behalf of the child must have the capacity to consent to the intervention in question, be acting voluntarily, and be appropriately informed. The power to consent must be exercised according to the "welfare principle": that the child’s "welfare" or "best interests" must be paramount. Even where a child lacks capacity to consent on their own behalf, the child must be involved as much as possible in the decision-making process.”*

**It is concerning therefore that there is no reference in this section of the Code of Practice to ensuring that the child’s best interests are a paramount consideration when parents are exercising their right to consent on behalf of their incapacitous child. Nor is there any reference to ensuring that the young person will be involved as much as possible in the decision making process. This should be urgently rectified in the Code of Practice. If ‘best interests’ is one of the principles of the Act it is vital that this is included as an interim measure with a view to urgent legislative rectification through amending the Mental Capacity Act.**

**The Code should also clearly outline the implications for 16 and 17 year olds who lack capacity as a result of those with parental responsibility giving or withholding consent. NICCY envisages a great deal of scenarios where it would be clearly in the best interests of 16 and 17 year olds for consent not to be provided or withheld. In fact, the Code at para 10.10, now advises corporate parents that best practice would dictate that the guardian should not provide or withhold consent to ensure that arbitrary decisions are not made. If the Department itself recognises that children would be best protected by coming within the provisions of the Act, rather than advise corporate parents to neither provide or withhold consent to circumvent the legislative disorder that now exists, NICCY firmly recommends that the current position is urgently rectified for 16 and 17 year olds. NICCY also wishes to query whether the Code will include similar advice for all parents, who will clearly be at a disadvantage to looked after children if the implications of providing consent or refusing consent are not made clear to them.**

Throughout NICCY’s involvement in the development of the Mental Capacity Act and in all its advice to Government to date we have been clear about the need for **all** children and young people to have unimpeded access to the protections and safeguards contained in the Act. We have also been extremely supportive of the emphasis in the Act on supported, as opposed to substitute, decision making. We note that under the Code, in determining whether someone can make a decision for her / himself, *“all practicable help and support”* must be given.[[13]](#footnote-13) NICCY wishes to seek clear assurances in the case of children and young people aged 16 and 17, that they will receive all help and support to make decisions in their own right. This should include the appointment of independent advocates to assist in the determination of what is in the best interests of a person lacking capacity. The appointment of an independent advocate is an extremely important safeguard in ensuring that children and young people are involved in decisions which affect them as much as possible and where they lack capacity that decisions are made which reflect the views and wishes of the young person and are in their best interests. It is vital that the advocate assists in facilitating the voice of the young person and ensuring this is accurately represented in decision-making regarding their care and treatment. An advocate should not speak in place of the individual but on their behalf, and fully and accurately represent their views.

Given the introduction of an additional stage before a 16 or 17 year old can have access to the safeguards and protections of the legislation, these young people are at a significant disadvantage to adults who automatically have access to the safeguards and protections of the Act when they lose capacity. We therefore do not believe that the emphasis on supported decision making for 16 and 17 year olds is sufficient when compared to those over the age of 18 if young people cannot access an advocate, for example until their parents have not provided or withheld their consent to an act.

As 16 and 17 year olds who lack capacity will not be able to access the protections and safeguards of the Act unless everyone with responsibility either refuses or fails to consent, the nominated person safeguard will not be available to them. This places 16 and 17 year olds in the position of not being able to nominate who should act on their behalf and no means to displace those with parental responsibility for them. The nominated person procedure was introduced to address the incompatibility of the nearest relative provisions with Article 8 of the ECHR as incorporated by the Human Rights Act 1998 as highlighted in case law including JT v UK.[[14]](#footnote-14) As this will not be accessible to the majority of 16 and 17 year olds, we have serious concerns about future legal liability which we recommend the Department gives immediate consideration to.

In the case of children and young people who are in the care of the state, i.e. children who are ‘looked after’ or detained in the JJC, NICCY has serious concerns with regard to power to consent to an act where a 16 or 17 year old lacks capacity, passing to the state and the young person being excluded from the protections and safeguards of the Act unless the state fails or refuses to provide consent or an act being carried out on a young person by the state. This is an entirely untenable position which must be rectified through non-commencement of section 9(6) of the Act and through legislative amendment in the future.

Paragraph 10.16 of the Code states that there is a presumption of **incapacity** for those transitioning from the Mental Health Order to the Mental Capacity Act when this may not be the case. Such an approach flies in the face of the principle of autonomy in the Act. The Code also fails entirely to address the situation whereby a 15 year old who is a significant risk of harm to themselves and is detained in hospital turns 16 and assessed as having capacity and is no longer detainable – see page 11 above.

**NICCY firmly recommends that in the first instance, the Department does not commence clause 9(6) of the Mental Capacity Act. The Department should also identify a suitable expedient legislative opportunity to rectify the apparent current position regarding 16 and 17 year olds who lack capacity. The current position as we understand it, completely undermines all of the work that has been done by NICCY and the children’s sector more generally with regard to the protection of the rights of 16 and 17 year olds who lack capacity. It is entirely inappropriate that extremely vulnerable 16 and 17 year olds who lack capacity should find themselves in this position, without access to safeguards and protections, a position that was never the subject of any public consultation or debate on this legislation.**

6.0 Additional Safeguards for Children and Young People

It is disappointing to note how little information is contained in Chapter 10, the Children’s Chapter of the Code of Practice. NICCY had expected there to be a number of additional safeguards to be put in place for 16 and 17 year olds through the Code of Practice. In the consultation on proposals for the Mental Capacity Bill for Northern Ireland[[15]](#footnote-15) the then Department of Health, Social Services and Public Safety and the Department of Justice emphasised that in relation to 16 and 17 year olds the Code of Practice will set out additional protections. It is extremely unclear from an examination of the Children’s Chapter of the draft Code of Practice at this juncture what additional protections the consultation on proposals for the Mental Capacity Bill for Northern Ireland referred to. In particular, NICCY expected a clear commitment in the Code of Practice to ensuring that all 16 and 17 year olds who are in hospital have equal access to education of a standard that is available to their peers within the community. This should include provisions being made for children with special educational needs, including those with a statement of special educational needs. The right of children and young people with mental ill health to an effective education was recognised in the Bamford Review’s Human Rights and Equality of Opportunity report[[16]](#footnote-16) which states that,

*“The review emphasises the importance of recognising the right of every child and young person to have access to a practical and effective education…government policy or funding priorities should not disadvantage people with a mental health problem or a learning disability…particular attention needs to be paid to ensuring that children and young people with mental health difficulties or a learning disability, who present challenges to educational services because of the severity or complexity of their disability, enjoy equal access to education…children and young people with a mental health difficulty or a learning disability have the right to an effective and practical education without discrimination under Protocol 1, Article 2 and Article 14 of the ECHR as incorporated by the Human Rights Act 1998.”*[[17]](#footnote-17)

In order to comply with UNCRC, particularly Articles 2 – non-discrimination, 23 - right of a disabled child to a full and decent life[[18]](#footnote-18), 28 – right to education and 29 – right to an effective education and Protocol 1, Article 2 of the ECHR and Article 24 of the UNCRPD – the right of persons with a disability to education, the Codes of Practice relating to children of all ages under the mental health and mental capacity frameworks should ensure that all children with mental ill health or a learning disability receive a practical and effective education up to the age of 18 or 19 where a statement of special educational needs is in place. This should include provision for effective transitions back into the community to be built into discharge planning so that children being discharged from hospital suffer no disruption to their education. **NICCY firmly recommends that the Code of Practice is amended to include additional vital protections for children and young people, including the fundamental right to a practical and effective education.**

7.0 Advocacy

One of the key safeguards of the Mental Capacity Act is the provision of independent mental capacity advocates for people who lack capacity as provided for by Chapter 5 of the Mental Capacity Act. NICCY has consistently called for the extension of the provision of independent advocacy services to children and young people with learning disabilities and / or mental ill health as and when required. In particular, we have called on the Government to provide independent advocacy services to children and young people when admission to hospital is being considered in the community to ensure that if possible, formal detention can be avoided and courses of action which cause least harm can be progressed. It is both surprising and confusing, given the centrality of the issue of independent advocacy services to the development of the Mental Capacity Act and the emphasis in the Act on the provision of all practicable support to allow people who lack capacity to make decisions, that there is no chapter in the Code of Practice on advocacy. Advocacy is mentioned only twice in the Code, one of these references relates to, ‘non-statutory advocates’.[[19]](#footnote-19) NICCY would have expected the Code to refer at length to when health and social care professionals should employ the services of an independent advocate to assist people who lack capacity. The absence of any reference to the availability of independent advocates is extremely concerning.

Under Article 12 of the UNCRC, children and young people have a right to have their views heard and taken into account in matters which impact on their lives. In addition, Article 7 of the UNCPRD places an obligation on Government to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. State Parties must ensure that children with disabilities have the right to express their views freely on all matters affecting them and their views are to be given due weight in accordance with their age and maturity on an equal basis with other children. In ensuring that children and young people have these fundamental rights upheld it will be vitally important to provide them with the support of independent advocacy services. Independent advocates will be even more important for 16 and 17 year olds who, under the current, flawed version of the Code of Practice, now face additional barriers to accessing the safeguards and protections of the Mental Capacity Act. Independent advocates will also be vitally important to this group in ensuring that the core focus of the Act for them remains as supported, as opposed to substitute, decision making. The provision of independent advocacy services to all children and young people who require the service, regardless of their age, is essential for the realisation of their right to meaningful participation without discrimination as provided for by both the UNCRC and the UNCRPD.

NICCY is aware that the Department intends to commence the Act in stages, with the provisions relating to advocacy coming later in the commencement process. The department states in its letter of 26th February 2019 that as the Independent Mental Capacity Advocates will require additional legislation in the form of Regulations that,

*“…it is not feasible to commence these provisions before the second half of 2021 at the earliest.”*

The effect of this would be that the legislation would commence without the provision of the advocacy safeguard. Given this and the almost complete lack of reference to advocacy in the current version of the Code NICCY has serious concerns about the intentions of the Department regarding the provision of and perceived role of the advocacy service. It is NICCY’s view that such an approach raises serious questions around the compatibility of the Act with the ECHR and UNCRPD. The Department states in its letter of 26th February,

*“During the Assembly process the Bill (and subsequently the Act) was determined as being compatible with all international obligations, such as European Convention on Human Rights and the United Nations’ Convention on the Rights of Persons with Disabilities. Without such compliance the Assembly would not have had the competence to legislate and the passage of the Bill would have been stopped, either through procedures in the Assembly itself or by the Supreme Court. As this did not happen competence was assured and the Bill received Royal Assent.”*

The commencement of the Act without the advocacy service was not something that was considered when the Act was being subjected to scrutiny with regard to ECHR compatibility. NICCY believes that the commencement and implementation of the Act without the advocacy safeguards now raises the question of ECHR compatibility. As outlined above, access to independent advocacy is fundamental in the realisation of children’s rights under the Act. **NICCY therefore strongly advises that the advocacy provisions are commenced from the outset. NICCY will be seeking legal advice on the issue of the ECHR and UNCRPD compatibility of the Act if commenced without the advocacy provisions.**

8.0 Offence of ill-treatment and neglect

NICCY has raised concerns in previous submissions regarding the offence of ill-treatment and neglect. This version of the Code of Practice again states that this offence will apply to anyone caring for a person who lacks capacity or is believed to lack capacity in relation to all or any matters concerning their care and that this will apply regardless of age.

While it is welcome that this new offence will apply to children and young people of all ages it continues to remain unclear how the Department intends to establish a lack of capacity in under 16s as the capacity test in the Mental Capacity Act does not apply to this age group. At an earlier stage in the process NICCY was informed by the then DHSSPS that as, ‘lack of capacity’ is not defined in the Bill for under 16s, the establishment of a lack of capacity in this age group will be determined in accordance with the common law and further guidance in a Code of Practice.[[20]](#footnote-20) It is therefore extremely disappointing when considering this section of the Code of Practice that no information has been provided whatsoever on how a lack of capacity will be determined in under 16s. While the assessment of a lack of capacity in under 16s on a case by case basis is welcome it raises significant questions about the rationale for the exclusion of under 16s from the scope of the civil provisions of the Mental Capacity Act in its entirety. If, for the purposes of this offence under the Act, capacity in under 16s can and will be assessed, we can see no reason why under 16s should have been excluded from the scope of the capacity based civil provisions of the Mental Capacity Act. **We look forward to being provided, as a matter of priority, with further guidance on how the Department intends to assess the capacity of children and young people under 16 as promised by the Department.**

NICCY also has concerns about the requirement for P to lack capacity for a prosecution for this offence to be successful. The law in England and Wales has been revised and non-capacity based offences have been introduced to ensure the protection of vulnerable people in receipt of care from ill-treatment or neglect, regardless of whether or not they lack capacity.[[21]](#footnote-21) It is NICCY’s view that cognisance needs to be taken of the legislative position in England and Wales and the rationale for the law to be revised to ensure adequate protections for all vulnerable people in receipt of care, regardless of whether or not they lack capacity. This is particularly vital for children and young people in light of the fact that the Department has continued to fail to provide information on how it intends to test capacity in under 16s.

9.0 Age Appropriate Environment

Para 10.12 of the Code of Practice states that,

*“If a person who is 16 or 17 is an in-patient in hospital for the purpose of assessment or treatment of a mental disorder the hospital must ensure that the person’s environment in the hospital is suitable to the person’s age. The hospital must consider all relevant factors when determining what environment is suitable. This may include, but is not limited to:*

1. *the wishes of the person;*
2. *the wishes of parents or guardians;*

*c. the other persons in the environment where the person is;*

*d. where the person can receive the best care and treatment; and*

*e. if there is age specific accommodation available.”*

It goes on to state[[22]](#footnote-22) thatthe hospital must consult a person with the knowledge or expertise to help determine of the environment is appropriate for the person’s age. This person may be a parent or relative or it may be a professional, such as a social worker. It is unclear how a hospital will make a determination about who is the most appropriate person to consult with about the appropriateness or otherwise of the child’s environment. In addition, it is unclear how a parent, relative or social worker will be familiar enough with every aspect of the environment, including the needs and particular circumstances of the other patients in the hospital, to be able to make such a determination. Where there is a disagreement in terms of the suitability of the environment, it is unclear as to how this will be resolved and the weight that will be given to the views of the person being consulted. **We would advise that this section be elaborated upon in the version of the Code of Practice as this is likely to cause a great deal of confusion and uncertainty as currently drafted.**

We are concerned to note that para 10.14 of the Code of Practice states that,

*“The requirement to ensure that the environment is suitable for the person’s needs does not mean that they have to be placed on a dedicated children’s ward. Rather, it requires that* ***all*** *relevant circumstances must be considered when deciding where to place16 and 17 year olds;* ***the environment must be suitable to the individual person’s needs****.”*

We are extremely disappointed to see the Code of Practice falling short of ensuring that children and young people are never detained in a mental health setting with adults. NICCY believes that this does not go far enough in providing firm assurances that the practice of admitting children onto adult psychiatric wards will cease. The admission of children and young people to adult wards is an issue of serious concern which NICCY and other agencies have repeatedly highlighted over a considerable period.[[23]](#footnote-23) The risks to children in terms of their protection and safety and the potentially detrimental impact on their social and emotional wellbeing are significant and consequently NICCY believes it is wholly unacceptable that children are ever placed on adult psychiatric wards. **NICCY recommends that this section of the Code of Practice be amended to ensure that all children and young people under 18 will never be placed on adult psychiatric wards and will receive treatment in age and developmentally appropriate settings.** NICCY believes that this is the only way to ensure compliance with international children’s rights standards which requires that children and young people are not detained with adults (Article 37c of the UNCRC) and have their best interests upheld (Article 3 of the UNCRC). The treatment of children on adult psychiatric wards was also raised by the United Nations Committee on the Rights of the Child in its Concluding Observations following its examination of the UK Government’s compliance with its obligations under the UNCRC in 2008[[24]](#footnote-24) and again most recently in 2016 where the Committee recommended that the Government,

*“Expedite the prohibition of placing children with mental health needs in adult psychiatric wards or police stations, while ensuring the provision of age-appropriate mental health services and facilities.”*[[25]](#footnote-25)

10.0 Scenarios

NICCY has serious concerns about the scenarios provided regarding best interests and children. Version 1 allows for a parent to refuse life sustaining treatment for a child who has lost capacity without any checks and balances in place. Both versions of this scenario are clearly written to make the flawed section 9 of the Mental Capacity Act appear that it would work in practice. However as we have been informed by the DoH, the position for 16 and 17 year olds has come about as a result of an error and should be rectified as opposed to being further entrenched through the inclusion of scenarios, both of which result in the child dying without receiving the new treatment that health professionals wish to try. The right to life of the child must trump all consent. NICCY cannot imagine any situation whereby practitioners would comply with the consent under version 1 without seeking court authorisation.

There are a range of scenarios missing from the Code regarding children and young people. These include young people transitioning from the amended Mental Health Order to the Mental Capacity Act; when the parent of a 16 or 17 year old’s capacity is in question and regarding looked after children. The failure to provide any Guidance on these very confusing areas will again leave medical professionals with no support and potentially facing legal liability.

11.0 Conclusion

**NICCY calls on the Department of Health to take into account the recommendations made in this paper, which we provide in compliance with the Commissioner’s statutory advice capacity under Article 7(4) of The Commissioner for Children and Young People (Northern Ireland) Order’ (2003).** We hope that the comments contained in this submission are helpful to the Department and we look forward to engaging further in the development of the Code of Practice on the Mental Capacity Act (Northern Ireland) 2016.

**NICCY reiterates its request for an urgent meeting with the Department to discuss its concerns outlined in this submission and get clarity on the Department’s position regarding 16 and 17 year old children and young people under the Mental Capacity Act.**

1. Introduction, The Bamford Review of Mental Health and Learning Disability. A Comprehensive Legislative Framework (2007). [↑](#footnote-ref-1)
2. Para 5.7, Page 39. [↑](#footnote-ref-2)
3. Pg 5, The Bamford Review of Mental Health and Learning Disability. A Comprehensive Legislative Framework (2007). [↑](#footnote-ref-3)
4. Para 1.11, Page 17. [↑](#footnote-ref-4)
5. ‘Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities’ Equality Commission for Northern Ireland, April 2010, p.29 – 31. [↑](#footnote-ref-5)
6. Letter received from DoH 26th February 2019. [↑](#footnote-ref-6)
7. Approved by the Equality Commission for Northern Ireland on 28th March 2012. [↑](#footnote-ref-7)
8. Para.3.2.4. ‘Equality scheme for the Department of Health, Social Services and Public Safety’. [↑](#footnote-ref-8)
9. Mental Health Act 1983: Code of Practice, Department of Health, 2015. [↑](#footnote-ref-9)
10. Pg.47, A Comprehensive Legislative Framework, August 2007. [↑](#footnote-ref-10)
11. Then Department of Health, Social Services and Public Safety [↑](#footnote-ref-11)
12. 2003 - https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/consent-ref-guide.pdf [↑](#footnote-ref-12)
13. Para 3.1 Code of Practice [↑](#footnote-ref-13)
14. 26494/95 (2000) ECHR 133. [↑](#footnote-ref-14)
15. Consultation closed August 2014 [↑](#footnote-ref-15)
16. Human Rights and Equality of Opportunity – The Bamford Review, October 2006. [↑](#footnote-ref-16)
17. Pg. 21. [↑](#footnote-ref-17)
18. Article 23 of the UNCRC specifically refers to the rights of mentally disabled children and strongly promotes integration and participation in education. Pursuant to Article 23 of the UNCRC state parties are required to recognise that a mentally disabled child should enjoy a full and decent life, in conditions, which ensure dignity, promote self-reliance, and facilitate the child’s active participation in the community. Recognising the special needs of a disabled child, assistance is required to be provided free of charge, whenever possible and should be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development including his/her cultural and spiritual development. [↑](#footnote-ref-18)
19. Para 3.16, Page 30. [↑](#footnote-ref-19)
20. Correspondence from DHSSPS to NICCY, 30th July 2015. [↑](#footnote-ref-20)
21. Criminal Justice and Courts Act 2015 [↑](#footnote-ref-21)
22. Para 10.13 [↑](#footnote-ref-22)
23. Baseline Assessment of the Care of Children Under 18 Admitted to Adult Wards in Northern Ireland, RQIA, December 2012; Strengthening Protection for Children and Young People when accessing goods, facilities and services, Summary Report, ECNI and NICCY, October 2013 [↑](#footnote-ref-23)
24. Para 56, CRC/C/GBR/CO/4, 20th October 2008. [↑](#footnote-ref-24)
25. |  |
    | --- |
    | Para 61c, CRC/C/GBR/CO/5, 12th July 2016 |

    [↑](#footnote-ref-25)