



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to UN CEDAW Committee's
Follow-up to Inquiry Concerning the UK of
Great Britain and NI Under Article 8 of the
Optional Protocol to the UN CEDAW**

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Summary of Recommendations

- 2.3 The Committee may wish to recommend that the State Party ensures public and professional awareness that undergoing, providing or assisting an abortion has been decriminalised in NI.**
- 2.4 The Committee may wish to recommend that the State Party takes additional steps to ensure information on abortion services in NI is accessible and communicated accurately, including by translators.**
- 2.42 The Committee may wish to recommend that the State Party ensures that sufficient, long-term, ring-fenced funding is available and fully utilised to maintain consistent abortion services in line with the Abortion (NI) Regulations in every Trust area in NI. Also, that the necessary funding for abortion services is an addition to the Department of Health's broader budget, to ensure existing healthcare services can be delivered in full.**
- 2.43 The Committee may wish to recommend that the State Party ensures abortion services in NI are fully accessible, including enabling referrals between Trust areas for all abortion services, facilitating access to services for complex cases within NI and implementing a locally-run regional central booking service.**
- 2.44 The Committee may wish to recommend that the State Party ensures telemedicine is introduced as an option for early medical abortions in NI under certain circumstances, as in other parts of the UK, and that a clear pathway to care and after care is in place for telemedicine abortions, including for individuals using unregistered sources.**

- 2.45 The Committee may wish to clarify how best to achieve a balance between eliminating discrimination against women and the rights of persons with disabilities in the context of abortions, particularly regarding severe fetal abnormality.**
- 2.46 The Committee may wish to recommend that the State Party ensures that occasions when a baby is born alive after a termination of pregnancy procedure is effectively monitored, with clear guidance for medical professionals and that the individuals involved are adequately supported.**
- 2.47 The Committee may wish to recommend that the State Party takes immediate steps to ensure individuals with a diagnosis of severe fetal abnormality or fatal fetal abnormality have access to appropriate services and are adequately supported.**
- 2.53 The Committee may wish to recommend that the State Party ensures that there is regional, abortion-specific, non-stereotyping guidance in NI and that all associated healthcare staff undertake related training that is informed by service users and periodically refreshed, particularly regarding conscientious objection.**
- 2.54 The Committee may wish to recommend that the State Party ensures that there are sufficient third-level education places and that there are specific pathways to enable medical professionals in NI to specialise in sexual health and abortion services.**
- 2.55 The Committee may wish to recommend that the State Party ensures that there is effective staff planning to ensure that sexual health and abortion services are consistently available across NI.**

- 2.59 The Committee may wish to recommend that the State Party ensures that sufficient long-term, ring-fenced funding is provided to the Regional Quality Improvement Authority, or an appropriate alternative, for the purposes of ensuring that abortion services in NI are consistently monitored and reviewed at regular intervals.**
- 2.61 The Committee may wish to provide the State Party with further guidance on how to strengthen data collection on abortion services in NI, including how such data should be disaggregated.**
- 2.62 The Committee may wish to recommend that the State Party ensures that representative organisations are effectively consulted on how data on abortion services in NI is gathered, reported and monitored.**
- 3.3 The Committee may wish to recommend that the State Party ensures that sufficient, long-term, ring-fenced funding is guaranteed for abortion-related counselling, including post-abortion counselling.**
- 3.4 The Committee may wish to recommend that the State Party ensures that private healthcare providers are closely monitored to ensure their aims and the services that they offer are transparent and accurately communicated, with particular consideration of minority groups with specific needs.**
- 3.6 The Committee may wish to recommend that the State Party ensures that consistent, accessible and effective contraception services and information are available across all Trust areas in NI, with particular consideration of rurality and utilising online pathways.**

- 3.12 The Committee may wish to clarify whether, in its view, the provision for exemptions from relationships and sexuality education within the Education (NI) (Amendment) Regulations 2023 is compatible with its recommendations.**
- 3.13 The Committee may wish to clarify its position on the provision of relationships and sexuality education to young people aged 16-19 years old.**
- 3.15 The Committee may wish to recommend that the State Party undertakes accessible regional public awareness raising campaigns regarding sexual and reproductive health rights and services in NI.**
- 3.16 The Committee may wish to recommend that the State Party ensures that a standardised, accessible approach is taken by public authorities regarding information on abortion services in NI, including online.**
- 3.17 The Committee may wish to recommend that the State Party ensures that individuals and representative organisations are involved in designing and implementing awareness raising initiatives.**
- 3.20 The Committee may wish to recommend that the State Party takes immediate steps to combat gender-based stereotypes regarding women's primary roles as mothers, as an effective and comprehensive Gender Equality Strategy is awaited.**
- 3.29 The Committee may wish to recommend that the State Party ensures that funding is available to establish a safe access zone in NI as necessary and that any additional costs involved are not prohibitive for voluntary sexual health clinics and any future private abortion clinic.**

3.30 The Committee may wish to recommend that the State Party takes immediate steps to ensure that private property cannot be utilised to circumvent safe access zones for the purposes of protesting reproductive healthcare services.

1.0 Introduction

- 1.1 The NIHRC is one of three A-status National Human Rights Institutions of the United Kingdom (UK). In accordance with the Paris Principles and pursuant to Section 69(1) of the Northern Ireland (NI) Act 1998, the NIHRC reviews the adequacy and effectiveness of measures undertaken by the United Kingdom Government and Northern Ireland Executive to promote and protect human rights, specifically within NI.
- 1.2 This evidence is submitted to the Working Group on Inquiries of the UN Committee on the Elimination of All Forms of Discrimination Against Women (the Committee) in response to its call for written observations in relation to the follow-up report on its inquiry regarding access to abortion services in NI.¹

2.0 Legal and Institutional Framework

Decriminalisation²

- 2.1 On 22 October 2019, undergoing, providing or assisting an abortion was decriminalised in all circumstances in NI.³ However, the recommended moratorium on criminalising abortions in NI was not introduced following publication of the Committee's report. Consequently, for 18 months individuals and healthcare professionals continued to fear prosecution for undergoing, providing or assisting abortions in NI.

¹ The majority of Commissioners support this submission, however one Commissioner does not support the evidence within and has dissented to its submission.

² The UN CEDAW Committee recommended that the "State Party urgently repeal sections 58 and 59 of the Offences against the Persons Act 1961 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". The UN CEDAW Committee also recommended that "the State Party urgently... 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". See CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee', 6 March 2018, at paras 85(a) and 85(c).

³ Section 9(2) of the NI (Executive Formations etc) Act 2019 states that "sections 58 and 59 of the Offences Against the Person Act 1981 (attempts to procure abortion) are repealed under the law of NI". Section 9(3) of the 2019 Act continues that "no investigations may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those sections under the law of NI (whenever committed)".

- 2.2 The NI Office purports that initial issues with decriminalisation have been resolved.⁴ However, civil society organisations have reported a lack of awareness and/or understanding of decriminalisation, including for some healthcare professionals, which is undermining access to abortion services.⁵ There are also reported instances of some translators refusing to work for abortion services or knowingly translating incorrectly.⁶
- 2.3 **The Committee may wish to recommend that the State Party ensures public and professional awareness that undergoing, providing or assisting an abortion has been decriminalised in NI.**
- 2.4 **The Committee may wish to recommend that the State Party takes additional steps to ensure information on abortion services in NI is accessible and communicated accurately, including by translators.**

Legalising Abortion in NI⁷

Initial legalisation of abortion in NI

- 2.5 Section 9(1) of the NI (Executive Formations etc) Act 2019 required that “the Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of NI”. Regulations aimed at delivering these commitments were to come into force by 31 March 2020.⁸

⁴ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

⁵ Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

⁶ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

⁷ The UN CEDAW Committee recommended that “the State Party urgently... adopt legislation to provide for expanded grounds to legalise abortion at least in the following cases: i) threat to the pregnant woman’s physical or mental health, without conditionality of ‘long-term or permanent’ effects; ii) rape and incest; iii) severe fetal impairment, including fatal fetal abnormality, 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.” The Committee also recommended that “the State Party... provide women with access to high-quality abortion and post-abortion care in all public health facilities”. See CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee’, 6 March 2018, at paras 85(b) and 85(c).

⁸ Sections 9(4), 9(5) and 9(6), NI (Executive Formations etc) Act 2021.

- 2.6 The NI Office issued interim guidance for healthcare professionals that applied between 22 October 2019 and 31 March 2020.⁹ The interim guidance confirmed that, during this period, while terminations were decriminalised, there would be no routine regional services available in NI. It also clarified that it was legal for healthcare professionals to direct women and girls in NI to termination services that are available elsewhere, primarily services available in England.¹⁰
- 2.7 On 31 March 2020, following a six-week public consultation,¹¹ the Abortion (NI) Regulations 2020 came into force. On 14 May 2020, the original regulations were revoked and replaced by the Abortion (NI) (No 2) Regulations 2020. This was for administrative reasons, with no substantive changes to the circumstances in which terminations can be performed in NI and the associated procedural requirements. Thus, the current legal framework is governed by the Abortion (NI) (No 2) Regulations 2020, but terminations in a range of circumstances have been legalised in NI since 31 March 2020.
- 2.8 The Abortion Regulations permit terminations to be performed in NI under any circumstances up to 11 weeks and six days¹² and where there is a risk to physical or mental health of the woman or girl up to 24 weeks.¹³ Terminations with no gestational limit are also legal in NI where there is an immediate necessity, a risk to life or grave permanent injury to the physical or mental health of a pregnant woman or girl, or in cases of severe fetal impairment or fatal fetal abnormality.¹⁴

⁹ NI Office, 'Report pursuant to section 3(5) of the Northern Ireland (Executive Formation etc) Act 2019', (NI Office, 2019) at 12.

¹⁰ NI Office, 'UK Government Guidance for Healthcare Professionals in Northern Ireland on abortion law and terminations of pregnancy in the period 22 October 2019 to 31 March 2020 in relation to the NI (Executive Formation etc) Act 2019' (October 2019).

¹¹ NI Office, 'A new legal framework for abortion services in Northern Ireland Implementation of the legal duty under section 9 of the Northern Ireland (Executive Formation etc) Act 2019: Government consultation' (NI Office, 2019); NI Human Rights Commission, 'Response to HM Government Consultation on a New Legal Framework for Abortion Services in NI', 19 December 2019.

¹² Regulation 3, Abortion (NI) (No 2) Regulations 2020.

¹³ Regulation 4, Abortion (NI) (No 2) Regulations 2020.

¹⁴ Regulations 5, 6 and 7, Abortion (NI) (No 2) Regulations 2020.

- 2.9 Certification from one healthcare professional is required for up to and including 11 weeks and six days.¹⁵ For ‘early medical abortions’ the first pill must be taken at the clinic, but it is permitted to take the second pill at home, if the pregnancy has not exceeded 10 weeks.¹⁶ From 12 weeks onwards, certification from two healthcare professionals is required based on the view that continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman, which is greater than if the pregnancy were terminated.¹⁷
- 2.10 Regulation 12 of the Abortion Regulations permits conscientious objection in the context of implementing these Regulations.¹⁸
- 2.11 Failure to comply with the requirements set out in the regulations is a criminal offence punishable with a fine up to £5,000.¹⁹
- 2.12 For the first two weeks of April 2020, the only abortion services available in NI were where it was necessary to preserve the life of the woman, or there is a risk of real and serious adverse effect on her physical or mental health, which is either long term or permanent.²⁰ In response to the lacuna, the British Pregnancy Advisory Service extended its ‘telemedicine option’ to NI. This option was quickly withdrawn following correspondence from the Department of Health.²¹ Telemedicine has been rolled out in the rest of the UK, but remains unavailable in NI.²² The Department of Health intends to consider the introduction of telemedicine

¹⁵ Regulation 3, Abortion (NI) (No 2) Regulations 2020.

¹⁶ Regulation 9, Abortion (NI) (No 2) Regulations 2020.

¹⁷ Regulations 4, 6 and 7, Abortion (NI) (No 2) Regulations 2020.

¹⁸ The Abortion (NI) (No 2) Regulations state that “a person is not under a duty to participate in any treatment authorised by these regulations to which the person has a conscientious objection”. This “applies whether the duty arises under contract or under any statutory or other legal requirement”. However, there is an exception and the “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 women” is unaffected by conscientious objection. See Regulations 12(1), 12(2) and 12(3), Abortion (NI) (No 2) Regulations 2020.

¹⁹ Regulation 11(3), Abortion (NI) (No 2) Regulations 2020.

²⁰ Meeting between NI Human Rights Commission and Informing Choices, 7 August 2020.

²¹ British Pregnancy Advisory Service, ‘Pills by Post - Remote Abortion Pill Treatment’. Available at <https://www.bpas.org/abortion-care/abortion-treatments/the-abortion-pill/remote-treatment/>; Meeting between NI Human Rights Commission and Informing Choices, 7 August 2020; Email correspondence from Department of Health to NI Human Rights Commission, 12 September 2023

²² Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

during phase two of its process for implementing abortion services in NI.²³ Phase two is expected to commence in 2025, at the earliest.²⁴ However, whether consideration of telemedicine is included is subject to Ministerial approval.²⁵ Many civil society organisations view telemedicine as an accessible and cost-effective form of healthcare.²⁶

2.13 In early April 2020, clinicians, managers within the Trusts in NI and others formed the NI Abortion and Contraception Taskforce to set up a service in line with the Abortion Regulations. Between mid-April and start of June 2020, Trusts in NI guided by the regulations gradually started providing certain services within their existing resources and without formal support from the Department of Health. While this approach was not appropriate or sustainable long-term, the Trusts in NI felt that the service was necessary, particularly given the restrictions on travel due to COVID-19, which significantly hindered individuals accessing services in other parts of the UK and Ireland.²⁷ However, it remained that individuals that did not satisfy the Trust's services criteria were still expected to travel to England or Ireland to access abortion services, with increased uncertainty and stress due to COVID-19 risks and restrictions.²⁸

2.14 Between start of June and early October 2020, termination services up to nine weeks and six days were introduced in all Trusts in NI, subject to available resources.²⁹ Two of the five Trusts were offering terminations up to 11 weeks and six days for patients that lived within their Trust area.³⁰ More information on how these services were established is available in the NIHRC's monitoring report.³¹

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

²⁷ Meetings between NI Human Rights Commission, Health and Social Care Trusts and Royal Colleges of Healthcare Professionals, August-October 2020.

²⁸ Ibid.

²⁹ Brendan Hughes, 'Central access point' launched for abortion services in NI', Irish News, 16 April 2020; Meeting between NI Human Rights Commission and Informing Choices NI, 7 August 2020.

³⁰ Meetings between NI Human Rights Commission, Health and Social Care Trusts and Royal Colleges of Healthcare Professionals, August-October 2020.

³¹ NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021).

- 2.15 From start of October 2020, termination services introduced by the Trusts experienced a roll back. For example, for a significant period, the Northern Trust was no longer offering any termination services due to lack of commissioning from the Department of Health and having to reassign resources to enable resumption of non-emergency healthcare services that had been suspended due to COVID-19. Intermittently throughout 2021 and 2022, other Trusts in NI experienced similar challenges and, consequently, suspended services for a period.³²
- 2.16 During periods where services were suspended, there was a disparity within NI. Individuals that were registered within the affected trust areas that required a termination for a non-medical reason were not able to access termination services in other trusts due to lack of resources.³³ Consequently, the individuals affected had to either travel outside NI or use unregulated telemedicine services to access a termination.³⁴
- 2.17 Similarly, during this period, Trusts in NI that were providing termination services were limiting these to individuals that were less than ten weeks pregnant.³⁵ Thus, individuals between ten weeks and 11 weeks and six days gestation, unless a termination was required for a medical reason, were not able to access termination services in NI in line with the Abortion Regulations. The individuals affected had to travel or use unregulated telemedicine services. An additional

³² Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021).

³³ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021).

³⁴ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021).

³⁵ Meetings between NI Human Rights Commission and Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

concern was that these restrictions fell when travel was restricted, costly and difficult to navigate due to COVID-19.

- 2.18 As the lack of commissioning of services persisted, the risk remained that all Trusts in NI would have to cease offering any termination services, which was contrary to the Abortion Regulations.
- 2.19 The NIHRC's monitoring report on reproductive healthcare provision in NI found that the Committee's recommendations have not been fully implemented in NI and highlighted two overarching issues.³⁶ First, the lack of commissioning and funding of abortion services.³⁷ Second, the lack of guidance on implementation of the Abortion (NI) Regulations 2020 and subsequent Abortion (NI) (No 2) Regulations 2020.³⁸

Legal challenges

- 2.20 In December 2020, the NIHRC initiated judicial review proceedings against the Secretary of State for NI, the NI Executive and the Department of Health in respect of the ongoing failure to commission and fund abortion services in NI, and the lack of guidance to Trusts in NI on the provision of services. The NIHRC argued that this breached the Secretary of State's obligations under the NI (Executive Formation etc) Act 2019 and Article 8 of the European Convention on Human Rights (ECHR). In 2021, the NI High Court ruled that the Secretary of State for NI was in breach of obligations under section 9 of the NI (Executive Formation etc) Act 2019, but did not make declarations against the NI Executive and Department of Health.³⁹
- 2.21 On 31 March 2021, the Abortion (NI) Regulations 2021 came into force. These Regulations enabled the Secretary of State for NI to direct the First Minister, deputy First Minister, a NI Minister, a NI Department, the Regional Health and Social

³⁶ NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021), at para 6.1.

³⁷ Ibid.

³⁸ Ibid.

³⁹ *Re NI Human Rights Commission's Application for Judicial Review* [2021] NIQB 91, at para 115.

Care Board, and the Regional Agency for Public Health and Social Well-being. This power could be used by the Secretary of State for NI when it is considered that there is a regression in implementing the Committee's inquiry recommendations.

2.22 On 22 July 2021, the then Secretary of State for NI, Brandon Lewis MP, utilised the Abortion (NI) Regulations 2021. He made a statement to the UK Parliament issuing a direction to the Department of Health, the Minister of Health, the Health and Social Care Board, and to the First and Deputy First Minister, to commission and make abortion services available in NI. This was to be done as soon as possible, and no later than 31 March 2022, to ensure immediate support for interim services of early medical abortion.⁴⁰ The direction also included "an immediate requirement for the Department of Health to continue to support the Central Access Point provided by Informing Choices NI who are key to providing Early Medical Abortion services".⁴¹

2.23 On 30 July 2021, Paul Givan MLA vowed to resist the UK Government's direction.⁴² Consequently, he introduced a bill at the NI Assembly to amend the Abortion (NI) (No 2) Regulations 2020, which aimed to remove the ground for an abortion in cases of severe fetal impairment. In October 2021, with a divided vote, the NI Assembly Committee of Health voted in favour of the proposed Bill.⁴³ However, the Committee of Health also called for the full implementation of commissioned services as set out in the Abortion (NI) (No 2) Regulations 2020 and noted its concern regarding women who are forced to travel to other parts of the UK to avail of healthcare services.⁴⁴ In December 2021, the principles of the Bill were rejected by a divided majority of 45 to 42 at the Committee Stage of the NI Assembly.⁴⁵ The Bill had not

⁴⁰ NI Office, 'Press Release: Secretary of State issues updated direction to NI's Department of Health to make abortion services available', 21 July 2021.

⁴¹ Ibid.

⁴² Enda McClafferty, 'NI abortion: Givan vows to resist commissioning order', BBC News, 29 July 2021.

⁴³ NI Assembly, 'Committee for Health Report on the Severe Fetal Impairment Abortion (Amendment) Bill', 19 November 2021.

⁴⁴ Ibid.

⁴⁵ NI Assembly, 'Official Report: Tuesday 14 December 2021' (NIA, 2021).

reached the final stage by the end of the NI Assembly's 2017-2022 mandate and did not continue.

- 2.24 In May 2022, the then Secretary of State for NI laid further regulations that removed the need for the Department of Health to seek Executive Committee approval to commission abortion services in NI. Thus, all political barriers to the Department of Health commissioning and funding abortion services in NI were removed.⁴⁶ The NIHRC welcomed this development, but was "concerned that there is no deadline specified for services to be made available".⁴⁷ In October 2022, the current Secretary of State for NI, Chris Heaton-Harris MP, announced that the UK Government would commission abortion services in NI.⁴⁸ It remained the responsibility of the Department of Health to administer the funding provided by the UK Government.⁴⁹
- 2.25 In December 2022, the current Secretary of State for NI wrote to the Department of Health instructing it to formally commission abortion services in NI.⁵⁰ The Department of Health confirmed that it was moving forward with commissioning abortion services in NI.⁵¹ The UK Government has not provided additional funding to enable abortion services to be commissioned in NI, instead the necessary funding has been ringfenced within the NI block grant.⁵² This arrangement is in place until March 2025.⁵³ There is a memorandum of understanding between the Department of Health and the NI Office that future funding is to be decided by the NI Executive,⁵⁴ but if needed the NI Office will ensure funding is available to provide consistent abortion services.⁵⁵ The Department of Health is confident that broader budget

⁴⁶ NI Office, 'Press Release: Secretary of State issues updated direction to NI's Department of Health to make abortion services available', 26 May 2022.

⁴⁷ NI Human Rights Commission, 'Press Release: NI Human Rights Commission's Chief Commissioner Responds to UK Government Abortion Regulations', 19 May 2022.

⁴⁸ Amy Cochrane, 'Secretary of State to commission abortion services in NI – three years after legalisation', Belfast Telegraph, 24 October 2022.

⁴⁹ Ibid.

⁵⁰ NI Office, 'Press Statement: Secretary of State for NI instructs the Department of Health to commission abortion services', 2 December 2022.

⁵¹ Department of Health, 'Press Statement: DoH Statement', 2 December 2022.

⁵² Ibid.

⁵³ Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

⁵⁴ Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

⁵⁵ Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

cuts will not affect abortion services in NI.⁵⁶ However, while acknowledging the importance of ensuring obligations regarding abortion services are fully implemented, the Department of Health is concerned that, given its broader budget is already pressurized, not receiving additional money to deliver these new services reduces its ability to effectively deliver other, equally important, health services.⁵⁷

2.26 Additionally, the Society for the Protection of Unborn Children Pro-Life Limited brought legal proceedings claiming that the Abortion (NI) Regulations 2021 and the Abortion Services Directions 2021 were unlawful. It argued that the 2021 Regulations provided the Secretary of State for NI with a greater power than he has under section 26 of the NI Act 1998. Also, that the Secretary of State for NI's powers are not exercisable when legislative and executive powers are being exercised by the NI Assembly. The NIHRC intervened in the case. In February 2022, the NI High Court ruled that the Secretary of State for NI had acted lawfully.⁵⁸ The Society for the Protection of Unborn Children Pro-Life Limited appealed. In May 2023, the NI Court of Appeal dismissed the appeal.⁵⁹

2.27 In its judgment the NI Court of Appeal specifically considered the Committee's findings on severe fetal impairment.⁶⁰ The NI Court of Appeal highlighted that:

...we consider that there is an inherent inconsistency in paragraph [62] of the [UN] CEDAW [Committee's report] and, thus, it is difficult at the moment to work out how the perpetuation of negative stereotypes towards persons with disabilities is encompassed if abortion on the ground of severe fetal impairment is made available to facilitate

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ *SPUC (Society for the Protection of Unborn Children) Pro-Life Ltd's Application* [2022] NIQB 9.

⁵⁹ *SPUC Pro-Life Limited Application for Judicial Review* [2023] NICA 35.

⁶⁰ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee', 6 March 2018, at para 62.

reproductive choice and autonomy in cases such as those of foetuses who have Down's Syndrome.⁶¹

2.28 The NI Court of Appeal continued that:

in the instant case... the focus is upon the vires of regulations and directions mandated by a primary Act of Parliament which require the Secretary of State to ensure compliance with the [UN] CEDAW [Committee's] recommendations. A choice was made to structure the law in that way in NI. It remains to be seen how feasible this is in practice as regards severe fetal impairment for the reasons we have highlighted...⁶²

2.29 The NI Court of Appeal queried, with a focus on the Committee, "whether the issue may be further clarified by the international bodies who deal with the elimination of discrimination against women and the rights of persons with disabilities".⁶³ For example, the England and Wales Court of Appeal in the *Crowter* case adopted a different approach to that in the *Society for the Protection of Unborn Children Pro-Life Limited* case. In *Crowter*, the England and Wales Court of Appeal interpreted that the Committee's "condemnation of the disability selective abortion is limited to cases where the disability in question falls short of severe fetal impairment".⁶⁴

Current situation

2.30 It is difficult to refer to the exact provision for abortion services in NI. The NIHRC's monitoring indicates that provision is subject to change and there is not consistent implementation of the Abortion (NI) Regulations.⁶⁵ Provision of abortion services in NI is fragile, often dependent on a

⁶¹ *SPUC Pro-Life Limited Application for Judicial Review* [2023] NICA 35, at para 86.

⁶² *Ibid*, at para 88.

⁶³ *Ibid*.

⁶⁴ This case was refused permission to appeal to the UK Supreme Court. See *R (On the Application of Crowter and Another) v Secretary of State for Health and Social Care* [2022] EWCA Civ 1559, at para 65; Available at: <https://www.supremecourt.uk/news/permission-to-appeal-march-2023.html>

⁶⁵ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021).

single practitioner.⁶⁶ There are also difficulties in accessing adequate and appropriate facilities to enable consistent abortion services within each Trust in NI.⁶⁷

2.31 In 2023, the Department of Health intended that all Trusts in NI would be offering medical and manual vacuum aspiration abortions for up to 11 weeks and 6 days gestation.⁶⁸ It intended that all non-complex surgical intervention up to 11 weeks and six days gestation, would be offered as a regional service by the Belfast Trust and South Eastern Trust.⁶⁹ It intended that non-complex abortions involving a severe fetal abnormality would be conducted by the Belfast Trust.⁷⁰ However, in July 2023, these services were not being delivered as intended.⁷¹ Consequently, individuals are still travelling to England for abortions, including early medical abortions.⁷²

2.32 Complex surgical cases are referred for treatment in England, with the diagnosis and aftercare carried out in NI.⁷³ The Department of Health intends that this will continue.⁷⁴ Concerns remain about complex cases having to travel to England, as this takes individuals away from their support network and trusted healthcare providers.⁷⁵ It is also a particular concern for individuals with caring, work-related, education or other commitments.⁷⁶ Many civil society organisations believe that the expertise exists to be able to

⁶⁶ Correspondence from the Royal College of Nursing in NI to the NI Human Rights Commission, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

⁶⁷ Ibid.

⁶⁸ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Between January and June 2023, 96 individuals travelled from NI to England for an abortion, which included individuals under 9 weeks and six days gestation and minors. See Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; Available at: <https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-january-to-june-2022/abortion-statistics-for-england-and-wales-january-to-june-2022>

⁷³ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

⁷⁴ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

⁷⁵ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

⁷⁶ Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

provide all abortion services in NI and for non-complex cases to be dealt with locally in each Trust area within NI.⁷⁷

2.33 The first sexual and reproductive health consultant in NI has been appointed in the Belfast Trust.⁷⁸ It is intended that such a consultant will be appointed in all Trusts in NI, with recruitment underway.⁷⁹

2.34 The Department of Health has instructed all Trusts in NI to have referral pathways for the regional services in place, as well as contingency measures in the event of any period of non-availability of any element of the regional service.⁸⁰ However, there remains no pathway between Trusts for non-regional services. For example, early medical abortions are only available in the Trust area where an individual lives. Trusts in NI typically only have one location for abortion services, this can leave individuals travelling further within their own Trust area, than if they were able to access the service in another Trust area.⁸¹ This is a particular concern of individuals in rural areas where the location in another Trust area may be more accessible.⁸² Additionally, having to access abortion services in a Trust area where you may know staff can create extra anxiety, which could be resolved by enabling access to the service in another Trust area.⁸³

2.35 Individuals in NI continue to obtain telemedicine through unregistered websites.⁸⁴ Support for individuals that face complications in such scenarios is lacking, with reports of individuals being informed by their General Practitioners Surgery to contact the drug provider for assistance.⁸⁵ The reason(s) for this happening require further investigation, however some civil society organisations have reported

⁷⁷ Ibid.

⁷⁸ Correspondence from Department of Health to NI Human Rights Commission, 27 July 2023.

⁷⁹ Ibid.

⁸⁰ Correspondence from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

⁸¹ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

⁸⁵ Ibid.

cases where significant trauma has resulted and the affected individual's life has been put at risk due to the lack of a clear care pathway in cases of unregulated telemedicine.⁸⁶

2.36 In 2023, the British Pregnancy Advisory Service remains the central booking system for abortion services in NI.⁸⁷ Between June 2020 and October 2021, this service was provided by Informing Choices NI,⁸⁸ but this ceased due to persistent funding issues and the service was transferred to the British Pregnancy Advisory Service.⁸⁹ A replacement service is under discussion.⁹⁰ The proposals are for the referral system to be separate to the General Practitioners' system and for open access to be offered across all Trusts in NI.⁹¹ Many civil society organisations believe that having local knowledge as standard within the centralised system is crucial.⁹²

2.37 The Department of Health has instructed each Trust in NI to have a Standard Operating Procedure that sets:

out the process for any woman returning to the referring Trust, or returning to NI, for further care following a procedure undertaken within the regional service or outside NI, and should include the provision of compassionate support and post-abortion care in accordance with the woman's individual healthcare needs.⁹³

2.38 There are some additional scenarios to be aware of. First, on a rare occasion that a baby is born alive after a termination

⁸⁶ Ibid.

⁸⁷ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

⁸⁸ Correspondence from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

⁸⁹ Informing Choices NI, 'Press Release: Charity to withdraw pathway to local abortion care due to the failure to commission services', 22 June 2021; Informing Choices NI, 'Informing Choices NI withdraw central access point into early medical abortion services', 1 October 2021.

⁹⁰ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

⁹¹ Ibid.

⁹² Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

⁹³ Correspondence from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

of pregnancy procedure, the Department of Health has directed that “the baby should receive the support and care that is in the baby’s best interests, and its condition should be managed in line with professional guidance for neonatal practice”.⁹⁴ The Department of Health has emphasised that clinicians should refer to current guidance on such situations,⁹⁵ but there is no statutory requirement to report such instances to the Chief Medical Officer.⁹⁶ Trusts in NI have been asked to keep a record of such instances for clinical and audit purposes, however these are not recorded as terminations of pregnancy.⁹⁷ Under the Department of Health’s direction, the Chief Medical Officer is currently developing guidance on this matter.⁹⁸

2.39 Second, the Department of Health has directed that “stillbirths and deaths of newborn babies following any procedure, including a termination of pregnancy, should be reported to the Coroner”.⁹⁹ This is in line with the Coroner’s Act (NI) 1959.¹⁰⁰

2.40 Third, the Public Health Agency and the Strategic Planning and Performance Group are undertaking an assessment of the actions required and costs of offering antenatal screening for fetal anomalies and inherited conditions in NI.¹⁰¹ The Department of Health has stated that “this programme of work will inform a future policy decision on antenatal screening for fetal anomalies and inherited conditions in NI”.¹⁰²

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Correspondence from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

¹⁰⁰ The NI Court of Appeal interprets the Coroners Act (NI) 1959 as applying in respect of a child capable of being born alive. This gives the Coroner the jurisdiction to carry out an inquest in such cases. See *Attorney General for NI and Siobhan Desmond v Senior Coroner for NI* [2013] NICA 68, at para 34.

¹⁰¹ Correspondence from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

¹⁰² Ibid.

- 2.41 Following concerns raised by the Royal College of Obstetricians and Gynaecologists, the Regulation and Quality Improvement Authority has been commissioned by the Department of Health to do a desktop review of the options presented to individuals with a diagnosis of severe fetal abnormality or fatal fetal abnormality, but where an abortion is not available or is not chosen.¹⁰³
- 2.42 **The Committee may wish to recommend that the State Party ensures that sufficient, long-term, ring-fenced funding is available and fully utilised to maintain consistent abortion services in line with the Abortion (NI) Regulations in every Trust area in NI. Also, that the necessary funding for abortion services is an addition to the Department of Health’s broader budget, to ensure existing healthcare services can be delivered in full.**
- 2.43 **The Committee may wish to recommend that the State Party ensures abortion services in NI are fully accessible, including enabling referrals between Trust areas for all abortion services, facilitating access to services for complex cases within NI and implementing a locally-run regional central booking service.**
- 2.44 **The Committee may wish to recommend that the State Party ensures telemedicine is introduced as an option for early medical abortions in NI under certain circumstances, as in other parts of the UK, and that a clear pathway to care and after care is in place for telemedicine abortions, including for individuals using unregistered sources.**
- 2.45 **The Committee may wish to clarify how best to achieve a balance between eliminating discrimination against women and the rights of persons with**

¹⁰³ Meeting between NI Human Rights Commission and the Regulation and Quality Improvement Authority, 5 June 2023.

disabilities in the context of abortions, particularly regarding severe fetal abnormality.

2.46 The Committee may wish to recommend that the State Party ensures that occasions when a baby is born alive after a termination of pregnancy procedure is effectively monitored, with clear guidance for medical professionals and that the individuals involved are adequately supported.

2.47 The Committee may wish to recommend that the State Party takes immediate steps to ensure individuals with a diagnosis of severe fetal abnormality or fatal fetal abnormality have access to appropriate services and are adequately supported.

Guidance on Abortions in NI¹⁰⁴

2.48 Existing guidance applies only in England, Wales and Scotland.¹⁰⁵ There is currently no plan to introduce statutory, department-led guidance for NI. Trusts, Royal College of Obstetricians and Gynaecologists, the Royal College of Midwives and Royal College of Nursing are to develop, review and appropriately revise their own guidance for abortion services in NI, which is to be disseminated to all staff.¹⁰⁶ The Department of Health has also directed that “appropriate training and support are provided to all relevant staff”.¹⁰⁷

2.49 The Department of Health is content that sufficient guidance already exists and does not plan to introduce specific guidance on conscientious objection regarding abortion

¹⁰⁴ The UN CEDAW Committee recommended that “the State Party urgently... adopt evidence-based protocols for health-care professionals on providing legal abortions particularly on the grounds of physical and mental health and ensure continuous training on the protocols”. The UN CEDAW Committee also recommended also that “the State Party... adopt guidance on doctor-patient confidentiality in that area”. See CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee’, 6 March 2018, at paras 85(c) and 85(d).

¹⁰⁵ Correspondence from Permanent Secretary for Department of Health, Peter May to Health and Social Care Trust Chief Executives, Medical Directors, Directors of Nursing, Clinical Directors of Obstetric Services and Midwifery Leads, Business Services Organisation Chief Executive and Head of Directorate of Trust Legal Services, 18 May 2023.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

services in NI.¹⁰⁸ However, several stakeholders are aware of frequent misuse or misunderstanding of conscientious objection in the context of abortion services.¹⁰⁹ Thus, it has been proposed that regional guidance that is clear on what does and does not constitute conscientious objection in this specific context is required.¹¹⁰

2.50 Each Trust in NI is providing 'values clarification' training.¹¹¹ This training operates on an opt-in basis and has only been offered as one cycle.¹¹² Several civil society organisations have recommended that values clarification training should be given to all staff, not only those directly involved with abortion services.¹¹³ Additionally, that training should be informed by service users and their representative organisations.¹¹⁴

2.51 The Department of Health has acknowledged that the training and recruitment necessary to enable comprehensive provision of abortion services in NI remain a challenge.¹¹⁵ It is difficult recruiting specialised medical professionals due to the low numbers available.¹¹⁶ There can also be a dependence on a single practitioner to carry services within one Trust area.¹¹⁷ Active recruitment is taking place and plans are being actively considered to enhance training to address these issues, including ensuring that physician training, currently only offered in England, is directly

¹⁰⁸ Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹⁰⁹ Operationally, staff that apply for posts within abortion services all have a conscientious commitment to the provision of those services. Other staff that work in sexual and reproductive health are required to follow-up on complications from abortions and to direct patients to abortion services, even if they claim a conscientious objection to providing treatment. It is reliant on staff to express their conscientious objection to their line manager so that this can be accommodated. However, there have been reports of some pharmacists refusing to dispense early medical abortion medication to an abortion service in NI. It has also been reported that abortion services previously collapsed in a Trust area because the doctor providing the service was not provided with necessary administrative support due to other staff conscientiously objecting. See Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; Correspondence from Royal College of Nursing NI to NI Human Rights Commission, 19 July 2023.

¹¹⁰ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹¹¹ Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

¹¹² Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹¹³ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

¹¹⁴ Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹¹⁵ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹¹⁶ Correspondence from Royal College of Nursing NI to NI Human Rights Commission, 19 July 2023.

¹¹⁷ Correspondence from the Royal College of Nursing in NI to the NI Human Rights Commission, 19 July 2023.

available in NI.¹¹⁸ However, the Royal College of Nursing recommends that more work is required to ensure there are sufficient third-level education places for courses specialising in abortion services and that there is a specific pathway for medical professionals who wish to pursue a career in sexual health.¹¹⁹ Additionally, several civil society organisations have recommended that forward planning is required to ensure continuity of services in predictable scenarios such as annual leave, retirement and maternity leave.¹²⁰

2.52 Civil society organisations have reported that certain groups, such as trans men, may face specific challenges when attempting to access abortion services in NI.¹²¹ It has been suggested that this should be considered when designing guidance and training, including engaging with affected individuals and their representative organisations.

2.53 The Committee may wish to recommend that the State Party ensures that there is regional, abortion-specific, non-stereotyping guidance in NI and that all associated healthcare staff undertake related training that is informed by service users and periodically refreshed, particularly regarding conscientious objection.

2.54 The Committee may wish to recommend that the State Party ensures that there are sufficient third-level education places and that there are specific pathways to enable medical professionals in NI to specialise in sexual health and abortion services.

2.55 The Committee may wish to recommend that the State Party ensures that there is effective staff planning to ensure that sexual health and abortion services are consistently available across NI.

¹¹⁸ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

¹¹⁹ Correspondence from Royal College of Nursing NI to NI Human Rights Commission, 19 July 2023.

¹²⁰ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

¹²¹ Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

Monitoring Mechanism¹²²

- 2.56 In 2021, the NIHRC published a monitoring report on the provision of reproductive healthcare services in NI.¹²³ This was an independent report that was initiated by the NIHRC. The NIHRC meets regularly with the NI Office to discuss several issues, including updates on implementation of the monitoring report's recommendations.
- 2.57 An Abortion Services Implementation Board has been established, which meets monthly.¹²⁴ The Oversight Board is tasked with managing any challenges to implementing abortion services in NI, but issues can be escalated to the Abortion Oversight Board, Permanent Secretaries of the Department of Health or NI Office.¹²⁵ The Implementation Board has no set term, but is expected to be operational until at least 2025.¹²⁶
- 2.58 In the long-term, it is the intention that the Regional Quality Improvement Authority¹²⁷ will monitor and review commissioned abortion services in NI.¹²⁸ The Regional Quality Improvement Authority is willing, but is unable to do so without specific funding.¹²⁹ The Regional Quality

¹²² The UN CEDAW Committee recommended that "the State Party urgently... 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 the mechanism with the Department of Health, Social Services and Public Safety and the NIHRC". See CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee', 6 March 2018, at para 85(e).

¹²³ NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in NI' (NIHRC, 2021).

¹²⁴ Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ The Regulation and Quality Improvement Authority is the independent body responsible for monitoring and inspecting the availability and quality of health and social care services in NI. It also ensures that health and social care services in NI are accessible, well managed and meet the required standards. Trust hospital services in NI are not required to be registered with Regulation Quality Improvement Authority, unlike its counterparts in the UK where hospitals are inspected at defined intervals. The Regulation and Quality Improvement Authority does not therefore have an annual programme of inspections of NI's hospital services more broadly. The Regulation and Quality Improvement Authority also undertakes specific reviews and intelligence-led inspections under the direction of the Department of Health or in response to specific intelligence or concerns. This means that abortion services provided by Trust hospitals in NI are not automatically subject to annual inspection with the key means of monitoring and assurance being internal assurance arrangements within Trusts.

¹²⁸ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

¹²⁹ Meeting between NI Human Rights Commission and the Regulation and Quality Improvement Authority, 5 June 2023.

Improvement Authority's mandate may also need to be revisited to ensure it can monitor all doctors involved in delivering abortion services in NI.¹³⁰

2.59 The Committee may wish to recommend that the State Party ensures that sufficient long-term, ring-fenced funding is provided to the Regional Quality Improvement Authority, or an appropriate alternative, for the purposes of ensuring that abortion services in NI are consistently monitored and reviewed at regular intervals.

Data Collection¹³¹

2.60 The Department of Health publishes annual statistics on hospital-based abortions in NI and the number of individuals travelling to other parts of the UK for abortion services.¹³² However, it remains that there is "no framework in place to report on all terminations of pregnancy carried out in NI".¹³³ Disaggregation of the data is currently limited to recording medical abortions and termination of pregnancies,¹³⁴ age of the individual that had an abortion and the trust area in which the abortion was performed.¹³⁵ Many civil society organisations view the available statistics as uninformative and lacking in context.¹³⁶ Many civil society organisations have recommended that the data gathering process should reflect every scenario, for example, it should include consideration of transgender and migrant issues.¹³⁷ The Department of Health is working on improving its data

¹³⁰ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

¹³¹ The UN CEDAW Committee recommended that "the State Party urgently...strengthen existing data-collection systems and data sharing between the Department [of Health] and the police to address the phenomenon of self-induced abortion". See CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee', 6 March 2018, at para 85(f).

¹³² Information Analysis Directorate, 'NI Hospital Based Termination of Pregnancy Statistics: 2021/2022' (DoH and NISRA), at 6.

¹³³ Ibid.

¹³⁴ The data makes an arbitrary and unclear distinction between medical abortions and terminations of pregnancy. See Information Analysis Directorate, 'NI Hospital Based Termination of Pregnancy Statistics: 2021/2022' (DoH and NISRA), at 6.

¹³⁵ Information Analysis Directorate, 'NI Hospital Based Termination of Pregnancy Statistics: 2021/2022' (DoH and NISRA).

¹³⁶ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between the NI Human Rights Commission and civil society organisations, 25 July 2023.

¹³⁷ Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

collection process regarding abortion services in NI, which it intends to start utilising in 2024.¹³⁸ Representative organisations have not been consulted as part of this process.¹³⁹

2.61 The Committee may wish to provide the State Party with further guidance on how to strengthen data collection on abortion services in NI, including how such data should be disaggregated.

2.62 The Committee may wish to recommend that the State Party ensures that representative organisations are effectively consulted on how data on abortion services in NI is gathered, reported and monitored.

3.0 Sexual and Reproductive Health Rights and Services

Counselling¹⁴⁰

3.1 Sufficient, long-term funding is lacking for abortion-related counselling services.¹⁴¹ Such services are vulnerable and, at times, have been under threat.¹⁴² Recent Department of Health funding has improved the situation, however, the need to rely on part-time, short-term posts remains, which makes recruitment difficult.¹⁴³ The resulting instability has hindered individuals' timely and consistent access to a crucial service.¹⁴⁴ Many civil society organisations have highlighted that post-abortion counselling is particularly important as abortions can trigger other experiences.¹⁴⁵

¹³⁸ Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹³⁹ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between the NI Human Rights Commission and civil society organisations, 25 July 2023.

¹⁴⁰ The UN CEDAW Committee recommended that "the State Party 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". See CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee', 6 March 2018, at para 86(a).

¹⁴¹ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

¹⁴² Ibid.

¹⁴³ Ibid; Meeting between NI Human Rights Commission and NI Office, 25 July 2023.

¹⁴⁴ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

¹⁴⁵ Ibid; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

- 3.2 Internet searches are directing individuals to pro-life organisations, such as Stanton Healthcare,¹⁴⁶ which particularly affects people seeking asylum and refugees.¹⁴⁷ This has involved individuals being subject to traumatising practices, misinformation and undue pressure for the purposes of preventing an abortion.¹⁴⁸
- 3.3 **The Committee may wish to recommend that the State Party ensures that sufficient, long-term, ring-fenced funding is guaranteed for abortion-related counselling, including post-abortion counselling.**
- 3.4 **The Committee may wish to recommend that the State Party ensures that private healthcare providers are closely monitored to ensure their aims and the services that they offer are transparent and accurately communicated, with particular consideration of minority groups with specific needs.**

Accessibility and Affordability of Services and Products¹⁴⁹

- 3.5 Contraception is provided as part of regional sexual and reproductive health services, which other Trusts can make

¹⁴⁶ Stanton Healthcare states that it is “a safe place where women are empowered to make their best choice”. It states that it will “guide you through the option and services available and will provide you with up-to-date, medically accurate information”. It also states that it provides “an individualised post-abortion care plan”. See Stantonbelfast.org.

¹⁴⁷ Meeting between NI Human Rights Commission and NI Office, 25 April 2023; Meeting between NI Human Rights Commission and NI Office, 4 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹⁴⁸ Constance Kampfner, ‘Anti-abortion charity Stanton Healthcare accused of misleading women’, *The Times*, 19 February 2022; Poppy Koronka, ‘Anti-abortion charity “censors online critics”’, *The Times*, 31 October 2022; Informing Choices NI, ‘Beyond Decriminalisation: Pregnancy Choices and Abortion Care in NI’ (ICNI, 2021), at 34; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹⁴⁹ The UN CEDAW Committee recommended that “the State Party... ensure the accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral, emergency, long-term and permanent forms of contraception and adopt a protocol to facilitate access at pharmacies, clinics and hospitals”. See CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee’, 6 March 2018, at para 86(b).

referrals to.¹⁵⁰ The Department of Health has commissioned an online contraceptive service for administering contraception pills.¹⁵¹ However, several civil society organisations have highlighted there is a lack of consistency across Trusts in NI.¹⁵² Furthermore, lack of accessible information and effective sign-posting across all Trust areas in NI has been raised.¹⁵³ Within rural areas the stigma attached to contraception is more prevalent and harder to circumvent due to the tightknit nature of rural communities and reduced number of pharmacies to choose from.¹⁵⁴

3.6 The Committee may wish to recommend that the State Party ensures that consistent, accessible and effective contraception services and information are available across all Trust areas in NI, with particular consideration of rurality and utilising online pathways.

Relationships and Sexuality Education¹⁵⁵

3.7 In June 2023, the NIHRC published an investigation report into relationships and sexuality education in schools in NI.¹⁵⁶ It found that there are some positive examples of post-primary schools providing comprehensive and scientifically accurate relationships and sexuality education. However, in most NI schools this is not the case, where resources are not always considered to be comprehensive, pluralistic and objective and do not comply with the Committee's

¹⁵⁰ The Department of Health has developed Key Performance Indicators with the intention that 100 per cent of abortion service users are offered contraceptives at their appointment and 30 per cent of service users leave the service with long-acting reversible contraceptive. See Correspondence from the Royal College of Nursing in NI to the NI Human Rights Commission, 19 July 2023; Correspondence from the Department of Health to the NI Human Rights Commission, 27 July 2023.

¹⁵¹ The Department of Health intends that the commissioned online contraceptive services will enable family planning services to concentrate limited resources on the provision of Long Acting Reversible Contraception and the insertion of coils, rather than administering contraceptive pills. See correspondence from Department of Health to NI Human Rights Commission, 27 July 2023.

¹⁵² Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ The UN CEDAW Committee recommended that "the State Party... make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation". See CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee', 6 March 2018, at para 86(d).

¹⁵⁶ NI Human Rights Commission, 'Relationships and Sexuality Education in Post Primary Schools in NI: A Compelling Case for Reform' (NIHRC, 2023).

recommendations. The NIHRC made 13 recommendations that primarily focused on amending the Education (Curriculum Minimum Content) Order (NI) 2007 and proposing steps that are necessary for ensuring the recommended reforms are implemented effectively.¹⁵⁷

- 3.8 Following the NIHRC's investigation,¹⁵⁸ the UK Government introduced the Relationships and Sexuality Education (NI) (Amendment) Regulations 2023. These regulations amend the Education (NI) Order 2006, and the Education (Curriculum Minimum Content) Order (NI) 2007 to make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion, a compulsory component of the curriculum.¹⁵⁹
- 3.9 The Department of Education is required to issue guidance on the content and delivery of the education by 1 January 2024¹⁶⁰ and to publish a report on the implementation of relationships and sexuality education by September 2026.¹⁶¹ The NIHRC is to be consulted during the development this report.¹⁶²
- 3.10 Additionally, the Department of Education is required to make provision about the circumstances in which, at the request of a parent, a pupil may be excused from receiving relationships and sexuality education, or specified elements of that education.¹⁶³ Several civil society organisations have raised concerns that such a provision may pose a safeguarding risk and prevent certain children from accessing critical information relating to their sexual and reproductive health.¹⁶⁴

¹⁵⁷ Ibid.

¹⁵⁸ NI Human Rights Commission, 'Relationships and Sexuality Education in Post Primary Schools in NI: A Compelling Case for Reform' (NIHRC, 2023).

¹⁵⁹ Regulation 2(2), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023; Regulation 3, Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

¹⁶⁰ Regulation 2(3), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

¹⁶¹ Regulation 4(1), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

¹⁶² Regulation 4(2)(c), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

¹⁶³ Regulation 2(3), Relationships and Sexuality Education (NI) (Amendment) Regulations 2023.

¹⁶⁴ Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

3.11 The Committee’s recommendation uses the term “adolescents”, which include individuals aged up to 19 years old. The compulsory age of education in NI is 16 years old. Reflecting this the Education (Curriculum Minimum Content) Order (NI) 2007 does not prescribe a curriculum for individuals in post-16 education.

3.12 The Committee may wish to clarify whether, in its view, the provision for exemptions from relationships and sexuality education within the Education (NI) (Amendment) Regulations 2023 is compatible with its recommendations.

3.13 The Committee may wish to clarify its position on the provision of relationships and sexuality education to young people aged 16-19 years old.

Awareness Raising¹⁶⁵

3.14 The regional NI Direct website and websites of individual Trusts provide information on abortion services in NI. However, there is no standardised approach to how information is listed on public authorities’ websites.¹⁶⁶ Several stakeholders have reported that many individuals remain unaware of the change to abortion services in NI.¹⁶⁷ This creates a barrier to accessing services.¹⁶⁸ Many civil society organisations have stressed that awareness raising regarding an individual’s rights and the services available are crucial, particularly given the complexities of sexual and reproductive health.¹⁶⁹ Many civil society organisations suggest that individuals and representative organisations

¹⁶⁵ The UN CEDAW Committee recommended that “the State Party... intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception”. See CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee’, 6 March 2018, at para 86(e).

¹⁶⁶ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

¹⁶⁷ Correspondence from the Royal College of Nursing in NI to the NI Human Rights Commission, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹⁶⁸ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

¹⁶⁹ Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

should be involved in designing and implementing awareness raising initiatives.¹⁷⁰

- 3.15 The Committee may wish to recommend that the State Party undertakes accessible regional public awareness raising campaigns regarding sexual and reproductive health rights and services in NI.**
- 3.16 The Committee may wish to recommend that the State Party ensures that a standardised, accessible approach is taken by public authorities regarding information on abortion services in NI, including online.**
- 3.17 The Committee may wish to recommend that the State Party ensures that individuals and representative organisations are involved in designing and implementing awareness raising initiatives.**

Gender-based Stereotypes¹⁷¹

- 3.18 In 2020, the NI Executive committed to publishing a new Gender Equality Strategy.¹⁷² The Department for Communities appointed an Expert Advisory Panel and created a Co-Design Group.¹⁷³ A cross-departmental working group was also created. In 2021, the Expert Advisory Panel published its report.¹⁷⁴ A public consultation on the Gender Equality Strategy has been delayed.¹⁷⁵ The Gender Equality Strategy cannot progress until a new NI Executive is operational.¹⁷⁶

¹⁷⁰ Ibid.

¹⁷¹ The UN CEDAW Committee recommended that “the State Party... adopt a strategy to combat gender-based stereotypes regarding women’s primary roles as mothers”. See CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee’, 6 March 2018, at para 86(f).

¹⁷² NI Office, ‘New Decade, New Approach’ (NIO, 2020).

¹⁷³ The Co-Design Group on the Gender Equality Strategy consisted of key stakeholders, including the NIHRC.

¹⁷⁴ The Expert Panel on the Gender Equality Strategy’s report highlighted key human rights obligations relevant to gender equality and outlined several key themes for discussion by the Co-Design Group. See Department for Communities, ‘Gender Equality Strategy Expert Advisory Panel Report’ (DfC, 2021), at 12.

¹⁷⁵ A public consultation on the Gender Equality Strategy was due to take place in early 2022.

¹⁷⁶ Correspondence from Department for Communities to NI Human Rights Commission, 21 July 2023.

- 3.19 Many civil society organisations are frustrated at the Gender Equality Strategy’s stagnation.¹⁷⁷ Many civil society organisations have observed that relationships and sexuality education is important in combatting gender-based stereotypes.¹⁷⁸
- 3.20 **The Committee may wish to recommend that the State Party takes immediate steps to combat gender-based stereotypes regarding women’s primary roles as mothers, as an effective and comprehensive Gender Equality Strategy is awaited.**

Safe Access Zones¹⁷⁹

- 3.21 Except for a brief reprieve when COVID-19 restrictions were in place, protestors carrying graphic placards and being abusive towards individuals and staff outside family planning and abortion clinics in NI continues.¹⁸⁰
- 3.22 The NIHRC repeatedly recommended that measures were taken to create safe or buffer zones to ensure that effective laws are in place and fully implemented to enable complaints of such harassment to be effectively investigated and that perpetrators are dealt with in accordance with such laws.¹⁸¹
- 3.23 In 2021, a Private Member’s Bill was introduced to the NI Assembly which aimed to “introduce safe access zones around registered pregnancy advisory bureaux and clinics, in which anti-termination activity could not take place”. It

¹⁷⁷ Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

¹⁷⁸ Ibid.

¹⁷⁹ The UN CEDAW Committee recommended that “the State Party... protect women from harassment by anti-abortion protestors by investigating complaints and prosecuting and punishing perpetrators”. See CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI Under Article 8 of the Optional Protocol to the UN CEDAW: Report of the UN CEDAW Committee’, 6 March 2018, at para 86(g).

¹⁸⁰ The Police Service NI does not hold regular data on this issue, but between January 2021 and January 2022, the Police Service NI was requested to attend 55 incidents at family planning and abortion clinics across NI. These requests were by either members of the public or staff employed within the facility. See *Reference by the Attorney General for NI – Abortion Services (Safe Access Zones) (NI) Bill* [2022] UKSC 32, at para 39; NI Human Rights Commission, ‘Monitoring Report on Reproductive Healthcare Provision in NI’ (NIHRC, 2021); Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023; Correspondence from the Royal College of Nursing in NI to the NI Human Rights Commission, 19 July 2023.

¹⁸¹ NI Human Rights Commission, ‘Monitoring Report on Reproductive Healthcare Provision in NI’ (NIHRC, 2021); NI Human Rights Commission, ‘Annual Statement 2021’ (NIHRC, 2021), at 260; NI Human Rights Commission, ‘Annual Statement 2022’ (NIHRC, 2022), at 242.

aimed to ensure individuals have “access to sexual and reproductive healthcare services without impediment or harassment, while carefully balancing the right to freedom of assembly”.

3.24 In 2022, the Attorney General for NI referred the (then) Abortion Services (Safe Access Zones) (NI) Bill to the UK Supreme Court for clarity on whether the offence created by the Bill was a proportionate interference with the rights of individuals who wished to express opposition to abortion services. The NIHRC intervened in this case. The UK Supreme Court concluded that it was satisfied that the restrictions in the (then) Bill were “justifiable” and did not “interfere disproportionately with a protestor’s rights under Articles 9, 10 and 11 of the [ECHR]”.¹⁸² The UK Supreme Court found the restrictions were “required to protect the rights of women seeking treatment or advice, and are also in the interests of the wider community, including other patients and staff of clinics and hospitals”.¹⁸³

3.25 In February 2023, the Abortion Services (Safe Access Zones) (NI) Act received Royal Assent. The 2023 Act enables safe access zones to be established in the vicinity of healthcare premises providing lawful abortions, as well as at premises where information, advice or counselling about abortion treatments are provided. The safe access zone will include the premises where the services are provided, as well as an area between 100 metres and 250 metres from entrances or exits of the protected premises. Once a safe access zone has been established, designated activities including anti-abortion protests are prohibited within the protected area.

3.26 By September 2023, safe access zones are to be introduced by all Trusts in NI.¹⁸⁴ The Department of Health is also developing the process for non-Trust premises to establish their safe access zones.¹⁸⁵ Information on the location of

¹⁸² *Reference by the Attorney General for NI – Abortion Services (Safe Access Zones) (NI) Bill* [2022] UKSC 32.

¹⁸³ *Ibid.*

¹⁸⁴ Department of Health, ‘Press Statement: Safe Access Zones update’, 3 July 2023.

¹⁸⁵ Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

each safe access zone is to be displayed at all protected premises and published on the Department of Health and Trusts' websites.¹⁸⁶ The Department of Health is also planning on publishing a policy statement on safe access zones and an annual report on implementation.¹⁸⁷ All safe access zones must be formally logged with the Department of Health.¹⁸⁸ The Department of Health is focused on creating a simplified process that aims to avoid undue delays.¹⁸⁹ A Special Task and Finish Group will monitor implementation.¹⁹⁰ The Police Service NI has been training officers and ensuring the necessary protocol is in place. However, there are concerns that already strained Police Service NI resources could hinder implementation, if there are extensive violations.¹⁹¹

3.27 There is no financial support in place to establish a safe access zone.¹⁹² There are concerns that the costs involved could be prohibitive.¹⁹³

3.28 There are also concerns that protestors could be able to circumvent safe access zones by utilising private property.¹⁹⁴

3.29 The Committee may wish to recommend that the State Party ensures that funding is available to establish a safe access zone in NI as necessary and that any additional costs involved are not prohibitive for voluntary sexual health clinics and any future private abortion clinic.

¹⁸⁶ Section 7, Abortion Services (Safe Access Zones) (NI) Act 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023; Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

¹⁸⁷ Section 8, Abortion Services (Safe Access Zones) (NI) Act 2023; Department of Health, 'Press Statement: Safe Access Zones update', 3 July 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹⁸⁸ Section 4, Abortion Services (Safe Access Zones) (NI) Act 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹⁸⁹ Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹⁹⁰ Meeting between NI Human Rights Commission and NI Office, 4 July 2023.

¹⁹¹ Julian O'Neill, 'Police Service NI budget could become impossible to manage, says chief constable', *BBC News*, 4 May 2023; Meeting between NI Human Rights Commission and Department of Health, 19 July 2023.

¹⁹² Email correspondence from the Department of Health to the NI Human Rights Commission, 12 September 2023.

¹⁹³ Meeting between NI Human Rights Commission and Informing Choices NI, 24 July 2023.

¹⁹⁴ *Ibid*; Meeting between NI Human Rights Commission and civil society organisations, 25 July 2023.

3.30 The Committee may wish to recommend that the State Party takes immediate steps to ensure that private property cannot be utilised to circumvent safe access zones for the purposes of protesting reproductive healthcare services.

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