



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Advice of the Northern Ireland Human Rights
Commission to the Northern Ireland Office in
respect of the NI (Executive Formation etc.) Act
2019**

Termination of Pregnancy

September 2019

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Summary of Recommendations

- 2.8** The NIHRC advises that it considers that the continued requirement for travel to access terminations in the interim period will likely give rise to human rights violations under both the ECHR and CEDAW.
- 2.9** The NIHRC recommends that access to the GB pathway is effectively facilitated and made available to all women and girls who require access under the CEDAW recommendations, regardless of financial status. Details of the pathway should be provided through the Department of Health NI to all clinicians in NI.
- 2.10** The NIHRC is aware that there may be women and girls who are unable to travel due to age, domestic violence or other considerations. Where women and girls, who require access in circumstances covered by the recommendations of the CEDAW report, present to their clinician and advise they are unable to travel, access to terminations should be made available in NI.
- 2.13** The NIHRC recommends that immediate, specific and circumscribed guidance be provided by the Department of Health NI to GPs and other medical professionals in NI, advising that there is no longer a duty to report women and girls who present in this manner to the PSNI or other authorities.
- 2.14** The NIHRC further recommends that a statement is issued to members of the public advising that they will be able to present to GPs or other medical facilities without fear of prosecution if they have taken termination medication not prescribed by a local doctor.
- 2.18** The NIHRC recommends that the Domestic Abuse Bill and relevant criminal protections are expedited to ensure women and girls suffering from psychological abuse or coercive control situations receive adequate protection and redress from the criminal law.
- 3.2** The Commission would welcome confirmation of the intention that women and girls who access terminations should not face investigations or prosecutions on other grounds.

- 3.23 The Commission recommends that the Department of Health should issue revised guidance addressing how clinicians respond to this situation, as the present guidance does not provide any support for them in their decision making or guidance on how to balance competing interests. The guidance should leave appropriate scope for clinicians to exercise their judgment in difficult situations such as these.**
- 3.24 The NIHRC considers that it is essential that victims of sexual crime have confidence in any procedure put in place to allow them to access terminations. The NIHRC advises that any process must avoid re-traumatising victims of sexual crime, including children, and must provide the necessary support, counselling and treatment they require. Victims engaging with any process should be provided with advocates or directed to appropriate support mechanisms to assist them as they do so.**
- 3.40 In line with women’s right to health,¹ the NIHRC recommends that women and girls in NI are provided with the best available reproductive healthcare to ensure that medical issues are identified as early as possible whatever decision is taken by the woman herself.**
- 3.49 The NIHRC recommends that consideration be given to a conscientious objection clause when enacting legislation for terminations in NI. The NIHRC advises that any conscientious objection clause should not have the effect of denying or unduly impairing access to terminations for women and girls. Where this instance arises, this would lead to a violation under the ECHR and CEDAW.**

¹ Article 12 CEDAW, Article 12 ICESCR

- 3.50 The NIHRC further recommends that the Department of Health NI and regulatory bodies issue guidance to their members as to what tasks will be considered to fall under any conscientious exemption clause and those which will not. The guidance and legislation should make clear that the clause does not affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman or girl.**
- 3.53 In line with the right to health in the family planning context under CEDAW², the NIHRC recommends that the above recommendations are fully taken forward. The NIHRC advises that the government set out what actions they are taking to meet these recommendations and provide an action plan with a timeframe for completion.**
- 3.57 The Commission recommends effective steps are taken to ensure mandatory age-appropriate, comprehensive and scientifically accurate sexuality and gender identity education that promotes healthy relationships, sexual and reproductive rights, and responsible sexual behaviour is provided in all NI schools and other education settings. The Commission further recommends that effective steps are taken to promote human rights education in NI schools, which includes a focus on the empowerment of girls and the UN CEDAW.**
- 3.58 The Commission recommends that specialised services on relationships, sexuality and gender identity are sufficiently resourced to satisfy need.**
- 3.59 An action plan with a time frame for completion of the above steps should also be developed and published.**
- 3.61 The NIHRC recommends that this anti-stereotyping work include gender-based stereotypes regarding women’s primary role as mothers in line with the Inquiry’s recommendations. An action plan with a time frame for completion of the above steps should also be developed.**

² Article 12 CEDAW.

3.65 The NIHRC recommends that the Secretary of State reviews the existing law to ensure that it provides sufficient protection so NI women and girls can access family planning services without intimidation. Legislative provision should be made for buffer zones where this is not already possible under the existing law.

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights. The NIHRC also has a role, under section 69(3), to advise the Secretary of State and the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights. In accordance with these functions, the following advice is submitted to the Northern Ireland Office in respect of the duties placed on it by the Northern Ireland (Executive Formation etc.) Act 2019.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant international treaties in this context include:
- European Convention on Human Rights 1950 (ECHR);³
 - International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR);⁴
 - International Covenant on Civil and Political Rights 1966 (ICCPR);⁵
 - UN Convention on the Elimination of All Forms of Discrimination Against Women 1979 (UN CEDAW);⁶
 - UN Convention against Torture 1987 (UN CAT);⁷
 - UN Convention on the Rights of the Child 1989 (UN CRC);⁸
 - Charter of Fundamental Rights of the European Union 2000 (CFR);⁹
 - UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD);¹⁰
- 1.3 The UK Government is subject to the obligations contained within these international treaties by virtue of its ratification of these instruments.¹¹
- 1.4 The present advice will cover the issues of termination of pregnancy in NI; pursuant to sections 8-10 of the Northern Ireland (Executive Formation etc.) Act 2019. It was produced in the absence of any legislative draft for scrutiny. The NIHRC is content to provide any further or specific advice on issues arising from this paper, and may make further comment once the

³ Ratified by the UK in 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights (ECtHR).

⁴ Ratified by the UK in 1976.

⁵ Ratified by the UK in 1976.

⁶ Ratified by the UK in 1981.

⁷ Ratified by the UK in 1988.

⁸ Ratified by the UK in 1991.

⁹ Ratified by the UK in 2000.

¹⁰ Ratified by the UK in 2009.

¹¹ The UK Mission at Geneva has stated, 'The UK's approach to signing international treaties is that we only give our signature where we are fully prepared to follow up with ratification in a short time thereafter.' See, UK Mission at Geneva, 'Universal Periodic Review Mid-term Progress Update by the United Kingdom on its Implementation of Recommendations agreed in June 2008' (March 2010) on recommendation 22 (France).

consultation phase has commenced or further details of the proposed legislative frameworks become clear.

- 1.5 The advice is divided into sections, detailing the NIHRC's recommendations and advice in the interim period from October 2019 – March 2020 and then from March 2020 onwards.

International human rights standards

- 1.6 The focus of this next section is to set out the relevant international standards that are relevant in the context of sexual and reproductive rights for women and girls.

Right to health

- 1.7 The right to the highest attainable standard of health is protected by a number of the core United Nations human rights treaties, such as ICESCR¹², CEDAW¹³ and UNCRC¹⁴. The Committee on Economic, Social and Cultural Rights ('CESCR') has confirmed, "*the right to sexual and reproductive health is an integral part of the right to health enshrined in article 12*" of ICESCR.¹⁵ This "*requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.*"¹⁶
- 1.8 The right to health is "*indispensable for the exercise of other human rights*"¹⁷ and there is a clear relationship between this right and others such as prohibition on torture, inhuman and degrading treatment, the right to private life and non-discrimination.¹⁸

Torture, inhuman and degrading treatment and the right to private and family life

- 1.9 Failure to provide appropriate healthcare to women can engage the right not to be subject to torture, inhuman or degrading treatment or punishment, protected by CAT¹⁹, ICCPR²⁰, UNCRC²¹ and the ECHR.²² As an absolute right, there is no permissible justification to a breach of this nature.
- 1.10 Private and family life is also protected under Article 8 ECHR and Article 17 ICCPR. The European Court of Human Rights ('ECtHR') has also ruled that

¹² Article 12, ICESCR.

¹³ Article 12, CEDAW.

¹⁴ Article 24, UNCRC.

¹⁵ CESCR, General comment No. 22 (the right to sexual and reproductive health) (2 May 2016) E/C.12/GC/22, para 1.

¹⁶ Ibid, para 21.

¹⁷ Ibid, para 1.

¹⁸ Ibid, para 3.

¹⁹ Articles 2, 16, CAT.

²⁰ Article 7, ICCPR.

²¹ Article 37a, UNCRC.

²² Article 3, ECHR.

where the treatment does not reach the severity of Article 3 ECHR it may “*nonetheless breach Article 8 in its private-life aspect where there are sufficiently adverse effects on physical and moral integrity.*”²³

- 1.11 The UN Human Rights Committee has recognised the failure to provide termination of pregnancy as causing “*intense physical and mental suffering*” which amounted to a violation of Article 7 ICCPR.²⁴ The CAT Committee has noted that the denial of medical care to women who have had accessed termination of pregnancy services “*...could seriously jeopardize their physical and mental health and could constitute cruel and inhuman treatment.*”²⁵

Non-discrimination

- 1.12 The concept of non-discrimination is clear in all of the relevant core UN treaties: CEDAW, ICCPR,²⁶ UNCAT, UNCRPD²⁷ and UNCRC.²⁸ Article 14 ECHR guarantees equal treatment in the enjoyment of other rights in the Convention. The HRC confirms that “*non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.*”²⁹
- 1.13 In 2008, the Parliamentary Assembly of the Council of Europe noted that where States impose numerous restrictions on access to safe termination of pregnancy services, “*these restrictions have discriminatory effects, since women who are well informed and possess adequate financial means can often obtain legal and safe abortions more easily.*”³⁰
- 1.14 In 2016, the Human Rights Committee concluded, in the case of *Amanda Mellet v. Ireland*, “[l]aws criminalizing abortion violate the rights to non-discrimination and equal enjoyment of other rights on the grounds of sex and gender. The rights to equality and non-discrimination compel states to ensure that health services accommodate the fundamental biological differences between men and women in reproduction. Such laws are discriminatory also because they deny women moral agency that is closely related to their reproductive autonomy. There are no similar restrictions on health services that only men need.”³¹

²³ *Bensaid v. the United Kingdom*, Application no. 44599/98 (06 May 2001) para 46.

²⁴ UN Human Rights Committee, *AM v. Ireland*, Communication No. 2324/2013 (9 June 2016) CCPR/C/116/D/2324/2013, para 7.4.

²⁵ CAT, Concluding Observations on Paraguay, (14 December 2011) CAT/C/PRY/CO/4-6, para 22.

²⁶ Articles 2 and 24, ICCPR.

²⁷ Article 5, UNCRPD.

²⁸ Article 2, UNCRC.

²⁹ Human Rights Committee, General Comment No. 18: Non-discrimination (1989) para 1.

³⁰ Parliamentary Assembly of the Council of Europe, Access to Safe and Legal Abortion in Europe, Resolution 1607 (2008), para 2

³¹ UN Human Rights Committee, *AM v. Ireland*, Communication No. 2324/2013 (9 June 2016) CCPR/C/116/D/2324/2013, para 3.15.

2.0 Interim period – October 2019 – March 2020

- 2.1 The NIHRC understands that there may be no interim arrangements put in place between 22 October 2019 and 31 March 2020, when the new regulations are intended to come into force. The NIHRC has a number of concerns regarding the impact of the absence of interim arrangements during this time period.

Travel

- 2.2 The NIHRC understands that during the above time period, women and girls may still be required to travel to gain access to terminations, although the criminal prohibition will have dissipated. Although access to the GB pathway will remain, travel is not an option for all persons who may wish to access a termination of pregnancy.
- 2.3 The UK Supreme Court commented on the requirement to travel, with Lord Mance remarking that the NI law, “*merely outsources the issue, by imposing on the great majority of women within the categories in issue on this appeal the considerable stress and the cost of travelling abroad, away from their familiar home environment and local care, to undergo the humiliating “conveyor belt” experience*”.³² Lord Kerr also commented “*distress can only be increased and compounded by forcing the woman to seek termination of her pregnancy in a different country, away from her family and friends and without the support of her own doctor.*”³³ The impact of all of these factors collectively contributed to the Supreme Court’s obiter view³⁴ that the current law violates the right to private and family life of women and girls in NI under Article 8 ECHR.
- 2.4 By failing to put any interim measures in place, which would allow women and girls to access healthcare services in line with CEDAW recommendations in NI during this time, women and girls will still have to suffer the stress and humiliation of travelling to another jurisdiction.
- 2.5 As noted in the CEDAW Inquiry:

“Testimonies revealed that the stress of undergoing an abortion outside NI is compounded by logistical arrangements and the secrecy within which these must be made; ultimately impacting women’s mental health. Logistical arrangements include: determining a clinic that offers the correct procedure and availability within the necessary timeframe; procuring transportation tickets and hotel reservations, including any transfers; arranging care for any children

³² In the matter of an application by the Northern Ireland Human Rights Commission [2018] UKSC 27, para 126.

³³ In the matter of an application by the Northern Ireland Human Rights Commission [2018] UKSC 27, para 238.

³⁴ The NIHRC notes that the Supreme Court’s ruling in this matter was not binding. See paras 2 – 3 of the judgment.

*at home; requesting leave from work; and dealing with unforeseen complications, including an extended stay. For women and girls who do not possess a driver's licence or passport, securing photographic identification for travel within the tight timeline in which an abortion can be performed is a challenge.*³⁵

- 2.6 A continued requirement to travel would put women and girls, already in a vulnerable position and at a time of crisis, at continuing risk of human rights violations. The likelihood of individuals resorting to potentially unsafe practices remains while prosecutions under the criminal law have been removed and a healthcare process not yet been established. The NIHRC has continuously identified the numerous practical barriers for women needing to travel, including those noted above by the Committee.³⁶
- 2.7 Aside from having to travel contributing to a potential human rights violation, the NIHRC notes there will also be women who are unable to avail of the GB scheme, as they will not meet the means test required. The NIHRC is concerned that women and girls who fail to meet the means test will still be effectively denied access to a termination if they cannot afford to pay for access in GB themselves.
- 2.8 The NIHRC advises that it considers that the continued requirement for travel to access terminations in the interim period will likely give rise to human rights violations under both the ECHR and CEDAW.**
- 2.9 The NIHRC recommends that access to the GB pathway is effectively facilitated and made available to all women and girls who require access under the CEDAW recommendations, regardless of financial status. Details of the pathway should be provided through the Department of Health NI to all clinicians in NI.**
- 2.10 The NIHRC is aware that there may be women and girls who are unable to travel due to age, domestic violence or other considerations. Where women and girls, who require access in circumstances covered by the recommendations of the CEDAW report, present to their clinician and advise they are unable to travel, access to terminations should be made available in NI.**

Access to termination of pregnancy medication

³⁵ CEDAW Committee, Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1, 23 February 2018, para 27.

³⁶ See NIHRC, Supplementary Information Paper to the Women and Equalities Committee Inquiry into Abortion Law in Northern Ireland (Jan 2019) para 12.

- 2.11 The NIHRC notes that women and girls accessing termination of pregnancy medication via the internet has already led to prosecutions in NI.³⁷
- 2.12 In light of the gap between 22 October 2019 and 31 March 2020, the fact that all women and girls may not be eligible for financial aid to access terminations in GB and the continued requirement to travel, the NIHRC further notes the possibility that there may still be women and girls who will seek to access terminations via online or postal medication services.
- 2.13 The NIHRC recommends that immediate, specific and circumscribed guidance be provided by the Department of Health NI to GPs and other medical professionals in NI, advising that there is no longer a duty to report women and girls who present in this manner to the PSNI or other authorities.**
- 2.14 The NIHRC further recommends that a statement is issued to members of the public advising that they will be able to present to GPs or other medical facilities without fear of prosecution if they have taken termination medication not prescribed by a local doctor.**

Criminal law protections for women and girls

- 2.15 The law criminalising women and girls who access terminations of pregnancy will fall away in law on 22 October 2019.
- 2.16 The NIHRC notes that Article 39 of the Istanbul Convention³⁸ requires that States take necessary legislative measures to ensure that performing an abortion on a woman without her prior and informed consent is criminalised and further, that the aiding, abetting or attempting³⁹ of forced termination is also criminalised by legislative or other measures.
- 2.17 The NIHRC notes the existing measures under the criminal law to deal with crimes such as physical harm to women and girls. However, the NIHRC is aware that there is currently a gap in legislation relating to coercive control or psychological forms of violence against women and girls. The NIHRC is aware that provision is made for protection of women and girls in these circumstances in the Domestic Abuse Bill currently before Westminster.
- 2.18 The NIHRC recommends that the Domestic Abuse Bill and relevant criminal protections are expedited to ensure women and girls suffering from psychological abuse or coercive control situations receive adequate protection and redress from the criminal law.**

³⁷ Belfast Telegraph, Challenge over prosecution of mother who obtained abortion pills to be heard, 6 November 2018

³⁸ Signed by the UK in 2012. The UK has not yet ratified the Istanbul Convention however the NIHRC understands it is committed to doing so – see Ratification of the Council of Europe Convention on Combating Violence Against Women and Domestic Violence (Istanbul Convention) – 2018 Report on Progress :Written statement - HCWS1048

³⁹ Istanbul Convention, Council of Europe Convention on preventing and combating violence against women and domestic violence, 11.V.2011, No. 210, Article 41

3.0 Termination of Pregnancy in NI post March 2020

CEDAW Inquiry Report Recommendations: legal framework

3.1 This section is structured around the recommendations provided by the CEDAW Committee in its Inquiry report on the law of termination of pregnancy in NI.

Repeal sections 58 and 59 of the Offences against the Person Act, 1861 so that no criminal charges can be brought against women and girls who undergo abortion or against qualified health care professionals and all others who provide and assist in the abortion;⁴⁰

3.2 The NIHRC notes that sections 9(2)-(3) NIEFA will repeal sections 58 and 59 of the Offences against the Person Act 1861 and create a moratorium on criminal investigations and proceedings under the law of Northern Ireland. Should this provision come into effect on 22 October 2019, the NIHRC is content that this recommendation will have been complied with for the purposes of the law of NI and welcomes this.⁴¹ **The Commission would welcome confirmation of the intention that women and girls who access terminations should not face investigations or prosecutions on other grounds.** The NIHRC notes that clinicians will still be subject to professional regulatory control and other criminal offences.

Adopt legislation to provide for expanded grounds to legalise abortion at least in the following cases:

Threat to the pregnant woman's physical or mental health without conditionality of "long-term or permanent" effects;

Rape and incest; and

Severe foetal impairment, including FFA, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term;⁴²

⁴⁰ CEDAW Committee, Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1, 23 February 2018, para 85(a).

⁴¹ The NIHRC notes that the CEDAW Committee has recommended decriminalisation of termination of pregnancy to all State parties and that it is the United Kingdom as a whole that is the relevant signatory for the purposes of the Convention – see CEDAW Committee, Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1, 23 February 2018, para 58.

⁴² CEDAW Committee, Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1, 23 February 2018, para 85(b).

- 3.3 The NIHRC recognises that s.9(4) will require legislation to provide for the three circumstances set out by the CEDAW Committee (above).

Threat to physical/mental health:

- 3.4 Access to termination of pregnancy on the grounds of threat to a woman's physical or mental health was previously governed by the common law Bourne Test.⁴³ Given that this was established by the Courts and included the conditionality of 'long-term or permanent', a new test will need to be developed in order to provide access on these grounds.
- 3.5 Given that access is a healthcare decision, and should be made between a woman or girl and her clinicians, it is appropriate that the medical profession are involved in the development of any such test. While it may be appropriate to create access on a statutory footing, detailed guidance will need to follow, in order that women have certainty around the scope of access and clinicians are supported in their decision-making role. Further consultation with clinicians, for example through the Royal Colleges, will be necessary to develop adequate guidance. The guidance should recognise that the test is based on clinical judgment with due regard for the woman's views and circumstances.

Rape and incest:

Eligibility

- 3.6 The UK Supreme Court has identified that failure to provide access to termination, in situations of rape and incest, was in breach of Article 8 ECHR.⁴⁴
- 3.7 The discussions in the NIHRC's case have brought to the fore difficulties with this terminology. The DOJ has also recognised the difficulties inherent in this area, in particular the narrow scope of 'rape' and that 'incest' is not a term currently used in law.⁴⁵
- 3.8 Indeed, the UKSC considered, in the particular context of JR76, about the form of sexual crime in respect of a minor under the age of 16. Lady Hale

⁴³ R v. Bourne [1939] KB 687, at 694.

⁴⁴ In the matter of an application by the Northern Ireland Human Rights Commission [2018] UKSC 27, para 2.

⁴⁵ DOJ, The Criminal Law on Abortion, Lethal Foetal Abnormality and Sexual Crime: A Consultation on Amending the Law (2014) paras 7.1-7.2.

notes, “it is conclusively presumed in the law of Northern Ireland that children under 16 are incapable of giving consent to sexual touching, including penetration of the vagina by a penis”.⁴⁶

- 3.9 The Department of Justice should ensure that the legislation is clear about the relevant sexual offences that are covered under this ground, including those offences that are not legally defined as ‘rape’ under current criminal legislation. Otherwise this could create a hierarchy of sexual offences and lead to some, in particular minors, not being able to access the same services.

Process

- 3.10 A process will have to be established in order for women and girls to be able to access services under these grounds. However, the NIHRC recognises that a procedure to deal with this scenario is likely to be difficult and potentially controversial.
- 3.11 Some states deal with the matter by providing open access in early pregnancy, for example, Ireland up to 12 weeks.⁴⁷ Such a system will circumvent the need to create a specific process or exemption for victims of sexual crimes. While the international human rights standards do not require full open access to termination of pregnancy; however, access must be provided in respect of sexual crime. Whilst human rights standards identify the minimum level of protection, the State is entitled to institute progressive human rights measures where it feels appropriate.
- 3.12 Equally, other approaches can be found in jurisdictions across Europe. There are 25 Member States, which specifically legislate for termination in cases of sexual crime.⁴⁸ The majority of these specific provisions express temporal limitations, ranging from ten to 28 weeks. Six of these countries provide extensions to the open access provisions for victims of sexual crimes.⁴⁹
- 3.13 The procedures for accessing a termination on the basis of sexual crime also differ across Europe. In some states, the decision is made by a single

⁴⁶ In the matter of an application by the Northern Ireland Human Rights Commission [2018] UKSC 27, para 25.

⁴⁷ Section 12, Health (Regulation of Termination of Pregnancy) Act 2018.

⁴⁸ Albania; Austria; Bosnia and Herzegovina; Croatia; Cyprus; Denmark; Finland; Germany; Georgia; Greece; Hungary; Iceland; Latvia; Macedonia; Moldova; Monaco; Montenegro; Norway; Poland; Portugal; Russia; Serbia; Slovakia; Turkey; Ukraine.

⁴⁹ Croatia; Denmark; Macedonia; Montenegro; Norway; Serbia; Slovakia.

doctor⁵⁰, while others require the authorisation of a Commission or committee of specialists⁵¹, often comprised of physicians, lawyers and social workers.

- 3.14 In other states, there is involvement of the criminal justice process, whereby certification by a police authority⁵² is required or where the circumstances of the crime are approved by police inquiry⁵³, evidence⁵⁴ or a prosecutor.⁵⁵
- 3.15 The Secretary of State should exercise caution in the design of this process, as replacing a criminal justice framework with another justice process, would appear contrary to CEDAW's approach to termination of pregnancy as a reproductive healthcare issue. The NIHRC notes that any excessively complicated process put in place will increase the requirements on the State to provide relevant support and representation to ensure women and girls are receiving access to terminations.
- 3.16 Special consideration for minors will require a child-centred approach that is in the best interests of the child, and compatible with the UNCRC. The Committee on the Rights of the Child has, in general comment 14, provided detailed guidance on how 'best interests' is to be interpreted and implemented.⁵⁶ The Secretary of State should therefore be aware that any process designed to facilitate access to terminations in cases of sexual crimes will be engaging with child victims of assault.

Time limits

- 3.17 The gestational limits applied to a specific process for sexual crime, or indeed more open access, would likely need to be set down in the legislation. There is no guidance in the human rights commentary regarding termination on this aspect of healthcare provision. Therefore, it would be required to develop any gestational limits, in conjunction with the appropriate clinicians and officials from the Department of Health.
- 3.18 Following general human rights principles, the provision of time limits in legislation should pursue a legitimate aim and be proportionate to that

⁵⁰ Germany.

⁵¹ Albania; Bosnia and Herzegovina; Croatia; Macedonia; Serbia.

⁵² Cyprus; Latvia.

⁵³ Finland.

⁵⁴ Portugal.

⁵⁵ Poland.

⁵⁶ CRC, General Comment 14 on the right of the child to have his or her best interests taken as a primary consideration (29 May 2013) CRC/C/GC/14.

aim. In short, there should be a justification as to why certain time limits were chosen as appropriate.

Other issues

- 3.19 An additional difficulty arises in NI in respect of sexual crimes. The Criminal Law Act (Northern Ireland) 1967 creates a duty, under section 5, to report a relevant offence. The penalty under this section is imprisonment for up to two years.
- 3.20 The Attorney General for NI has produced human rights guidance for the Public Prosecution Service NI on Section 5 in the context of disclosures of rape made in the claims for social security.⁵⁷ There is no specific guidance of this nature in respect of access to termination, although the Women and Equalities Committee has recommended that the Attorney General issue human rights guidance to the effect that *“it will rarely be in the public interest to prosecute survivors of rape and incest, and professionals treating them, who have not reported the offence to the police”*.⁵⁸
- 3.21 The current Department of Health guidance for healthcare professionals, states that, *“health and social care professionals will need to balance the interests of their patient against the public interest in reporting certain information to the police.”*⁵⁹
- 3.22 The Department will need to consider how the existence of the duty to report will impact upon women accessing healthcare where a crime has been committed. Further clarity is required in order for women to be confident that they will not be reported to the police or prosecuted in situations where they have chosen not to engage with the criminal justice system.
- 3.23 The Commission recommends that the Department of Health should issue revised guidance addressing how clinicians respond to this situation, as the present guidance does not provide any support for them in their decision making or guidance on how to balance competing interests. The guidance should leave appropriate scope for clinicians to exercise their judgment in**

⁵⁷ AGNI, Human Rights Guidance for the Public Prosecution Service: The Application of Section 5 of the Criminal Law Act (NI) 1976 to rape victims and those to whom they make disclosure in connection with a claim for social security, child tax credit or anonymous registration on the electoral roll (20 April 2018).

⁵⁸ Women and Equalities Committee, Abortion Law in Northern Ireland (April 2019), para 128.

⁵⁹ DH, Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland (March 2016) para 6.4.

difficult situations such as these.

3.24 The NIHRC considers that it is essential that victims of sexual crime have confidence in any procedure put in place to allow them to access terminations. The NIHRC advises that any process must avoid re-traumatising victims of sexual crime, including children, and must provide the necessary support, counselling and treatment they require. Victims engaging with any process should be provided with advocates or directed to appropriate support mechanisms to assist them as they do so.

Severe foetal impairment, including fatal foetal abnormality

Eligibility

- 3.25 The Commission recognises that the terms used by the human rights treaty bodies are not necessarily medical terms, and therefore appropriate definitions cannot be derived from this body of jurisprudence. In order to identify the nature of conditions that may fall within, or outside, of these terms, full consultation with clinicians' representative bodies, such as the Royal Colleges, will be necessary.
- 3.26 There are 31 Member States, which legislate for some form of foetal abnormality⁶⁰ and a number of others provide access implicitly under other grounds such as risk to the woman's health.⁶¹ The provisions legalising terminations on grounds of foetal abnormality differ in three main respects: (i) the language used, (ii) the process of attestation, and (iii) the gestational time limits imposed.
- 3.27 Some states provide separate provisions dealing with 'fatal' foetal impairments and 'serious' foetal impairments.⁶² However, the majority of States encompass both forms of impairment under one provision, prescribing 'serious' or 'severe', implicitly covering fatal foetal abnormalities as well.
- 3.28 The language used to describe impairments includes 'incurable malformation of the foetus', 'incurable problem with the development of

⁶⁰ Albania; Austria; Belgium; Bosnia and Herzegovina; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Greece; Hungary; Iceland; Ireland; Italy; Lithuania; Luxembourg; Macedonia; Moldova; Monaco; Montenegro; Norway; Poland; Portugal; Serbia; Slovakia; Slovenia; Spain; United Kingdom (except Northern Ireland).

⁶¹ For example, Germany, Latvia, Netherlands, Sweden, Switzerland.

⁶² Albania, Croatia; Czech Republic; Hungary; Moldova; Portugal; Slovakia; Spain.

the foetus', 'serious or incurable disease or malformation', 'serious physical or mental disabilities', 'serious foetal defects' or 'severe abnormality'. To the NIHRC's understanding, none of the legal instruments specifies which forms of conditions would fall within the scope of the definition; this is left to clinical judgment.

- 3.29 It is clear from considering the frameworks of Great Britain and Ireland, that guidance produced by the Royal Colleges gives direct and detailed information for clinicians about the operation of the law, and the medical decisions that are necessary.⁶³ Indeed, the Irish guidance does provide an indicative list of conditions that may fall within scope of fatal foetal abnormality/life limiting condition.⁶⁴
- 3.30 The CEDAW Committee has criticised the existing guidance in NI, the UKSC has also recognised the 'chilling-effect' on clinicians.⁶⁵ Therefore, the Department will have to fully consult with clinicians in order to develop sufficiently clear guidance that will enable medical professionals to conduct their professional duties and exercise their clinical judgment effectively.

Process

- 3.31 In terms of designing a process by which women and girls can access termination on medical grounds, this is likely to be developed by way of guidance. Again, the process differs across Europe and it will be for the Department to develop in line with representative bodies of clinicians.
- 3.32 In terms of the NIHRC's concerns in this area, any process for accessing a termination must ensure the autonomy of the woman. This was specifically highlighted by the UKSC, as the present approach "*fails to attach any weight whatsoever to personal autonomy and the freedom to control one's own life: values which underpin article 8 of the Convention*".⁶⁶
- 3.33 In a recent joint statement between the CEDAW and CRPD Committees, it is noted that, "*all health services [...] be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed*

⁶³ Royal College of Obstetricians and Gynaecologists, *The Care of Women Requesting Induced Abortion: Evidence-based Clinical Number 7* (Nov 2011); Institute of Obstetricians and Gynaecologists, Royal College of Physicians of Ireland, *Interim Clinical Guidance: Pathway for Management of Fatal Fetal Abnormalities and/or Life-limiting Conditions Diagnosed during Pregnancy* (Jan 2019).

⁶⁴ Institute of Obstetricians and Gynaecologists, Royal College of Physicians of Ireland, *Interim Clinical Guidance: Pathway for Management of Fatal Fetal Abnormalities and/or Life-limiting Conditions Diagnosed during Pregnancy* (Jan 2019), p.13.

⁶⁵ In the matter of an application by the Northern Ireland Human Rights Commission [2018] UKSC 27, para 326.

⁶⁶ In the matter of an application by the Northern Ireland Human Rights Commission [2018] UKSC 27, para 125.

consent and choice.”⁶⁷ Further, that a “human rights-based approach to sexual and reproductive health acknowledges that women’s decisions on their own bodies are personal and private, and places the autonomy of the woman at the center of policy and law-making related to sexual and reproductive health services, including abortion care”.⁶⁸

- 3.34 The Committee on Economic, Social and Cultural Rights (CESCR Committee) highlights that comprehensive sexual and reproductive healthcare contains the four interrelated and essential elements of availability, accessibility, acceptability and quality.⁶⁹ Under accessibility, ‘information accessibility’ includes, *“the right to seek, receive and disseminate information and ideas concerning sexual and reproductive health issues generally, and also for individuals to receive specific information on their particular health status. All individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health, including maternal health, contraceptives, family planning, sexually transmitted infections, HIV prevention, safe abortion and post-abortion care, infertility and fertility options, and reproductive cancer.”⁷⁰*
- 3.35 Such information must be provided in a manner consistent with the needs of the individual and *“information accessibility should not impair the right to have personal health data and information treated with privacy and confidentiality.”⁷¹* The CESCR Committee further explains, *“States must refrain from censoring, withholding, misrepresenting or criminalizing the provision of information on sexual and reproductive health, both to the public and to individuals. Such restrictions impede access to information and services, and can fuel stigma and discrimination.”⁷²*
- 3.36 Equally, adequate support, counselling and any other required assistance should be made available to women or girls who choose to continue with the pregnancy.

Time limits

- 3.37 The gestational limits also vary significantly across Member States. The majority of States, which expressly provide for termination of pregnancy in

⁶⁷ Joint statement by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women, Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities (29 August 2018), p.1.

⁶⁸ Joint statement by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women, Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities (29 August 2018), p.1.

⁶⁹ CESCR, General comment no.22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (2 May 2016) E/C.12/GC/22, para 11.

⁷⁰ CESCR, General comment no.22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (2 May 2016) E/C.12/GC/22, para 18.

⁷¹ CESCR, General comment no.22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (2 May 2016) E/C.12/GC/22, para 19.

⁷² CESCR, General comment no.22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (2 May 2016) E/C.12/GC/22, para 41.

situations of serious or fatal foetal abnormality, do not specify a gestational time limit in law.⁷³ Where gestational time limits are specified in law, for a serious foetal abnormality, this can range from 20 to 24 weeks⁷⁴; with Norway and Poland permitting up to the point of viability. For fatal foetal abnormalities, where those are set down in law⁷⁵, gestational limits vary up to a maximum of 22 weeks.⁷⁶

3.38 The gestational limits applied to a specific category of serious malformation or fatal foetal abnormality, would likely need to be set down in the legislation. There is no guidance in the human rights commentary regarding termination on this aspect of healthcare provision. Therefore, it would be required to develop any gestational limits, in conjunction with the appropriate representative clinical bodies and officials from the Department of Health.

3.39 The NIHRC further notes that there are differences between NI and GB as to the provision of reproductive healthcare and treatment capable of diagnosing serious malformation of the foetus, including fatal foetal abnormalities.

3.40 In line with women's right to health,⁷⁷ the NIHRC recommends that women and girls in NI are provided with the best available reproductive healthcare to ensure that medical issues are identified as early as possible whatever decision is taken by the woman herself.

Other issues

3.41 The NIHRC has recognised that the UN Treaty Bodies have taken slightly different approaches to the issue of access to termination in NI. The Committee on the Rights of Persons with Disabilities, in its first concluding observations on the UK, recommended that "*the State party amend its abortion law accordingly. Women's rights to reproductive and sexual autonomy should be respected without legalizing selective abortion on the ground of fetal deficiency.*"⁷⁸

⁷³ Austria; Belgium; Bosnia and Herzegovina; Bulgaria; Croatia; Czech Republic; Cyprus; Denmark; France; Iceland; Italy; Lithuania; Luxembourg; Macedonia; Moldova; Monaco, Serbia; Slovakia.

⁷⁴ Bulgaria; Estonia 21 weeks; Finland 24 weeks; Greece 24 weeks; Hungary 20 weeks; Portugal 24 weeks; Serbia 20 weeks; Spain 22 weeks; UK 24 weeks.

⁷⁵ Where fatal foetal abnormalities are not provided for in law, there are countries, such as the rest of the UK, which legislate up until 24 weeks – this allows for diagnosis and appropriate treatment to be provided.

⁷⁶ Georgia; Lithuania; Moldova; Sweden.

⁷⁷ Article 12 CEDAW, Article 12 ICESCR

⁷⁸ CRPD, Concluding Observations on the UK (29 August 2017) CRPD/C/GBR/CO/1, para 13.

- 3.42 However, unlike the other treaty bodies, the CRPD Committee did not focus on the specific law of NI, raising its concerns generally about the relevant UK legislation.
- 3.43 Since that time, the apparent tension between the views of the CRPD Committee and CEDAW, has been significantly resolved through the publication of a joint statement of the two Committees on this issue. It states that, *"In order to respect gender equality and disability rights, in accordance with the CEDAW and CRPD Conventions, States parties should decriminalize abortion in all circumstances and legalize it in a manner that fully respects the autonomy of women, including women with disabilities. In all efforts to implement their obligations regarding sexual and reproductive health and rights, including access to safe and legal abortion, the Committees call upon States parties to take a human rights based approach that safeguards the reproductive choice and autonomy of all women, including women with disabilities."*⁷⁹

Staff objection to performing terminations

- 3.44 The NIHR is aware that there will be occasions where staff have an objection to carrying out terminations on the basis of a religious or moral belief.
- 3.45 The 1967 Act in England, Wales and Scotland makes provision for staff to refuse to participate in terminations where they have a conscientious objection.⁸⁰ The Act also clarifies that the conscientious objection exemption does not *"affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman."*⁸¹
- 3.46 In 2014, the Supreme Court⁸² considered the exemption under the Act in the context of two midwives who objected to any involvement in termination of pregnancies, including undertaking administrative duties.⁸³ The Court briefly considered Article 9 ECHR⁸⁴ but, noting that the right is

⁷⁹ Joint statement by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women, Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities (29 August 2018), p.2.

⁸⁰ Section 4 Abortion Act 1967

⁸¹ Section 4(2) Abortion Act 1967

⁸² Greater Glasgow Health Board (Appellant) v Doogan and another (Respondents) (Scotland) [2014] UKSC 68

⁸³ Ibid, paras 12 and 19.

⁸⁴ The right to freedom of thought, conscience and religion – paras 23 and 24.

qualified and that any decision would be context specific, opted to consider the exemption in more practical terms. The Court therefore considered the list of duties required to be carried out by the midwives in the context of terminations and ruled which duties were covered by the exemption clause and those that were not.⁸⁵ The Court did not make a finding under the ECHR but noted the following:

“Whatever the outcome of the objectors’ stance, it is a feature of conscience clauses generally within the health care profession that the conscientious objector be under an obligation to refer the case to a professional who does not share that objection. This is a necessary corollary of the professional’s duty of care towards the patient. Once she has assumed care of the patient, she needs a good reason for failing to provide that care. But when conscientious objection is the reason, another health care professional should be found who does not share the objection.”⁸⁶

3.47 Should the relevant legislation in NI follow the conscience objection exemption clause in the 1967 Act, then the above judgment is instructive in noting which acts will likely be considered to fall under that clause and which will not.

3.48 As noted by the Supreme Court, an employee refusing to carry out duties in relation to termination of pregnancy due to religious reasons will likely engage their rights under Article 9 ECHR.⁸⁷ Article 9 ECHR is a qualified right which means it can be restricted where prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. In previous cases⁸⁸ regarding an employee’s objection to performing duties, the ECtHR has noted that States have a wide margin of appreciation when considering how to balance competing rights.

3.49 The NIHRC recommends that consideration be given to a conscientious objection clause when enacting legislation for terminations in NI. The NIHRC advises that any conscientious objection clause should not have the effect of denying or unduly

⁸⁵ Ibid, para 39.

⁸⁶ Ibid, para 40.

⁸⁷ Ibid, para 39.

⁸⁸ Eweida and Others v. the United Kingdom, Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10, para 106.

impairing access to terminations for women and girls. Where this instance arises, this would lead to a violation under the ECHR and CEDAW.

3.50 The NIHRC further recommends that the Department of Health NI and regulatory bodies issue guidance to their members as to what tasks will be considered to fall under any conscientious exemption clause and those which will not. The guidance and legislation should make clear that the clause does not affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman or girl.

Ending criminal prosecutions and investigations

Introduce, as an interim measure, a moratorium on the application of criminal laws concerning abortion, and cease all related arrests, investigations and criminal prosecutions, including of women seeking post-abortion care and healthcare professionals;⁸⁹

3.51 The NIHRC notes section 9(2) NIEFA introduces a moratorium on criminal investigations and proceedings under sections 58 and 59 of the Offences against the Person Act 1861. The NIHRC notes that this section will apply irrespective of the date in which an incident falling under OAPA. It is not clear from the text of s.9(2) if arrests will be covered by the provision. The Secretary of State may wish to clarify this point to ensure that the extent of the provision is clear. If this provision comes into effect on 22 October, and on the condition that arrests are also covered, the NIHRC is content that this recommendation will have been complied with.

CEDAW Inquiry Report Additional Recommendations

3.52 The recommendations of the CEDAW Report covered a number of other related issues, such as sexual and reproductive health rights and service provision in NI. As the Act requires full implementation of the CEDAW Report recommendations, these related issues must be also be addressed in any action taken by the Secretary of State.

⁸⁹ CEDAW Committee, Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1, 23 February 2018, para 85(c).

Adopt evidence-based protocols for healthcare professionals on providing legal abortions particularly on the grounds of physical and mental health; and ensure continuous training on these protocols;⁹⁰

Establish a mechanism to advance women's rights, including through monitoring authorities' compliance with international standards concerning access to sexual and reproductive health including access to safe abortions; and ensure enhanced coordination between this mechanism with the Department of Health, Social Services and Public Safety (DHSSPS) and the Northern Ireland Human Rights Commission;⁹¹

Strengthen existing data collection and sharing systems between the DHSSPS [now DOH] and the PSNI to address the phenomenon of self-induced abortions;⁹²

Provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion;⁹³

Ensure accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral and emergency, long term or permanent and adopt a protocol to facilitate access at pharmacies, clinics and hospitals;⁹⁴

Provide women with access to high quality abortion and post-abortion care in all public health facilities, and adopt guidance on doctor-patient confidentiality in this area;⁹⁵

3.53 In line with the right to health in the family planning context under CEDAW⁹⁶, the NIHRC recommends that the above recommendations are fully taken forward. The NIHRC advises that the government set out what actions they are taking to meet these recommendations and provide an action plan with a timeframe for completion.

⁹⁰ Ibid, para 85(d).

⁹¹ Ibid, para 85(e).

⁹² Ibid, para 85(f).

⁹³ Ibid, para 86(a).

⁹⁴ Ibid, para 86(b).

⁹⁵ Ibid, para 86(c).

⁹⁶ Article 12 CEDAW.

Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory curriculum component for adolescents, covering early pregnancy prevention and access to abortion, and monitor its implementation;⁹⁷

- 3.54 CEDAW has commented on the provision of sexual education and highlighted that the State Party's *"lack of oversight on schools' discretion to deliver the RSE curriculum to ensure that it is evidence-based and includes contraceptive use, safe abortion and post-abortion care, violates article 10(h) of the Convention."*⁹⁸
- 3.55 Subsequent to its Inquiry report, the CEDAW Committee has recommended that the UK Government and NI Executive *"take measures to introduce mandatory age-appropriate education on sexual and reproductive rights in school curricula, including issues such as gender relations and responsible sexual behaviour, throughout the State party;..[and] promote human rights education in schools which includes a focus on the empowerment of girls and the [UN CEDAW] Convention"*.⁹⁹
- 3.56 The NIHRC has written the Department of Education in relation to this recommendation to discuss how it will be progressed and to ensure that it is provided to all girls in education in NI.

3.57 The Commission recommends effective steps are taken to ensure mandatory age-appropriate, comprehensive and scientifically accurate sexuality and gender identity education that promotes healthy relationships, sexual and reproductive rights, and responsible sexual behaviour is provided in all NI schools and other education settings. The Commission further recommends that effective steps are taken to promote human rights education in NI schools, which includes a focus on the empowerment of girls and the UN CEDAW.

3.58 The Commission recommends that specialised services on

⁹⁷ CEDAW Committee, Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1, 23 February 2018, para 86(d).

⁹⁸ CEDAW, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (6 March 2018) CEDAW/C/OP.8/GBR/1, para 76.

⁹⁹ CEDAW, Concluding observations on the eight periodic report of United Kingdom of Great Britain and Northern Ireland (8 March 2019) CEDAW/C/GBR/CO/8, para 41.

relationships, sexuality and gender identity are sufficiently resourced to satisfy need.

3.59 An action plan with a time frame for completion of the above steps should also be developed and published.

Intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception;¹⁰⁰

Adopt a strategy to combat gender-based stereotypes regarding women's primary role as mothers;¹⁰¹

3.60 The NIHRC has previously recommended that all government departments take effective steps to address stereotyping and objectification of NI women. This includes engaging with the media to eliminate stereotypical imaging and the objectification of women in the media, and take further measures to eliminate negative gender stereotypes and to promote positive and diverse gender portrayals, including in schools and through public campaigns.

3.61 The NIHRC recommends that this anti-stereotyping work include gender-based stereotypes regarding women's primary role as mothers in line with the Inquiry's recommendations. An action plan with a time frame for completion of the above steps should also be developed.

Protect women from harassment by anti-abortion protestors by investigating complaints, prosecuting and punishing perpetrators.¹⁰²

3.62 The NIHRC is aware that intimidation has occurred outside the NI Family Planning clinic and has raised this directly with the CEDAW Committee.¹⁰³

¹⁰⁰ CEDAW Committee, Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1, 23 February 2018, para 86(e).

¹⁰¹ Ibid, para 86(f).

¹⁰² Ibid, para 86(g).

¹⁰³ NIHRC, Submission to the United Nations Committee on the Elimination of Discrimination against Women: Parallel Report to the Eighth Periodic Report Submitted by the United Kingdom of Great Britain and Northern Ireland (Jan 2019, para 49.

- 3.63 The NIHRC notes the use of Public Spaces Protection Orders (PSPOs) by some local councils in England and Wales to create 'safe zones' outside of some clinics and to prohibit protesting, harassment, intimidation or photographing/recording staff members or service users. The use of such zones was recently considered by the Court of Appeal in England and Wales in relation to an order imposed in Ealing¹⁰⁴. The Court of Appeal upheld the earlier decision of the High Court, which found that although the rights of the protestors under Articles 9, 10, 11 and 14 ECHR were engaged, the interference was justified as "necessary in a democratic society".¹⁰⁵ The PSOP in this case was therefore not a violation of the applicants' human rights. The Court of Appeal further noted that the Article 8 ECHR right of those women and girls seeking to utilise the services of the clinic were engaged by the actions of the protestors outside it.¹⁰⁶
- 3.64 The NIHRC understands that PSPOs are not available in NI but notes the above judgment of the Court of Appeal and the possibility for rights violations to occur where women and girls seeking to access termination services are not adequately protected from harassment and other intimidating behaviour outside clinics.
- 3.65 The NIHRC recommends that the Secretary of State reviews the existing law to ensure that it provides sufficient protection so NI women and girls can access family planning services without intimidation. Legislative provision should be made for buffer zones where this is not already possible under the existing law.**

¹⁰⁴ [Dulgheriu & Anor v The London Borough of Ealing \[2019\] EWCA Civ 1490 \(21 August 2019\)](#)

¹⁰⁵ [Dulgheriu & Anor v The London Borough Of Ealing. Neutral Citation Number: \[2018\] EWHC 1667, para 97](#)

¹⁰⁶ [Dulgheriu & Anor v The London Borough of Ealing \[2019\] EWCA Civ 1490 \(21 August 2019\), para 60.](#)

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