



EQUALITY COMMISSION FOR NORTHERN IRELAND

**Response to Government consultation on
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))**

December 2019

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1 Executive Summary

Introduction

1.1 The Equality Commission for Northern Ireland (‘the Commission’) has set out below its **recommendations** relating to:

- the proposed new **legal framework** for abortion services in Northern Ireland, aligned to the questions raised in the Government’s consultation paper¹;
- the **interim period**, namely the period before the Regulations are brought into force, which are supplementary to the focus of the consultation; and
- the **implementation of other Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Inquiry report recommendations**², which are also supplementary to the focus of the consultation, but which the Government has committed to take forward in due course.

1.2 The Commission’s comments on the Northern Ireland Office’s (NIO) Section 75 equality screening form³ are also highlighted below.

Our recommendations

New legal framework

1.3 We recommend that in considering its proposals as regards cases of severe fetal impairment (SFI), Government ensures that its approach is in compliance with the UK Government’s obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD), and clarifies, in particular, how will ensure that its proposals do not perpetuate stereotypes towards disabled people.

1.4 When considering proposals as to where abortion services can take place, we recommend that Government ensures that sexual and

¹ UK Government (2019), [A new legal framework for abortion services in NI. Implementation of the legal duty under section 9 of the Northern Ireland \(Executive Formation etc.\) Act 2019: Government consultation.](#)

² CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

³ NIO (2019), [S75 Equality screening form.](#)

reproductive health services are accessible to women with multiple identities⁴.

- 1.5 We recommend that Government ensures that its proposed approach relating to the certification process for healthcare professionals is evidence based; and that its proposed approach in relation to a right to conscientious objection, in combination with the proposed certification requirements, does not prevent women from accessing abortion services.
- 1.6 We recommend that Government ensures that any conscientious objection provision is narrowly and clearly defined, objectively justifiable and complies with human rights law, and its operation does not prevent women from accessing services.
- 1.7 We recommend that the scope of any conscientious objection provision and the rights of healthcare professionals, including under equality and human rights law, should be clarified through guidance.
- 1.8 We recommend that measures are taken to ensure that women, including women with multiple identities, are able to access all health services, including sexual and reproductive health services, free from discrimination or harassment, and that such measures should be compliant with human rights legislation.

Interim period

- 1.9 We recommend that steps are taken, during the interim period, to remove barriers experienced by women with multiple identities, particularly marginalised and vulnerable women, who have difficulty accessing abortion services in Great Britain.

Implementation of other CEDAW Inquiry report recommendations

- 1.10 We recommend that Government clarifies as a matter of urgency its timetable for ensuring compliance with the remaining CEDAW Inquiry Report recommendations that relate to wider issues, such as ensuring accessibility of services and tackling gender based stereotypes, as well as its proposed steps to effectively consult on how these recommendations will be implemented.
- 1.11 We recommend that Government clarifies how it will ensure appropriate and ongoing support for women who, in cases of fetal abnormality, decide to carry such pregnancies to term.

⁴ See paragraph 2.3 below as regards the reference to 'women with multiple identities'.

- 1.12 We recommend that guidance and training for health professionals includes challenging negative stereotypes towards disabled people, including disabled women.
- 1.13 We recommend that Government ensures that sexual and reproductive health services and products, and information, are accessible to women with multiple identities.
- 1.14 We recommend the adoption of a strategy to combat gender-based stereotypes regarding women's primary role as mothers. We also recommend action to counter other gender based stereotypes and prejudicial attitudes from an early age and across all areas of life. This should include action in all stages of education and vocational training, work, and the media and social media, including advertising and marketing.
- 1.15 We recommend that Government takes action to further embed and promote equality, including gender equality, within the content and delivery of the curriculum.
- 1.16 We recommend that Government ensures that teaching, including information, is accessible to, and inclusive of, pupils across the range of equality groups.

NIO Section 75 equality screening form

- 1.17 We welcome that an equality screening form was published with the consultation exercise on the establishment of a new legal framework for abortion services in Northern Ireland.
- 1.18 The screening report, however, contains limited information and the overall analysis of the consultation proposals does not enable reliable assessments of each of the consultation proposals in relation to the impacts and opportunities to promote equality of opportunity across the Section 75 equality grounds. In addition, there is not clarity with regard the proposed Section 75 processes.
- 1.19 In further developing the policy proposals it will be important that equality screenings are conducted for each consultation proposal to ensure that appropriate information, is used on which to determine assessments of impacts and opportunities on the Section 75 equality groups.
- 1.20 Clarity with regard the proposed way forward is required and if an EQIA is to be conducted, there should be clarity of focus for this.

2 Introductory comments

- 2.1 The Equality Commission for Northern Ireland ('the Commission') welcomes the opportunity to respond to Government's consultation on a new legal framework for abortion services in Northern Ireland⁵, as well as the Northern Ireland Office's (NIO) Section 75 equality screening form⁶. Further information on the role and remit of the Commission is set out in Annex 1.
- 2.2 We recognize that the issues raised in the consultation document are both complex and sensitive in nature. It is also clear that some of the proposals touch on a range of important equality issues; for example, issues relating to women's ability to access reproductive health care services; the rights of disabled people under equality law and under the UN Convention on the Rights of Persons with Disabilities (UNCRPD); as well as the religious rights of employees in the workplace.
- 2.3 In addition, as highlighted in more detail below, the proposals also impact on women who, due a combination of their sex with other factors, such as disability or race, may be subject to multiple and intersectional forms of discrimination ⁷('women with multiple identities').
- 2.4 Whilst we also recognise that due to their religious and/or moral views, some people, both women and men, are opposed to the changes, we also note there is evidence of clear public support in Northern Ireland for changes to the criminal law on abortion.
- 2.5 For example, we note that the Northern Ireland Life and Times Survey⁸ (NILT) points to increasing support for a change in the law. In 2016, 71% *agreed* or *strongly agreed* that "abortion should be a matter for medical regulation and not criminal law". By 2018 the figure was 82%. This also included a shift towards those '*strongly agreeing*', now 44%, up from 23% in 2016.

⁵ UK Government (2019), [A new legal framework for abortion services in NI. Implementation of the legal duty under section 9 of the Northern Ireland \(Executive Formation etc.\) Act 2019: Government consultation.](#)

⁶ NIO (2019), [S75 Equality screening form](#) .

⁷ For example, the Council of Europe has made clear that 'certain groups of women, due to the combination of their sex with other factors, such as their race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, are in an especially vulnerable position. In addition to discrimination on the grounds of sex, these women are often subjected simultaneously to one or several other types of discrimination'. See [Council of Europe Committee of Ministers Recommendation CM/Rec \(2007\)17 on gender equality standards and mechanisms](#), para 59.

⁸ [NILT Survey module \(questions and survey results\) on abortion](#)

2.6 This response builds on our earlier response to the Department for Justice (DoJ) consultation, *The Criminal Law on Abortion: lethal foetal abnormality and sexual crime*, in 2015⁹.

3 Our recommendations

3.1 Set out in the sections below are the Commission's recommendations, with supporting rationale, relating to:

- the **proposed new legal framework** for abortion services in Northern Ireland, aligned to the questions raised in the consultation paper¹⁰;
- the **interim period**, namely the period before the Regulations are brought into force, which are supplementary to the focus of the consultation; and
- the implementation of **other CEDAW Inquiry report recommendations**, which are also supplementary to the focus of the consultation, but which the Government has committed to take forward in due course.

3.2 The Commission has responded to those questions and issues, including on the proposed new framework, in relation to areas within its remit and expertise.

4 New legal framework: Recommendations

4.1 Outlined below are the Commission's recommendations on the proposed new legal framework, aligned to the questions raised in the consultation paper.

Fetal abnormality (Question 4)

We recommend that, in considering its proposals as regards cases of severe fetal impairment (SFI), Government ensures that its approach is in compliance with the UK Government's obligations under the UNCRPD, and clarifies, in particular, how

⁹ ECNI [Response to DOJ consultation on abortion](#) 2015.

¹⁰ UK Government (2019), [A new legal framework for abortion services in NI. Implementation of the legal duty under section 9 of the Northern Ireland \(Executive Formation etc\) Act 2019: Government consultation.](#)

it will ensure that its proposals do not perpetuate stereotypes towards disabled people.

Supporting rationale

4.2 Para 85 b (iii) of the *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) (2018)*¹¹ ('CEDAW Inquiry Report'), sets out that:

“The Committee recommends that the State party urgently: [...] (b) Adopt legislation to provide for expanded grounds to legalize abortion at least in the following cases: [...] (iii) Severe fetal impairment, including fatal fetal abnormality, without perpetuating stereotypes towards persons with disabilities ...”.

4.3 It is essential that Government, in considering its proposals as regards cases of severe fetal impairment (SFI), ensures that its approach is in compliance with the UK Government's obligations under the UNCRPD, including ensuring that it does not perpetuate stereotypes towards disabled people.

4.4 Whilst the UNCRPD does not explicitly refer to abortion in its text, there are a number of Articles (Articles 5, 6, 7, 10, 17, 23 and 25) in the UNCRPD which were particularly relevant to this issue.

4.5 The UNCRPD Committee had, in its 2017 Concluding Observations on the UK, stated, as regards abortion law in Great Britain, that:

‘The Committee is concerned about perceptions in society stigmatizing persons with disabilities as living a life of less value and the termination of pregnancy at any stage on the basis of foetal impairment. The Committee recommends that the State party changes abortion law accordingly. Women's rights to reproductive and sexual autonomy should be respected without legalizing selective abortions on ground of foetus deficiency’¹².

4.6 The subsequent 2018 Joint Statement of the CEDAW Committee and the UNCRPD Committee on *Guaranteeing sexual and reproductive health and rights for all women* ('the Joint Statement') sets out that:

¹¹ CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

¹² UNCRPD Committee (2017), [Concluding Observations on the UK](#), at paragraphs 12 and 13.

“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”¹³.

and

“States parties should fulfill their obligations ... by addressing the root causes of discrimination against women and persons with disabilities. This includes challenging discriminatory attitudes and fostering respect for the rights and dignity of persons with disabilities”.

- 4.7 We also note that the 2018 CEDAW / UNCRPD Joint Statement does not refer to time limits as regards termination of pregnancy in situations of serious or fatal foetal abnormality.
- 4.8 The Northern Ireland Human Rights Commission (NIHRC), in its 2019 advice to Government, recognised that the UN Treaty Bodies had taken slightly different approaches to the issue of access to termination in Northern Ireland¹⁴. In considering the matter the NIHRC states that: *‘However, unlike the other treaty bodies, the CRPD Committee [in its 2017 Concluding Observations on the UK State Party] did not focus on the specific law of Northern Ireland, raising its concerns generally about the relevant UK legislation’, and that ‘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 [2018] statement of the two Committees on this issue’*¹⁵.

¹³ CEDAW Committee and the UNCRPD Committee (2018), [Joint Statement of the CEDAW Committee and the UNCRPD Committee on Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities](#) .

¹⁴ NIHRC refers to the fact that ‘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.” NIHRC (2019), [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](#). See p21.

¹⁵ Ibid, at p22.

- 4.9 We note that the status of the UNCRPD in Northern Ireland law, the relevant provisions of the UNCRPD, and the views of the UNCRPD Committee were considered by a number of judges as part of their consideration of the compatibility of abortion law in Northern Ireland with human rights legislation, as set out in the Supreme Court’s decision¹⁶ in June 2018. This which was delivered prior to the publication of the Joint Statement on 29 August 2018.
- 4.10 A majority of the court¹⁷ considered that Northern Ireland law was incompatible with human rights law¹⁸ insofar as that law prohibited abortion in cases of fatal fetal abnormality, and pregnancy as a result of rape and incest¹⁹. We note that, in terms of cases involving serious, but not fatal, fetal abnormalities, the court considered that it was not possible to hold that Northern Ireland law was incompatible with human rights law²⁰.
- 4.11 We would also wish to draw Government’s attention, in particular, to the comments in that Judgement of Judge Kerr, who stated, whilst making clear that the unborn foetus is not treated in domestic law as already being a person²¹, that ‘the Northern Ireland Act 1998 forbids the Northern Ireland Assembly from making laws contrary to UNCRPD’²².
- 4.12 He also indicated that the ‘UNCRPD is based on the premise that if abortion is permissible, there should be no discrimination on the basis that the foetus, because of a defect, will result in a child being born with a physical or mental disability’, and that this was ‘a weighty factor to place in the balance’, and one ‘which was not present in cases of fatal foetal abnormality or rape and incest’²³. He also indicated that ‘this is particularly so in the light of UNCRPD Committee’s consistent criticism of any measure which provides for abortion in a way which distinguishes between the unborn on the basis of a physical or mental disability, relying on “general principles and obligations (articles 1-4)” and “equality and non-discrimination

¹⁶ Following a judicial review application by the NI Human Rights Commission (NIHRC), a majority of judges of the UK Supreme Court, in its [decision](#) of 7 June 2018, concluded that abortion law in Northern Ireland was incompatible with Article 8 (right to respect for private and family life) of the European Convention on Human Rights; though the Court also held it did not have the jurisdiction to make a declaration of incompatibility. For further information see also NIHRC’s [Statement](#) on Court decision (7 June 2018)

¹⁷ Lady Hale, Lord Mance, Lord Kerr and Lord Wilson

¹⁸ In particular, Article 8 of the European Convention on Human Rights.

¹⁹ See Supreme Court [summary](#) judgment, 7 June 2018.

²⁰ Ibid. .

²¹ Ibid para 92.

²² Judge Kerr stated that ‘The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is one of the treaties specified as an EU treaty under the EC (Definition of Treaties)(UNCRPD) Order 2009. Section 6(2)(d) of the NIA forbids the Northern Ireland Assembly from making laws contrary to UNCRPD’. Ibid. See para 331.

²³ Ibid, see para 133.

(article 5)”...’. He also indicated that the ‘difficulty in devising a confident and reliable definition of serious malformation is a potent factor against the finding of incompatibility’.

4.13 As indicated above, the Government is obliged to implement the CEDAW Inquiry Report recommendation as regards the adoption of legislation that legalises abortion on the grounds of *inter alia* SFI, including FFA, ‘*without perpetuating stereotypes towards persons with disabilities...*’²⁴.

4.14 We note that the 2018 Joint Statement includes that State Parties should challenge discriminatory attitudes and foster respect for the rights and dignity of disabled people, in particular disabled women, as well as providing support to parents of children with disabilities.

4.15 We further note that the CEDAW Committee (2018) in its CEDAW Inquiry Report stated that:

‘in cases of severe foetal impairment, the Committee aligns itself with the Committee on the Rights of Persons with Disabilities in the condemnation of sex-selective and disability-selective abortions, both stemming from the need to combat negative stereotypes and prejudices towards women and persons with disabilities’.

4.16 The report also made clear that:

‘...States parties are obligated to ensure that women’s decisions to terminate pregnancies on this ground do not perpetuate stereotypes towards persons with disabilities’²⁵.

4.17 In this context, we draw Government’s attention to concerns raised as part of a Parliamentary *Inquiry into Abortion on the Grounds of Disability* in 2013 which made clear that:

‘All parents expecting a child with a fetal disability need balanced information about what life would be like with a disabled child, time to consider their decision and comprehensive support from the medical profession whatever their decision should be’²⁶.

²⁴ CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

²⁵ CEDAW Committee, (2018), [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#), at para 62.

²⁶ Parliamentary [Inquiry into Abortion on the Grounds of Disability](#) (2013), at p.50.

- 4.18 There is no indication in the consultation paper as to as to how Government has ensured that it is proposing to implement these required legislative changes ‘without perpetuating stereotypes towards persons with disabilities’; as recommended in the CEDAW Inquiry report. There is therefore a need for Government to clarify how it will ensure that its proposals do not perpetuate stereotypes towards disabled people.

Where procedures can take place (Question 7)

When considering proposals as to where abortion services can take place, we recommend that Government ensures that sexual and reproductive health services are accessible to women with multiple identities.

Supporting rationale

- 4.19 In considering where abortion services can take place, it is essential that Government ensures that the services are accessible to women with multiple identities, including disabled women, women in rural areas, as well as migrant, asylum-seeking and refugee women.
- 4.20 We note that the CEDAW Inquiry Report (2018) highlighted that rural, migrant, asylum-seeking, refugee women and women in situations of conflict and poverty face additional barriers in accessing healthcare. It also highlighted the CEDAW Committee’s general recommendation that States parties provide adequate financing of health care systems in rural areas, particularly with regard to sexual and reproductive health and rights²⁷. The Committee also referred to ‘the concentration of sexual and reproductive services in Belfast’ as a barrier for women with multiple identities accessing healthcare services²⁸.

²⁷ In GR No. 34 (2016) on the rights of rural women, it observes that “[a]ccess to health care, including sexual and reproductive health care, is often extremely limited for rural women”. It recommends that States parties provide “[a]dequate financing of health care systems in rural areas, particularly with regard to sexual and reproductive health and rights”. See CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

²⁸ Ibid, para 72. See also [Ark Policy Brief \(2019\), Developing Integrated Sexual and Reproductive Health Services in N. Ireland](#) that states: ‘Given the rural nature of much of NI and the pressures that already exist in the Health Service here, it is imperative that the service delivery model for Early Medical Abortion is flexible and evidence based’. Ibid at page 3.

- 4.21 Further, under Article 25 of the UNCRPD, State Parties must provide health services needed by disabled people ‘as close as possible to people’s own communities, including in rural areas’²⁹.

Process of Certification (Question 9)

We recommend that Government ensures that its proposed approach relating to the certification process for healthcare professionals is evidence based; and that its proposed approach in relation to a right to conscientious objection, *in combination with* the proposed certification requirements, does not prevent women from accessing abortion services.

Supporting rationale

- 4.22 We note that Government is considering adopting a distinct approach in Northern Ireland as regards the certification of opinion requirements by medical or healthcare professionals, due to its view that ‘it is likely that there will be a more significant number of people raising conscientious objection than in other parts of the UK’.
- 4.23 The Government should ensure that its statement that ‘there is likely to be a more significant number of people raising conscientious objection’ is evidence based. It has not made clear in the consultation paper the evidence on which this statement is based.
- 4.24 Further, as we made clear in our response to DoJ’s consultation (2015)³⁰ on changes to the criminal law on abortion, there is a need to ensure that the exercise of a conscientious objection does not prevent women from accessing services to which they are legally entitled.
- 4.25 We note that Government has indicated that requiring two medical professionals to certify the grounds of an abortion could create practical difficulties, in particular, delays in women accessing abortion services.
- 4.26 It is essential that Government ensures that its proposed approach in relation to a right to conscientious objection, *in combination with* its proposed approach to certification requirements on healthcare professionals, does not operate to prevent women from accessing abortion services.

²⁹ UNCRPD, Art 25 (c).

³⁰ ECNI (2015) [Response to DOJ consultation on abortion](#) .

4.27 There is also a need for Government to monitor, on an ongoing basis, the impact of any measures adopted, including in relation to certification of opinion requirements, on women's ability to access abortion services.

Conscientious objection (Question 11)

We recommend that Government ensures that any conscientious objection provision is narrowly and clearly defined, objectively justifiable and complies with human rights law, and its operation does not prevent women from accessing services.

Supporting rationale

4.28 As made clear in our response to the DOJ's consultation (2015) on changes to the criminal law relating to abortion, we recognise that the inclusion of a right for healthcare professionals in criminal law relating to abortion, to refuse to provide treatment, provided it is narrowly and clearly defined, can have a number of beneficial outcomes.

4.29 For example, it can:

- provide legal certainty and clarity to both employees and employers so that they are clear when they can or cannot refuse to participate in the treatment;
- recognise and give automatic legal protection to those people who, due to their strongly held moral and/or religious convictions, object to participating in terminations of pregnancies in certain circumstances.

4.30 However, the Commission is clear that that any exception to the law must be narrowly defined and objectively justifiable. We do not support exceptions to either equality law or other law that do that meet these essential requirements.

4.31 In the interests of legal certainty, any right needs to be clearly defined so that the extent and limits to this right are clear. For example, it needs to be clear who can avail of the right; in relation to what services/treatment the right applies to; and how will a 'conscientious objection' be established.

4.32 It is essential that any exception within the criminal law relating to abortion is in compliance with human rights law. There is also a

need to ensure that the exercise of a conscientious objection does not prevent women from accessing services to which they are legally entitled. It should be made clear that the conscientious objector be under an obligation to refer the case to a professional who does not share that objection, and that this is a necessary corollary of the professional's duty of care towards the patient, as highlighted in the Supreme Court decision in the *Glasgow mid-wives cases (2014)*³¹.

- 4.33 The European Court of Human Rights, in 2011, has also indicated that 'States are obliged to organise the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation'³².
- 4.34 We also note that the intention is that the proposed legal framework for abortion law in Northern Ireland in respect of conscientious objection, will apply in the same way as in Great Britain, and will not cover ancillary, administrative and managerial tasks that might be associated with treatment relating to the termination of pregnancy³³.
- 4.35 It is important to note that the Supreme Court in the *Glasgow mid-wives cases* made it clear that the petitioners in that case, even if not protected by the conscience clause, "may still claim that, either under the Human Rights Act or under the Equality Act, their employers should have made reasonable adjustments to the requirements of the job in order to cater for the religious beliefs"³⁴.
- 4.36 As made clear in research commissioned by the Equality and Human Rights Commission (2014), this means that 'requirements to be involved in care of patients before or after an abortion may be said to be indirectly discriminatory against those with religion or belief objections: and any requirement for them to participate will need to be justified'³⁵.

³¹ Supreme Court [decision](#) of Doogan & Anor vs NHS Greater Glasgow and Clyde Health Board ('Glasgow mid-wives cases'), see paragraph 40 thereof.

³² *R.R. v Poland* (App.27617/04), 28 November 2011, para 206.

³³ We note that in GB, doctors, nurses, midwives and nursing associates can refuse to participate in the process of treatment due to a conscientious objection, except where it is necessary to save the life or prevent grave permanent injury to the physical or mental health of a pregnant woman.

³⁴ Supreme Court [decision](#) of Doogan & Anor vs NHS Greater Glasgow and Clyde Health Board ('Glasgow mid-wives cases'), see para 24 thereof. It will be noted that the Equality Act 2010 applies only in Great Britain.

³⁵ Peter Edge and Lucy Vickers, Oxford Brookes University (2014) Equality and Human Rights Commission [Research report 97: Review of equality and human rights law relating to religion or belief](#).

We recommend that the scope of any conscientious objection provision and the rights of healthcare professionals, including under equality and human rights law, should be clarified through guidance.

Supporting rationale

- 4.37 There is a need for clarity, including via training and guidance for healthcare professionals, so that they are aware of the scope of any conscientious objection provision, including who can avail of the right; in relation to what services/treatment the right applies to; and how will a ‘conscientious objection’ be established.
- 4.38 The guidance should make clear that those exercising any right to conscientious objection are under an obligation to refer the case to a professional who does not share that objection³⁶. The rights of healthcare professionals to choose to lawfully exercise any right to conscientious objection should be both recognised and respected, and support given, as appropriate³⁷.
- 4.39 There should also be clear guidance for healthcare professionals on their rights under equality and human rights law.
- 4.40 In addition, in its development of departmental guidance for healthcare professionals on the termination of pregnancy in Northern Ireland, Government should ensure effective engagement with a wide range of stakeholders, including equality groups. Exclusion zones (Question 13)

We recommend that measures are taken to ensure that women, including women with multiple identities, are able to access all health services, including sexual and reproductive health services, free from discrimination or harassment. Measures should be compliant with human rights legislation.

Supporting rationale

- 4.41 The CEDAW Inquiry Report recommended that the UK Government ‘protect women from harassment by anti-abortion protesters by investigating complaints and prosecuting and punishing perpetrators’³⁸.

³⁶ See Supreme Court [decision](#) of Doogan & Anor vs NHS Greater Glasgow and Clyde Health Board (‘Glasgow mid-wives cases’).

³⁷ For example, it will be noted that the Royal College of Nursing (RCN) has stated that ‘It is equally important to acknowledge that where nurses may have an objection to terminating a pregnancy, they should be afforded respect for their decision and supported not to participate in care scenarios that may lead to conflict’. See RCN (2017) [Termination of Pregnancy: An RCN nursing framework](#), at page 7.

³⁸ CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

- 4.42 We consider that women, including women with multiple identities, should be able to access all health services, including sexual and reproductive health services, without discrimination or harassment. We agree that any measures adopted to prevent harassment in public spaces should be in accordance with human rights law.
- 4.43 Our recommendation is consistent with the Joint Statement of the CEDAW Committee and the UNCRPD Committee (2018) on *Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities*, which states that ‘States parties should ensure non-interference, including by non-State actors, with the respect for autonomous decision-making by women, including women with disabilities, regarding their sexual and reproductive health well-being’³⁹.

³⁹ CEDAW Committee and the UNCRPD Committee (2018), [Joint Statement of the CEDAW Committee and the UNCRPD Committee on Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities](#) .

5 Recommendation regarding Interim period

5.1 Set out below is the Commission's recommendation relating to the interim period, namely the period before the Regulations are brought into force, which are supplementary to the focus of the consultation.

Remove barriers experienced by women with multiple identities to accessing GB abortion services.

We recommend that steps are taken, during the interim period, to remove barriers experienced by women with multiple identities, particularly marginalised and vulnerable women, who have difficulty accessing abortion services in Great Britain.

Supporting rationale

5.2 We note that Parliament's Women and Equalities Committee report into its *Inquiry* into Northern Ireland's abortion law⁴⁰ (2019), raised concerns⁴¹ about the ability of marginalised women to access UK Government's funding for abortion provision in England, indicated that it had not been accessed equally by different groups of women and girls. It stated that there were barriers for women: on low income; who are too ill to travel by plane or ferry; who are being abused or coerced by their partner; and with insecure immigration status and without travel documentation.

5.3 It recommended that the Government Equalities Office:

- should carry out an impact assessment, or publish any that have been carried out, to ascertain whether the policy of funding abortion provision in England can be accessed equitably by different groups of women and girls in Northern Ireland;
- work with community organisations supporting migrant women and girls, victims of violence and other marginalised groups to develop an information campaign to explain the funding of abortion provision, in particular to marginalised groups of women and girls;

⁴⁰ See Women and Equalities Committee, (2019) [Report on Abortion law in Northern Ireland](#), eighth report of 2017–2019 session.

⁴¹ It stated that the scheme was not accessed equally by different groups of women and girls and there were barriers for women and girls: on low income; who are too ill to travel by plane or ferry; who are being abused or coerced by their partner; and with insecure immigration status and without travel documentation.

- work with the Home Office to develop pathways for migrant women to travel to England to access the scheme.

- 5.4 We also note that the UK Government in its response to Women & Equalities Committee abortion inquiry (2019)⁴², recognised the issues and concerns raised by the Committee, and the challenges experienced by some women in being able to travel to access services in England.
- 5.5 We welcome that Government has committed to engage further with marginalised groups and to consider further action in this area⁴³. We also note that from 22 October 2019, in terms of women from Northern Ireland accessing abortion services in England, travel and, if needed, accommodation, are funded through a scheme operated by the UK Government's Department of Health and Social Care. Access to the free scheme from 22 October 2019 will not be means tested, and we recognise that this provision will help alleviate financial barriers faced by some women seeking to access services in England
- 5.6 However, it is essential that effective measures are put in place to address all barriers, not solely financial barriers, experienced by women with multiple identities, particularly marginalised and vulnerable women including women subjected to gender based violence, and women with insecure immigration status, as well as women who due to a disability may be unable to travel to Great Britain, who have difficulty in accessing abortion services in Great Britain during the interim period.
- 5.7 Further to the Government's commitment, there should be effective engagement, during the interim period, with women with multiple identities, including women with insecure immigration status and women subjected to gender based violence and disabled women, to identity barriers.

⁴² UK Government (2019), [Response](#) to Women and Equalities Committee's Report on Abortion law in Northern Ireland.

⁴³ The UK Government response has included, for example, a commitment to host a roundtable meeting with stakeholders to hear more about the issues affecting marginalised groups and how it might provide more support. Ibid

6 Recommendations relating to the implementation of other CEDAW Inquiry report recommendations

6.1 Outlined below are the Commission’s recommendations relating to the implementation of other CEDAW Inquiry Report recommendations which are not considered as part of the consultation, but which the Government has committed to take forward in due course.

Clarify timetable for implementation of remaining CEDAW Inquiry Report recommendations that are required to be implemented under the Act.

We recommend that Government clarifies as a matter of urgency its timetable for ensuring compliance with the remaining CEDAW Inquiry Report recommendations that relate to wider issues, such as ensuring accessibility of services and tackling gender based stereotypes, as well as its proposed steps to effectively consult on how these recommendations will be implemented.

Supporting rationale

6.2 Whilst we welcome that the Government had indicated prior to the consultation paper being published that ‘work is underway on all recommendations’⁴⁴, it is disappointing that there is no detail in the consultation document on how Government intends to comply with the full set of CEDAW Inquiry Report recommendations.

6.3 We note that the NIO screening document indicates that the CEDAW Inquiry report makes recommendations that ‘will be taken forward on a non-statutory basis’, and that it ‘will keep under consideration whether any further screenings are required ahead of implementing these non-statutory recommendations’⁴⁵.

6.4 It is disappointing that there is no indication as to the timetable for implementing these other recommendations, or an indication as to when, and the extent to which, the UK Government intends to consult on how these recommendations will be implemented. In its development of measures to comply with these additional CEDAW recommendations, Government should ensure effective

⁴⁴ UK Government (2019), [Guidance for healthcare professionals in NI 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](#).

⁴⁵ NIO (2019), [S75 Equality screening form](#) .

engagement with equality groups, including women, and compliance by public bodies in Northern Ireland with their S75 duties.

- 6.5 Further, whilst we agree that a number of the outstanding CEDAW report recommendations can be brought about through policy rather than legislative changes, it is our assessment that legislative changes would be required to make education on sexual and reproductive health and rights a *compulsory component* of curriculum, as recommended by the CEDAW Committee. It is not clear why the UK Government has not clarified this in the NIO screening document, and why this recommendation has not been addressed as part of proposals for the new legal framework for abortion.

Ensure ongoing support for women who, in cases of fetal abnormality, decide to carry such pregnancies to term.

We recommend Government clarifies how it will ensure appropriate and ongoing support for women who, in cases of fetal abnormality, decide to carry such pregnancies to term.

Supporting rationale

- 6.6 Government is under a duty to implement the CEDAW Inquiry report recommendation to: ‘Adopt legislation that legalises abortion on the grounds of inter alia SFI, including FFA, ‘ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term’.
- 6.7 It is not clear from the consultation document as to what consideration the Government has given, or what steps the Government has taken or intends to take, alongside its proposals to introduce a new legal framework, to ensure *appropriate and ongoing support, social and financial, for women in these circumstances*.
- 6.8 As noted earlier, concerns were raised as part of a Parliamentary *Inquiry into Abortion on the Grounds of Disability* in 2013 which made clear that: ‘All parents expecting a child with a fetal disability need balanced information about what life would be like with a disabled child... and comprehensive support from the medical profession whatever their decision should be’. It found ‘evidence from witnesses highlighted the varying and inconsistent approaches

towards informing, counselling and supporting parents in different clinical settings when fetal disability is discovered⁴⁶.

- 6.9 Further, we note that the inter-Departmental working group in Northern Ireland on fatal foetal abnormality⁴⁷ concluded, in 2016, that *‘some improvements can be made to the care and support of women with a fatal fetal abnormality diagnosis through the proposals to improve the standard of care under the existing legal framework’* and highlighted that the Public Health Agency had identified a number of improvements that could be implemented, going forward⁴⁸.
- 6.10 Measures to support disabled children and their families, including at an early stage, is also consistent with Article 23 of the UNCRPD, which makes clear that ‘State Parties must ensure that children with disabilities have equal rights with respect to family life’ and ‘shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families⁴⁹’.

Challenge negative stereotypes towards disabled people

We recommend that guidance and training for health professionals includes challenging negative stereotypes towards disabled people, including disabled women.

Supporting rationale

- 6.11 Government is under a duty to implement the CEDAW Inquiry report recommendation to: ‘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’.
- 6.12 We welcome the reference in the consultation paper to ensuring that legal provisions will also be accompanied by models of care, training, professional guidance and standards of practice to assist healthcare professionals to clearly understand their legal rights, obligations and duties.

⁴⁶ Parliamentary [Inquiry into Abortion on the Grounds of Disability](#) (2013)

⁴⁷ See DOJ/DOH working group on fatal foetal abnormality (2016), [Report of the working group on fatal foetal abnormality](#).

⁴⁸ *Ibid.*

⁴⁹ UNCRPD (Art 23), Respect for home and family

- 6.13 It is essential that such training, guidance and standards includes challenging negative stereotypes towards disabled people, including disabled women.
- 6.14 Such actions are also consistent with the duty on Government to implement the CEDAW Inquiry Report recommendation as regards the adoption of legislation that legalises abortion on the grounds of inter alia SFI, including FFA, ‘without perpetuating stereotypes towards persons with disabilities...’⁵⁰.
- 6.15 Research (2012) in Northern Ireland has identified areas of concern in respect to access for disabled women to sexual health and maternity services, with recommendations that consideration be given to the specific needs of disabled women with respect to the latter and that awareness training for health service staff was needed in respect of the sexual health and well-being of people with disabilities (including learning disabilities)⁵¹.
- 6.16 Action to challenge negative stereotypes towards disabled people, including disabled women, via training, guidance and standards for healthcare professionals, is also consistent with the broader Government commitment in the draft *Programme for Government* (PfG) (2015) to challenge negative attitudes towards disabled people in Northern Ireland⁵².
- 6.17 It is also consistent with Article 8 of the UNCRPD which requires State Parties to ‘combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life’⁵³. This Article makes clear that measures include ‘promoting awareness- training programmes regarding persons with disabilities and the rights of persons with disabilities’⁵⁴.
- 6.18 Further under Article 25 of the UNCRPD, State Parties must ‘require health professionals to provide care on the same quality to persons with disabilities, as to others, by inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with

⁵⁰ CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

⁵¹ Harper, C., McClenahan, S., Byrne, B. and Russell, H. (2012): ‘[Disability programmes and policies: How does Northern Ireland measure up? Monitoring Implementation \(public policy and programmes\) of the United Nations Convention on the Rights of Persons with Disabilities in Northern Ireland](#)’, paragraph 5.2.4.1, page 60 (ECNI)

⁵² See NI Executive (2015), [Proposed Delivery Plan for Programme for Government Indicator 42 \(Average life satisfaction score of people with disabilities\)](#)

⁵³ Art 8 (awareness raising) , UNCRPD

⁵⁴ Ibid, Art 8.2.d.

disabilities through training and the promulgation of ethical standards for public and private health care.

Ensure accessibility of services and information for women with multiple identities

We recommend that Government ensures that sexual and reproductive health services and products, and information, are accessible to women with multiple identities.

Supporting rationale

- 6.19 Government is under a duty to implement the CEDAW Inquiry Report recommendation that Government ‘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’⁵⁵.
- 6.20 It is also under a duty to implement the CEDAW Inquiry Report recommendation that Government: ‘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’.
- 6.21 It is essential that sexual and reproductive health services and products, as well as information on sexual and reproductive health services, are accessible to women with multiple identities.
- 6.22 We note that in the Joint Statement of the CEDAW Committee and the UNCRPD Committee (2018) states that, State Parties have an obligation to respect, protect and fulfill the rights of women, including women with disabilities, in relation to their sexual and reproductive health and rights and that they must ensure the enjoyment of these rights without any form of discrimination⁵⁶.
- 6.23 The Joint Statement also made clear that State Parties must ensure that all women, including women with disabilities, are protected against forced abortion, contraception or sterilization against their will or without their informed consent.

⁵⁵ CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

⁵⁶ CEDAW Committee and the UNCRPD Committee (2018), [Joint Statement of the CEDAW Committee and the UNCRPD Committee on Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities](#) , p.2.

- 6.24 There is evidence from across the UK that indicates that disabled adult women experience a number of barriers to accessing sexual and reproductive health and information. For example, few services offer support and information about sex and relationships for people with a learning disability⁵⁷.
- 6.25 Further, we draw Government's attention to concerns raised as part of a Parliamentary *Inquiry into Abortion on the Grounds of Disability* in 2013. In particular, the Commission who undertook that Inquiry was told that quite a few disabled people reported that they have felt they have been put under real compulsion to have fetal testing or even an abortion – on the grounds that they are not fit to have children, particularly people with learning difficulties⁵⁸.
- 6.26 Article 23 of the CRPD states that State Parties should ensure 'the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education ... and the means necessary to enable them to exercise these rights...' ⁵⁹.
- 6.27 Also, as noted below, the UNCRPD Committee in its Concluding Observations on the UK (2017) raised concerns as regards the lack of information and family planning education in accessible formats for persons with disabilities, in particular women and girls with disabilities. It recommended that the UK Government 'ensure equal access to sexual and reproductive health-care services, as set out in target 3.7 of the Sustainable Development Goals, provide information and family planning education for persons with disabilities in accessible formats, including Easy Read'.
- 6.28 Further, Article 25 of the UNCRPD requires that States "[p]rovide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes."
- 6.29 ECNI commissioned research (2012) identified areas of concern in respect to access for disabled women to sexual health and maternity services with recommendations that consideration be given to the specific needs of disabled women with respect to the latter and that awareness training for health service staff was needed in respect of

⁵⁷ As highlighted by UKIM (2017), [Updated submission to the UN Committee on the Rights of Persons with Disabilities in advance of the public examination of the UK's implementation of the UN CRPD](#). See also, [Mencap. 2017. Latest research on relationships, sex and learning disability](#).

⁵⁸ Parliamentary [Inquiry into Abortion on the Grounds of Disability](#) (2013), at p.50.

⁵⁹ UNCRPD Art 23.1.b.

the sexual health and wellbeing of people with disabilities (including learning disabilities).

6.30 As highlighted above, it should also be noted that the CEDAW Inquiry Report (2018) highlighted that rural, migrant, asylum-seeking, refugee women and women in situations of conflict and poverty face additional barriers in accessing healthcare. It also highlighted the CEDAW Committee's general recommendation that States parties provide adequate financing of health care systems in rural areas, particularly with regard to sexual and reproductive health and rights⁶⁰. The Committee also referred to 'the concentration of sexual and reproductive services in Belfast' as a barrier for women with multiple identities accessing healthcare services.

6.31 Further under Article 25 of the UNCRPD, State Parties must provide health services needed by disabled people 'as close as possible to people's own communities, including in rural areas'⁶¹.

Adopt a Strategy to tackle gender stereotypes.

We recommend the adoption of a strategy to combat gender-based stereotypes regarding women's primary role as mothers. We also recommend action to counter other gender based stereotypes and prejudicial attitudes from an early age and across all areas of life. This should include action in all stages of education and vocational training, work, and the media and social media, including advertising and marketing.

Supporting rationale

6.32 Government is under a duty to implement the CEDAW Inquiry Report recommendation that Government: 'Adopt a strategy to combat gender-based stereotypes regarding women's primary role as mothers'⁶².

6.33 The Commission has previously recommended specific action to institute coordinated, comprehensive and coherent measures to counter gender based stereotypes and prejudicial attitudes from an early age and across all areas of life, including in all stages of

⁶⁰ In GR No. 34 (2016) on the rights of rural women, it observes that "[a]ccess to health care, including sexual and reproductive health care, is often extremely limited for rural women". It recommends that States parties provide "[a]dequate financing of health care systems in rural areas, particularly with regard to sexual and reproductive health and rights". See CEDAW Committee (2018), [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#).

⁶¹ UNCRPD, Art 25 (c).

⁶² CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

education and vocational training, work, and the media and social media, including advertising and marketing.

- 6.34 Gender stereotyping and prejudicial attitudes affect women and men throughout their lives and limit the options that are open to them and the choices that they can make in public, economic, social, and family life.
- 6.35 It is therefore essential that Government, pursuant to its duties, implements a strategy to combat gender-based stereotypes regarding women's primary role as mothers, without further delay. We stress, however, that when implementing such a strategy, actions should include, not only measures to combat gender-based stereotypes regarding women's primary role as mothers, but also *other gender-based stereotypes*, including those relating to education and career choices, roles at work⁶³, and in the family and relationships⁶⁴, that impact on both women and men.
- 6.36 The strategy should also include actions aimed at addressing the fact that gender stereotyping can also have a particular impact on women and men with multiple identities. For example, gender stereotypes are often combined with other stereotypes experienced by disabled women, minority ethnic women as well as stereotypes due to age.
- 6.37 Further, it is essential to challenge gender stereotypes and prejudicial attitudes from an early age, as gender based stereotyping can begin in childhood and continue throughout life stages⁶⁵. We note that the Fawcett Society has recently published new research (2019) which highlights the lifelong impact of gender stereotyping in childhood⁶⁶.
- 6.38 As noted below, there is a need for steps to challenge gender roles and stereotyping in all stages of education and vocational training, including promoting gender equality through the curriculum, teacher training, subject choice, careers advice, and ensuring gender mainstreaming in the policies and practices of schools and other

⁶³ ECNI has highlighted that gender stereotypes contribute to gender inequality in relation to work, including occupational and industrial segregation. ECNI (2016) Gender Equality Priorities.

⁶⁴ For example, the UK Government has highlighted the impact of gender stereotypes on relationships. For example, it has indicated that 'prevailing stereotypes about traditional gender roles - where men are expected to be powerful and sexually assertive, while women are judged on their physical appearance and sexual availability to men - form the basis of unhealthy and disrespectful relationships'. UK Government [Response](#) to the Women and Equalities Committee's Inquiry on *Sexual harassment and sexual violence in schools*, para 70.

⁶⁵ See Committee on Women's Rights and Gender Equality, European Parliament (2012) [Report on eliminating Gender Stereotypes in the EU](#)

⁶⁶ Fawcett Society (2019) [Gender Stereotypes in Early Childhood: A Literature Review](#)

educational bodies. There is also a need to eradicate the objectification and degradation of women.

- 6.39 We note that the UK Government has recently indicated in its *Gender Equality Road Map* (2019) that one of the key drivers of gender inequality is 'limiting attitudes to gender' that 'can hold women and men back across their lives'⁶⁷.
- 6.40 It has committed to a series of actions aimed at addressing this inequality including providing improved advice and support in schools, including challenging gender stereotypes; action to increase participation in STEM subjects, particularly for girls; to tackle stereotyping in media and advertising; and to deepen the evidence base around the root causes of gendered aspirations and attitudes.
- 6.41 We consider that a strategy to combat gender-based stereotypes in Northern Ireland should also include actions in these areas.

Embed equality, including gender equality, into the curriculum.

We recommend that Government takes action to further embed and promote equality, including gender equality, within the content and delivery of the curriculum.

Supporting rationale

- 6.42 Government is under a duty to implement the CEDAW Inquiry Report recommendation that Government: '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'⁶⁸.
- 6.43 In implementing this requirement⁶⁹, it is important that action is taken to further embed and promote equality, including gender equality, within the content and delivery of the curriculum, including any

⁶⁷ UK Government (2019), [Gender Equality Road Map, Gender equality at every stage: a road map for change](#), at p10.

⁶⁸ CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

⁶⁹ Pursuant to the NI Executive Formation Act 2019, there is an obligation to implement CEDAW recommendation 'make age appropriate, comprehensive and scientifically accurate information 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'.

revised curriculum relating to Relationship and Sex education (RSE).

- 6.44 The Commission has consistently called for comprehensive action to be taken by the Department of Education, schools and other education bodies to embed equality of opportunity and good relations within the content and delivery of the curriculum.
- 6.45 Recommended actions include reviewing curriculum support materials and developing good practice guidance; setting strategic actions and outcomes; developing equality, including gender equality, elements to the training programmes for student teachers, existing teachers, heads and governors; ensuring effective monitoring and evaluation of actions and outcomes linked to promoting equality.
- 6.46 Further, educational bodies should make equality and good relations central to the culture and ethos of a school and the education system as a whole, including through the adoption of a ‘whole school approach’.
- 6.47 As regards the promotion of gender equality, we have called for steps to tackle gender inequalities and challenge gender roles and stereotyping in all stages of education and vocational training, including promoting gender equality through the curriculum, and teacher training⁷⁰, and ensuring gender mainstreaming⁷¹ in the policies and practices of schools and other educational bodies⁷²⁷³.
- 6.48 We consider that an absence of gender and wider mainstreaming in education, including in the curriculum, is a foundation for inequality⁷⁴.
- 6.49 We have highlighted the need to challenge gender roles, including across the curriculum generally, and within RSE specifically⁷⁵.

⁷⁰ This includes promoting gender equality through initial teacher training and CIPD.

⁷¹ “Gender mainstreaming is the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and all stages, by the actors involved in policy making”, see [Council of Europe definition of gender mainstreaming](#).

⁷² ECNI (2016) [Gender Equality, Policy Priorities and Recommendations](#)

⁷³ We have made clear that these measures should include challenging stereotypes in relation to women’s and men’s gender roles at school, work and in the family, communities and wider society, through the curriculum.

⁷⁴ ECNI (2018) [Equality in Education, Policy Recommendations](#)

⁷⁵ It will be noted that a 2014 survey for Girl-guiding found that three in five of those aged 13 to 21 (59%) had experienced sexual harassment at school, college or work in the last year and one in five girls aged 7 to 12 had experienced jokes of a sexual nature from boys (22%). The 2017 survey found an increase in sexual harassment since 2014, in particular on social media.

- 6.50 We have called for action to tackle gender based bullying, including transphobic bullying and bullying of a sexual nature across all areas of education, including in schools⁷⁶, including through adopting a 'whole school approach'.
- 6.51 We have also recommended steps to tackle the nature and specific impact of gender based violence on women and men and due to a person's gender identity; and to tackle cultural and stereotypical attitudes, including through education, aimed at raising awareness of, and tackling, gender based violence.
- 6.52 In addition, the Commission has consistently called for equality and good relations to be embedded in teacher training, both initial and continuing. While noting the implementation of a 10-year strategy for teacher professional learning⁷⁷, we are concerned about its lack of reference to equality and diversity issues, particularly given the issues that are being highlighted on teacher training needs.
- 6.53 It is also essential that there is effective and regular monitoring and evaluation by ETI and schools of actions taken to promote equality of opportunity, including as regards the delivery of any revised curriculum, so as to ensure that actions and outcomes linked to the promotion of equality are realised.
- 6.54 In 2013 we welcomed⁷⁸ the Department's circular⁷⁹ on RSE to schools in which it made it clear that the Department required each school to have in place a written policy on how it will address the delivery of RSE.
- 6.55 We also welcomed⁸⁰ the Education and Training Inspectorate's (ETI) 2016 evaluation and recommendations in relation to RSE in *primary and special schools*⁸¹. It recommended a number of improvements that included, for example, ensuring that the teaching of sensitive issues is provided to all children in all schools, prior to their transfer to post-primary education. It also calls for improvements in the training for teachers to enhance their capacity and confidence to deliver the more sensitive elements.

⁷⁶ The CEDAW Committee has called for measures to eradicate bullying/harassment against girls in schools. See CEDAW Committee (2013) [Concluding Observations on UK, CEDAW Committee](#)

⁷⁷ DE (2016) Learning Leaders, A strategy for teachers Professional Learning

⁷⁸ ECNI (2013) [Promoting Sexual Orientation Equality – Priorities and Recommendations](#)

⁷⁹ DE (2013) [DE Circular on RSE policy in schools](#)

⁸⁰ ECNI (2018) [Equality in Education, Policy Recommendations](#)

⁸¹ ETI (2016), [Report of an Evaluation of Relationships and Sexuality Education in Primary and Special Schools](#).

- 6.56 Furthermore, we note the ETI found that one in four of the 121 schools which responded to its online survey did not have an RSE policy.
- 6.57 We note that a 2011 Education and Training Inspectorate report of an Evaluation of RSE in Post Primary Schools concluded that overall best practice in RSE was characterised by, *inter alia*, :
- clear linkages and explicit connections made with the aims, values, ethos, moral and ethical framework of the school;
 - the use of current and age appropriate resources;
 - robust procedures for the monitoring and evaluation of the provision within the school.
- 6.58 We note that in England, RSE is to become compulsory from September 2020 in secondary education, and that the Department for Education has issued statutory guidance (2019)⁸² for schools and others, which sets out how schools must comply with this new duty.
- 6.59 We further note that the guidance on RSE in England makes clear that post primary schools should, in addition to covering issues such as abortion and contraception, cover a number issues relating to the promotion of equality, including gender equality.
- 6.60 These include, for example, knowledge of the legal rights and responsibilities regarding equality; how stereotypes impact on different equality groups; and knowledge of sexual harassment and sexual violence and why this is unacceptable.
- 6.61 Further, action to promote gender equality through education would be consistent with international obligations on gender equality, including the UN Sustainable Development Goals (2015) which have been adopted by the UK Government and which includes the Goal (Goal 5) on Gender Equality.
- 6.62 It should also be noted that Recommendation 5 (2002) of the Council of Europe on the protection of women against violence makes it clear that Member States should “introduce or reinforce a gender perspective in human rights education programmes and reinforce sex education programmes that give special importance to gender equality and mutual respect”.

⁸² Department for Education (2019) [Relationships education, RSE and Health Education. Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers.](#)

6.63 We note that the CEDAW Committee (2019) in its Concluding Observations on the UK, in addition to calling on the UK Government to ‘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’, has also recommended that the UK Government takes action to ‘promote human rights education in schools which includes a focus on the empowerment of girls and the Convention’.

Ensure teaching, including on Relationships and Sexuality Education (RSE), is accessible to all equality groups.

We recommend that Government ensures that teaching, including information, is accessible to, and inclusive of, pupils across the equality groups.

Supporting rationale

6.64 In terms of the delivery of the curriculum, including any revised curriculum relating to Relationships and Sexuality Education (RSE), schools should ensure that teaching, including information on sexual and reproductive health, is accessible to, and inclusive of, pupils across the equality groups.

6.65 For example, information should be accessible to disabled pupils, including disabled women. We note that evidence from across the UK indicates that disabled adult women experience a number of barriers to accessing sexual and reproductive health services and information. For example, few services offer support and information about sex and relationships for people with a learning disability⁸³.

6.66 We note that the UNCRPD Committee in its Concluding Observations on the UK (2017) raised concerns as regards the lack of information and family planning education in accessible formats for persons with disabilities, in particular women and girls with disabilities. It recommended that the UK Government ‘ensure equal access to sexual and reproductive health-care services, as set out in target 3.7 of the Sustainable Development Goals, provide information and family planning education for persons with disabilities in accessible formats, including Easy Read’⁸⁴.

⁸³ [Mencap. 2017. Latest research on relationships, sex and learning disability.](#)

⁸⁴ UNCRPD Committee (2017), [Concluding Observations on the UK.](#)

6.67 In addition, information should be accessible to pupils from different minority ethnic backgrounds, who may experience language barriers.

7 NIO Section 75 Equality Screening Form

7.1 We welcome that an equality screening form was published with the consultation exercise on the establishment of a new legal framework for abortion services in Northern Ireland.

7.2 The screening report, however, contains limited information and the overall analysis of the consultation proposals does not enable reliable assessments of each of the consultation proposals in relation to the impacts and opportunities to promote equality of opportunity across the Section 75 equality grounds.

7.3 In addition, there is not clarity with regard the proposed Section 75 processes; i.e. the statement that ‘this document constitutes the Department’s initial equality impact assessment of establishing a legal framework to provide access to abortion services in Northern Ireland’.

7.4 The overall rationale for the consultation proposals relating to the framework for abortion is set out in the Government Consultation; i.e. the health and safety of women and girls, and clarity and certainty for the medical profession. The CEDAW Inquiry Report recommendations focus on ensuring women have access to sexual and reproductive health rights and services and this point is reflected in the screening report where it is stated that women will benefit from the intended policy.

7.5 In further developing the policy proposals it will be important that equality screenings are conducted for each consultation proposal to ensure that appropriate information, including the information noted above, is used on which to determine assessments of impacts and opportunities on the Section 75 equality groups. Seven of the consultation proposals contain policy options relating to the grounds for abortion, gestational time limits, who can provide services and where these can be performed and notification requirements and may have a similar evidential base and therefore determinations on impacts and opportunities.

7.6 It will be important that information gained through this consultation, for example, the barriers facing disabled women, women with

dependents, migrant women and under 18s, be incorporated into the screening process.

- 7.7 Clarity with regard the proposed way forward is required and if an EQIA is to be conducted, there should be clarity of the focus for this.

8 Conclusion

- 8.1 We have set out a range of recommendations relating to the proposed new legal framework for abortion services in Northern Ireland; the interim period, namely the period before the Regulations are brought into force; and as regards the implementation of the remaining CEDAW Inquiry Report recommendations.
- 8.2 These include recommendations highlighting the need for Government to ensure compliance with its UNCRPD obligations; to ensure sexual and reproductive health services and information are accessible to women, including women with multiple identities; and to clarify its timetable for ensuring compliance with the remaining CEDAW Inquiry report recommendations and its proposed steps to consult on how these recommendations will be implemented.
- 8.3 We have also raised a number of issues for consideration by the NIO in relation to its Section 75 equality screening form.

**Equality Commission for Northern Ireland
December 2019**

9 Annex 1: Role and Remit of The Equality Commission for Northern Ireland

- 9.1 The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation and disability. The Commission’s remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998⁸⁵.
- 9.2 The Equality Commission and the Northern Ireland Human Rights Commission are jointly designated as the 'independent mechanism' to promote, protect and monitor implementation of United Nations Convention on the Rights of People with Disabilities (UNCRPD).

⁸⁵ The Commission’s general duties include:

- working towards the elimination of discrimination;
- promoting equality of opportunity and encouraging good practice;
- promoting positive / affirmative action;
- promoting good relations between people of different racial groups;
- overseeing the implementation and effectiveness of the statutory duty on relevant public authorities; and
- keeping the legislation under review.