

**Submission to the United Nations  
Committee on the Elimination of  
Discrimination Against Women on  
the follow-up procedure to Ireland's  
combined sixth and seventh  
periodic report**

*August 2020*



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission

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## Contents

<b>Introduction</b>	<b>1</b>
<b>Access to justice for historical abuses of women and girls</b>	<b>2</b>
Magdalene Laundries	2
<i>Independent investigation into the Magdalene Laundries</i>	2
<i>Investigation by the Office of the Ombudsman</i>	4
<i>Access to relevant information held in private and public archives</i>	5
Symphysiotomy	7
Mother and Baby Homes	7
<b>The provisions of resources to the NHRI</b>	<b>9</b>
<b>The impact of austerity measures on NGOs</b>	<b>10</b>
<b>Access to abortion</b>	<b>11</b>
Equitable access to information and services	12

## Introduction

The Irish Human Rights and Equality Commission (“the Commission”) is Ireland’s “A” Status National Human Rights Institution (“NHRI”) and the National Equality Body. The Commission previously made a submission to the UN Committee on the Elimination of Discrimination Against Women (“the Committee”) in January 2017, in respect of Ireland’s combined sixth and seventh periodic reports under the Convention on the Elimination of All Forms of Discrimination Against Women (“the Convention”).<sup>1</sup> In its 2017 Concluding Observations, the Committee requested that the Government of Ireland provide updates within two years on the steps taken to implement recommendations in the following areas:<sup>2</sup>

1. Access to justice for historical abuses of women and girls (para 15(a))
2. The provision of resources to the NHRI (para 17)
3. The impact of austerity measures on non-governmental organisations (para 21)
4. Access to abortion (43(a))

The Commission notes the late submission by the State of its follow-up report to the Committee in June 2020.<sup>3</sup>

The purpose of this submission is to provide the Committee with updates and information of relevance to the recommendations identified for follow-up, and to assist the Committee in its analysis of the State’s follow-up report.

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<sup>1</sup> Irish Human Rights and Equality Commission, [\*Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s combined sixth and seventh periodic reports\*](#) (January 2017).

<sup>2</sup> See Committee on the Elimination of Discrimination against Women, [\*Concluding observations on the combined sixth and seventh periodic reports of Ireland\*](#) (March 2017) at para 62.

<sup>3</sup> Government of Ireland (June 2020), *Committee on the Elimination of Discrimination against Women, Concluding observations on the combined sixth and seventh periodic reports of Ireland, Addendum, Information provided by Ireland on the follow-up to the concluding observations of the Committee*. Hereafter cited as ‘State Follow-up Report to CEDAW, June 2020’.

## Access to justice for historical abuses of women and girls

The Commission has repeatedly emphasised that the State's response to historical human rights abuses can inflict further and ongoing trauma upon victims and survivors.<sup>4</sup> Secondary victimisation can occur through the failure to acknowledge past abuses or the State's role therein, treatment which causes victims to believe that their voices are not being heard, or the absence of appropriate redress.

### Magdalene Laundries

#### Independent investigation into the Magdalene Laundries

In its 2017 Concluding Observations, the Committee concluded that the State had failed to establish an independent, thorough and effective investigation, in line with international standards, into all allegations of abuse, ill-treatment or neglect of women and children in the Magdalene Laundries.<sup>5</sup> This conclusion echoes similar concerns and recommendations expressed by the Committee against Torture,<sup>6</sup> the Committee on Economic, Social and Cultural Rights,<sup>7</sup> and the Human Rights Committee.<sup>8</sup>

The Commission notes the consistent reiteration by the State that it does not believe that a new inquiry into the Magdalene Laundries is required.<sup>9</sup> The State has repeatedly asserted that 'no factual evidence to support allegations of systematic torture or ill treatment of a criminal nature in these institutions was found'.<sup>10</sup> However, the Inter-Departmental Committee ("McAleese Committee"), established to determine the facts of the State's

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<sup>4</sup> Irish Human Rights and Equality Commission, [Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland's second periodic report](#) (July 2017) at p. 58.

<sup>5</sup> Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#) (March 2017) at p. 4.

<sup>6</sup> Committee against Torture, [Concluding observations on the second periodic report of Ireland](#) (August 2017) at p. 9.

<sup>7</sup> Committee on Economic, Social and Cultural Rights, [Concluding observations on the third periodic report of Ireland](#) (July 2015) at p. 6.

<sup>8</sup> Human Rights Committee, [Concluding observations on the fourth periodic report of Ireland](#) (August 2014) at p. 4.

<sup>9</sup> State Follow-up Report to CEDAW, June 2020. See also, Committee against Torture, [Information received from Ireland on follow-up to the concluding observations](#) (August 2018) at p. 4.

<sup>10</sup> See Committee against Torture, [Information received from Ireland on follow-up to the concluding observations](#) (August 2018) at p. 4.

involvement with Magdalene Laundries, had no remit to seek, investigate or make determinations on such evidence.

In 2019 the Special Rapporteur on the sale and sexual exploitation of children expressed her concern that the State maintains the position set out above, as it is based on the results of an inquiry that was limited in scope and gathered information primarily through voluntary contributions.<sup>11</sup> In February 2020 the UN Committee against Torture found that it has full jurisdiction to decide Elizabeth Coppin's complaint alleging that Ireland has failed to investigate or to ensure accountability or comprehensive redress for the abuse that she suffered in three of Ireland's Catholic Church-run 'Magdalene Laundries' from 1964 to 1968.<sup>12</sup> As the Commission has previously stated to the Committee,<sup>13</sup> the McAleese Report is insufficient to discharge the State's human rights obligations to investigate the relevant allegations. In this regard, the Commission notes the testimonies of women about the deprivation of liberty, forced labour and the physical and psychological punishment endured in the Magdalene Laundries.<sup>14</sup>

**Recalling the recommendations of the Committee, and other UN treaty monitoring bodies, the Commission recommends that the State investigate fully, in line with international human rights standards, the situation of women and children who were institutionalised in the Magdalene Laundries.**

**The Commission recommends that the State implements the recommendation of the Special Rapporteur on the sale and sexual exploitation of children to address the culture**

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<sup>11</sup> Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at p. 5.

<sup>12</sup> [https://www.hoganlovells.com/~media/hogan-lovells/pdf/2020-pdfs/2020\\_02\\_17\\_un\\_torture\\_committee\\_delivers\\_preliminary\\_judgment\\_against\\_ireland.pdf?la=en](https://www.hoganlovells.com/~media/hogan-lovells/pdf/2020-pdfs/2020_02_17_un_torture_committee_delivers_preliminary_judgment_against_ireland.pdf?la=en)

<sup>13</sup> Irish Human Rights and Equality Commission, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#) (January 2017) at p. 42.

<sup>14</sup> J.M. Smith *et al*, [State involvement in the Magdalene Laundries](#) (2013) at pp. 11-32. Following a visit to Ireland in 2018, the Special Rapporteur on the sale and sexual exploitation of children highlighted that 'conditions in the laundries were harsh, including restriction of movement, isolation from outside communities and humiliating treatment'. See Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at p. 5.

of silence around issues of historical abuse in Ireland, including by providing support for transparency at the highest political level.<sup>15</sup>

### Investigation by the Office of the Ombudsman

The Office of the Ombudsman published an investigation report in November 2017 which concluded that the manner in which the Magdalene Restorative Justice Scheme was administered by the Department of Justice and Equality (“the Department”) amounted to maladministration.<sup>16</sup>

With regard to eligibility for admission to the Scheme, the Ombudsman recommended that the Department should reconsider applications where there is evidence that a woman worked in a Magdalene Laundry but was recorded as having been ‘admitted to’ an adjoining institution. The Department published an Addendum to the terms of the original Scheme in November 2018, in order to implement this recommendation.<sup>17</sup>

While the Commission welcomes the adjustments to this Scheme, it notes recent reports regarding outstanding issues with the administrative processes in place. The Commission is aware of concerns that there continues to be an over reliance on the records of religious congregations in making assessments for eligibility under the revised Scheme, with ongoing ambiguity about the weight being afforded to the testimony of the women and/or their relatives.<sup>18</sup> The Addendum provides that applications under the Scheme must be accompanied by ‘records’ from the relevant institution setting out the time spent working there and that calculations for lump sum payments operate on the presumption that no

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<sup>15</sup> Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at p. 17.

<sup>16</sup> Office of the Ombudsman, [Opportunity Lost: An Investigation by the Ombudsman into the Administration of the Magdalen Restorative Justice Scheme](#) (2017). The Magdalene Restorative Justice Scheme is an *ex gratia* scheme. There was no statutory basis for the Scheme and the Irish Government approved it on the understanding that the State has no obligation in law to provide compensation to the women concerned (see the report, *Opportunity Lost*, at p. 53).

<sup>17</sup> Department of Justice and Equality, [Addendum to the Terms of Magdalen Restorative Justice Ex Gratia Scheme in respect of women who working in the laundries in the 12 ‘Magdalen’ institutions and who were resident in one of the 14 adjoining institutions](#) (November 2018).

<sup>18</sup> See, Irish Council for Civil Liberties, [NGO Submission to the United Nations Committee against Torture: Follow-up to the 2017 Concluding Observations of the Committee against Torture](#) (November 2018); The Journal, [Just one maximum compensation payout in Magdalene scheme since expansion](#) (11 February 2019); and Department of Justice and Equality, Written Answers, [Magdalen Laundries](#) (29 November 2018).

child under 12 years of age worked in a Magdalene Laundry, unless evidence is provided to the contrary.<sup>19</sup>

The Ombudsman also called on the Department to review all applications where there is a dispute over the ‘length of stay’ in a relevant institution and to address issues relating to the legal capacity of a number of women to accept awards under the Scheme. The Commission notes in the information provided by the State that a Senior Counsel was appointed to review these recommendations, and awaits the finalisation of this process.<sup>20</sup> In its 2017 submission to the Committee, the Commission urged the State to commence the relevant provisions of the *Assisted Decision-Making (Capacity) Act 2015* without delay, in order to ensure that the applications of women deemed to lack capacity can be processed under the Scheme.<sup>21</sup> The relevant provisions of the 2015 Act have not yet been commenced.

**The Commission recommends that the State administers the Magdalene Restorative Justice Scheme in line with international human rights standards, to ensure full compliance with the principles of fair procedures and transparency and to avoid any further obstacles for victims and survivors in accessing redress for historical abuses.**

**The Commission reiterates its recommendation that the relevant provisions of the *Assisted Decision-Making (Capacity) Act 2015* are commenced without delay.**

### **Access to relevant information held in private and public archives**

The Commission notes that the 2019 report by the Special Rapporteur on the sale and sexual exploitation of children highlights how victims and survivors are being ‘systematically

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<sup>19</sup> Department of Justice and Equality, [Addendum to the Terms of Magdalen Restorative Justice Ex Gratia Scheme in respect of women who working in the laundries in the 12 ‘Magdalen’ institutions and who were resident in one of the 14 adjoining institutions](#) (November 2018). See also, Dáil Éireann Debate, [Magdalen Laundries](#) (27 November 2018).

<sup>20</sup> State Follow-up Report to CEDAW, June 2020. <sup>21</sup> Irish Human Rights and Equality Commission, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s combined sixth and seventh periodic reports](#) (January 2017) at pp. 42-43.

<sup>21</sup> Irish Human Rights and Equality Commission, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s combined sixth and seventh periodic reports](#) (January 2017) at pp. 42-43.



denied' information from religious orders relating to their identities and family links.<sup>22</sup> The Committee against Torture recommended in 2017 that the State 'promote greater access of victims and their representatives to relevant information concerning the Magdalene Laundries held in private and public archives'.<sup>23</sup> The Commission supports this recommendation but notes the statement by the Minister for Justice and Equality in 2018 that there are no plans to provide access to the McAleese archive.<sup>24</sup> Furthermore, the Commission has expressed concerns about the proposal to deposit the records of the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee into the National Archives, where they will be withheld from public inspection for a period of 75 years.<sup>25</sup> These records will include administrative records of the institutions, survivors' personal records, and all relevant documents created by State representatives and the aforementioned bodies.<sup>26</sup> The Commission is concerned that, if enacted, the legislation would significantly weaken survivors' rights to their personal information, contrary to international and European human rights norms.<sup>27</sup>

**The Commission recommends that the archive of the McAleese Committee be made public and that the State takes action to address barriers faced by all victims and their representatives in accessing relevant information held in archives.**

**The Commission recommends that the State does not proceed with proposals to seal and withhold from public scrutiny for a minimum of 75 years records relating to residential institutional child abuse.**

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<sup>22</sup> Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at p. 4.

<sup>23</sup> Committee against Torture, [Concluding observations on the second periodic report of Ireland](#) (August 2017) at p. 9.

<sup>24</sup> Department of Justice and Equality, Written Answer, [Magdalen Laundries Data](#) (22 November 2018).

<sup>25</sup> IHREC (2020) Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland, p. 26. This was proposed in the *Retention of Records Bill 2019*, which lapsed in January 2020 with the dissolution of parliament.

<sup>26</sup> Dr Maeve O'Rourke, Máiréad Enright, Dr Sinéad Ring (2019) [Submission on the provisions of the Retention of Records Bill 2019](#), at p. 3.

<sup>27</sup> In particular: Article 8, European Convention on Human Rights and Article 19, International Covenant on Civil and Political Rights.

## Symphysiotomy

In its 2017 Concluding Observations, the Committee stated its regret that ‘no effort has been made to establish an independent investigation to identify, prosecute and punish the perpetrators who performed the medical procedure of symphysiotomy without the consent of women’.<sup>28</sup>

The State has yet to implement this recommendation and, therefore, the Commission must restate its position that the actions taken to date have not amounted to an ‘effective remedy’<sup>29</sup> and do not meet the required standards under the international human rights framework. The Commission has also raised its specific concerns that the ex gratia payment scheme established for survivors of symphysiotomy required applicants to waive their right to take further legal recourse against state and non-state actors through the judicial process.<sup>30</sup>

**The Commission repeats its recommendation<sup>31</sup> for the State to establish an independent investigation and provide a comprehensive response, in line with international human rights standards, to the situation of women who were subjected to the practice of symphysiotomy.**

## Mother and Baby Homes

In its 2017 submission to the Committee, the Commission recommended that the statutory investigation into Mother and Baby Homes be widened to include the operation of

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<sup>28</sup> Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#) (March 2017) at p. 4.

<sup>29</sup> See Human Rights Committee, [General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#) at pp. 6-8.

<sup>30</sup> See Irish Human Rights and Equality Commission, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#) (January 2017) at p. 43.

<sup>31</sup> See Irish Human Rights and Equality Commission, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#) (January 2017) at p. 44; and Irish Human Rights and Equality Commission, [Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland's second periodic report](#) (July 2017) at p. 55.

analogous institutions that were not included in the original Terms of Reference.<sup>32</sup> The Commission regrets that, despite its recommendations and the comments of the Committee,<sup>33</sup> the investigation remains limited in scope. The Special Rapporteur on the sale and sexual exploitation of children also raised concerns in March 2019 that the investigation is not broad enough to uncover the full scale of illegal adoptions alleged to have taken place.<sup>34</sup>

The Commission has previously noted<sup>35</sup> that the Second Interim Report of the Commission of Investigation identified inconsistencies in the exclusion of unaccompanied children in mother and baby homes from the remit of the Residential Institutions Redress Scheme: ‘Children who were resident in these institutions without their mothers would seem to have been in the same position as children resident in the industrial schools and orphanages which were covered by the redress scheme’.<sup>36</sup>

The Fourth Interim Report of the Commission of Investigation was finalised in December 2018. It states that the bulk of the material from the Department of Health and the Department of Children and Youth Affairs was ‘only recently received’ and notes with regret that so little relevant documentation has been found by the Health Service Executive.<sup>37</sup>

In responding to this report, the Minister for Children and Youth Affairs confirmed that the decision to exclude unaccompanied children in mother and baby homes from the redress scheme was reexamined by the Government but it ‘believes it would not be appropriate to deal with the question of redress in advance of any conclusions by the Commission [of

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<sup>32</sup> Irish Human Rights and Equality Commission, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s combined sixth and seventh periodic reports](#) (January 2017) at p. 45.

<sup>33</sup> Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#) (March 2017) at p. 4.

<sup>34</sup> Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at pp. 3-4.

<sup>35</sup> Irish Human Rights and Equality Commission, [Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland’s second periodic report](#) (July 2017) at p. 56.

<sup>36</sup> Mother and Baby Homes Commission of Investigation, [Second Interim Report](#) (September 2016) at p. 4.

<sup>37</sup> Mother and Baby Homes Commission of Investigation, [Fourth Interim Report](#) (December 2018) at p. 3.

Investigation]’.<sup>38</sup> The Government has recently granted a further extension for this investigation and the final reports are now due to be published on 30 October 2020.<sup>39</sup>

**The Commission recommends the State to ensure that investigations into abuses are sufficiently comprehensive to encompass all persons potentially affected and that foreseeable delays in the process are accounted for and addressed, including through the timely provision of all relevant documentation. It also repeats its concern that the exclusion of certain unaccompanied children from the Residential Institutions Redress Scheme represents an arbitrary barrier to accessing redress.**<sup>40</sup>

## The provisions of resources to the NHRI

The Commission is an independent statutory body, established in November 2014 under the *Irish Human Rights and Equality Commission Act 2014*. The Commission accounts directly to the Oireachtas for its statutory functions and the provisions of the 2014 Act ensure its structural and financial independence. The International Coordinating Committee of National Human Rights Institutions has accredited the Commission as an “A” status NHRI, thereby confirming its full compliance with the UN Paris Principles.

In addition to its institutional independence, the Commission is a Voted account, where the proposed estimated annual budget for the Commission is voted on by parliament. Section 26 of the *Irish Human Rights and Equality Commission Act 2014*, also provides that, in each financial year, the Minister consults with the Commission on the allocated budget.

The Commission is required to prepare a strategy statement on a three yearly basis, setting out its key objectives and the proposed use of resources.<sup>41</sup> In accordance with its *Strategy Statement 2019–2021*, the Commission has confirmed that it will use a significant portion of

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<sup>38</sup> Dáil Éireann Debate, [Fourth Interim Report of the Commission of Investigation into Mother and Baby Homes: Statements](#) (7 February 2019). See also, Department of Children and Youth Affairs, Written Answers, [Residential Institutions Redress Scheme](#) (29 January 2019).

<sup>39</sup> This statutory investigation was originally established in 2014. Gallagher, ‘[Final mother-and-baby homes report delayed for four months](#)’ *Irish Times* 12 June 2020.

<sup>40</sup> Irish Human Rights and Equality Commission, [Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland’s second periodic report](#) (July 2017) at p. 56.

<sup>41</sup> See Section 25(2) of the [Irish Human Rights and Equality Commission Act 2014](#).

its budget on pro-actively advancing human rights and equality issues in the following areas: access to justice; socio-economic rights; combatting racism and promoting intercultural understanding; and disability.<sup>42</sup>

## The impact of austerity measures on NGOs

The Commission expressed concerns to the Committee in 2017 about the damaging impact of the economic recession on Irish civil society organisations and community development programmes in the field of women's rights.<sup>43</sup>

The *National Strategy for Women and Girls 2017-2020* was subsequently published in April 2017 and references the Committee's recommendation in relation to the funding of NGOs, noting that it is being considered by the relevant Government bodies. The Strategy includes a broad commitment to ensure that civil society is enabled to advocate on behalf of women and sets out specific actions focused on: supporting the core funding of the National Women's Council of Ireland ("NWCI") (Action 6.16); supporting and resourcing women's community development organisations (Action 1.19); and ensuring a greater focus on women's participation and on gender issues at community level, including through the provision of key supports to disadvantaged women, Traveller and Roma women and women with disabilities through the Social Inclusion and Community Activation Programme ("SICAP") (Action 4.6).<sup>44</sup>

The Commission welcomes these commitments but notes the repeated calls for funding to be restored to pre-austerity levels for civil society organisations and community-based

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<sup>42</sup> Irish Human Rights and Equality Commission, [Strategy Statement 2019–2021](#) (2019) at p. 8.

<sup>43</sup> Irish Human Rights and Equality Commission, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#) (January 2017) at p. 75.

<sup>44</sup> Department of Justice and Equality, [National Strategy for Women and Girls 2017-2020: Creating a better society for all](#) (April 2017).

groups working to promote women's rights, including to ensure their ongoing sustainability.<sup>45</sup>

**The Commission recommends that the State adopt measures to ensure that the resources allocated for organisations working in the field of human rights and equality, including women's rights, are protected in future situations of economic recession and budgetary cuts.**

## Access to abortion

In June 2017, a Citizens' Assembly in Ireland recommended that a referendum be held on removing and replacing Article 40.3.3<sup>o</sup> of the Constitution, which recognised the equal right to life of the pregnant woman and the unborn.<sup>46</sup> On 25 May 2018, the Irish people voted to replace this Article with a provision permitting the State to legislate for the termination of pregnancy. The *Health (Regulation of Termination of Pregnancy) Act 2018* ("2018 Act") was subsequently enacted in December 2018, repealing the *Protection of Life During Pregnancy Act 2013* and the *Regulation of Information (Services Outside the State For Termination of Pregnancies) Act 1995*.<sup>47</sup> The 2018 Act provides for a termination where it has been certified by a medical practitioner that the pregnancy has not exceeded 12 weeks and at least 3 days have elapsed following this certification.<sup>48</sup> It also provides for terminations in later stages of pregnancy where there is a fatal foetal abnormality or risk to the health or the life of the mother.<sup>49</sup>

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<sup>45</sup> For example, National Women's Council of Ireland, [Pre-Budget Submission 2019: Investing in Women's Futures](#) (September 2018); National Women's Council of Ireland, [Pre-Budget Submission 2018: Value for Money and Money for Values](#) (October 2017); and Pavee Point, [Pre-budget Submission 2018](#) (July 2017).

<sup>46</sup> The Citizens Assembly, [First Report and Recommendations of the Citizens' Assembly: The Eighth Amendment of the Constitution](#) (June 2017).

<sup>47</sup> The *Health (Regulation of Termination of Pregnancy) Act 2018* is available [here](#). See also, Irish Human Rights and Equality Commission, [Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) Bill 2018](#) (September 2018) and Irish Human Rights and Equality Commission, [Human rights and equality considerations in the development of a new legislative and regulatory framework on abortion](#) (October 2017).

<sup>48</sup> Section 12.

<sup>49</sup> Section 9 provides for terminations where there is a there is a risk to the life, or of serious harm to the health, of the pregnant woman, after examination by 2 medical practitioners. Section 10 provides for a termination where there is an immediate risk to the life, or of serious harm to the health, of the pregnant woman, after the examination of one medical practitioner. Section 11 provides for termination in situations

The 2018 Act also allows medical practitioners to conscientiously object to carrying out a termination of pregnancy.<sup>50</sup> However, conscientious objection cannot be invoked in an emergency situation, when the risk to a pregnant woman's life or health is immediate.<sup>51</sup> The Act further obliges the objecting medical practitioner to transfer the care of the patient to enable the procedure to be carried out.<sup>52</sup> While recognising the need for appropriate provisions to safeguard the right of medical practitioners to conscientious objection,<sup>53</sup> the Commission has previously emphasised that the legislative and regulatory framework in place must ensure the necessary systems, personnel and resources to guarantee that women are provided safe and timely access to abortion services.<sup>54</sup>

Abortion services commenced on 1 January 2019 in Ireland.<sup>55</sup> As of April 2020, 373 general practitioners<sup>56</sup> and ten hospitals had signed up to provide abortion services in Ireland.<sup>57</sup>

## Equitable access to information and services

The Commission has stressed the importance of ensuring that the framework in place avoids creating barriers to access based on socio-economic status and has welcomed the recognition from the Minister for Health that abortion services need to be provided on a

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where two medical practitioners are of the opinion that there is present a condition affecting the foetus that is likely to lead to the death of the foetus either before, or within 28 days of, birth.

<sup>50</sup> Section 22.

<sup>51</sup> Dáil Éireann Debate, [Abortion Legislation](#) (15 January 2019).

<sup>52</sup> Section 22(3): 'A person who has a conscientious objection...shall, as soon as may be, make such arrangements for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of the termination of pregnancy concerned.' The Commission has recommended that in addition to provision in legislation, clear procedures for expeditious transfer of care should be provided through regulation and guidelines. See Irish Human Rights and Equality Commission, [Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) Bill 2018](#) (September 2018) at p. 9.

<sup>53</sup> The Commission has also recommended that appropriate provision for conscientious objection and the related restrictions and referral obligations should be extended to a broader range of health and social care professionals with whom a pregnant woman or girl may come into contact. See Irish Human Rights and Equality Commission, [Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) Bill 2018](#) (September 2018) at pp. 7-11.

<sup>54</sup> Irish Human Rights and Equality Commission, [Human rights and equality considerations in the development of a new legislative and regulatory framework on abortion](#) (October 2017) at pp. 27-29.

<sup>55</sup> RTÉ, [Abortion services to be provided in Ireland from today](#) (1 January 2019).

<sup>56</sup> Valerie Ryan, ['All GPs signed up for abortion services not constantly available'](#), *Irish Medical Times* (1 April 2020)

<sup>57</sup> Website of the Health Service Executive at <https://www2.hse.ie/conditions/abortion/how-to-get-an-abortion/hospitals-providing-services.html>



universal basis.<sup>58</sup> The Commission has highlighted its view that universality and equality of access to services for the termination of pregnancy in Ireland are contingent on the availability of such services across the State, including in rural areas.<sup>59</sup> It has also called on the State to ensure that the framework for abortion services is implemented in a manner that meets the needs of young women and girls, including through the development of age-appropriate procedures for their consent to treatment and the adaptation of the clinical assessment, referral and certification processes.<sup>60</sup>

The Commission notes the importance of ensuring that comprehensive, accessible and reliable health information is available to the public on abortion services, including women from ethnic minority groups and women with disabilities.<sup>61</sup> There have been recent reports about the existence of websites disseminating false information – requiring the Health Service Executive to institute legal proceedings in response – and actions by groups focused on deterring women from accessing abortion services.<sup>62</sup> As reported by the media, a number of data breaches have resulted in protests taking place outside hospitals to coincide with the scheduling of abortion procedures and the personal details of individuals being shared.<sup>63</sup>

The 2018 Act makes no provision for ‘safe access’ zones outside health centres providing abortion services. The Commission notes that the previous Government had committed to

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<sup>58</sup> Department of Health, Press Release, [Minister Harris gets Government approval for legislation which will provide for the Regulation of Termination of Pregnancy in Ireland](#) (10 July 2018).

<sup>59</sup> Irish Human Rights and Equality Commission, [Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) Bill 2018](#) (September 2018) at pp. 13-15.

<sup>60</sup> Irish Human Rights and Equality Commission, [Human rights and equality considerations in the development of a new legislative and regulatory framework on abortion](#) (October 2017) at pp. 14-17; Irish Human Rights and Equality Commission, [Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) Bill 2018](#) (September 2018) at pp. 5-6; and Irish Human Rights and Equality Commission, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#) (January 2017) at pp. 102-103.

<sup>61</sup> For example, concerns have been raised about the information and support phone line not being accessible to people who are deaf or hard-of-hearing. See The Journal, [‘What if someone is 11 weeks now?’: Concerns that HSE's abortion helpline fails to provide for deaf people](#) (5 January 2019).

<sup>62</sup> Joint Oireachtas Committee on Health, [Quarterly Update on Health Issues: Discussion](#) (6 February 2019); Dáil Éireann Debate, [Abortion Services Provision](#) (13 February 2019); and Seanad Debate, [Order of Business](#) (26 February 2019).

<sup>63</sup> Joint Oireachtas Committee on Health, [Quarterly Update on Health Issues: Discussion](#) (6 February 2019).



introducing legislation to address this issue.<sup>64</sup> The purpose of this legislation was to ensure that patients, service providers, healthcare staff and members of the public can access premises in which abortion services may be provided without fear of intimidation or harassment.<sup>65</sup> The new Programme for Government, published in June 2020, also anticipates the establishment of ‘exclusion zones’ around medical facilities.<sup>66</sup>

**The Commission reiterates its position that the State must meet its obligations, under international law, to vindicate the human rights of women and girls in accessing health care that is safe, appropriate and respects their right to privacy.<sup>67</sup>**

**The Commission welcomes the State’s commitment to review the operation of the 2018 Act no later than three years after it was commenced,<sup>68</sup> but notes that additional legislative and other measures may be needed within a shorter timeframe to protect the rights of women and girls.**

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<sup>64</sup> See Dáil Éireann Debate, [Abortion Services Provision](#) (5 February 2019).

<sup>65</sup> Dáil Éireann Debate, [Abortion Services Provision](#) (5 February 2019).

<sup>66</sup> Fianna Fáil, Fine Gael, Green Party (June 2020), *Programme for Government – Our Shared Future*. See section on ‘Promoting Women’s Health’

<sup>67</sup> Irish Human Rights and Equality Commission, [Oireachtas must now legislate to vindicate the human rights of women and girls in accessing healthcare](#) (May 2018).

<sup>68</sup> Section 7 of the 2018 Act.



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