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# ABORTION LAW AND POLICY IN NORTHERN IRELAND: ITS IMPACT ON ACCESS AND FUTURE DIRECTION

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# CONTEXT

- ❖ The current legal framework for abortion in Northern Ireland leads to very restricted access.
- ❖ 16 abortions were carried out by the NHS in the last reported year in Northern Ireland.
- ❖ In contrast 919 abortions were carried out in England to those with Northern Ireland addresses.
- ❖ Others self-abort at home (Aitken et al studies).
- ❖ A study in Northern Ireland and the Republic of Ireland identified that abortion was a workplace issue – that women were unable to get sick leave, were returning to work too soon, experienced stigma and were uncertain who they could support from.

# CEDAW

## Background information

- ❖ The Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW) has noted in its reports on the UK, since 1999, the lack of abortion access for residents in Northern Ireland.
- ❖ A Northern Ireland inquiry submission to CEDAW was made in 2010 by FPANI, Alliance for Choice and NIWEP.
- ❖ The investigation was carried out in 2016, with the report published in February 2018.

# CEDAW

The **UN CEDAW inquiry** published in 2018 established that the impact of restricted access resulted in **grave and systematic violation of human rights**. The inquiry identified:

- ❖ The chilling effect on clinicians of unclear law and policy.
- ❖ That access to abortion services, including counselling were impacted by anti-abortion protestors.
- ❖ A “don’t ask, don’t tell” practice existed, resulting in women neither asked, nor encouraged to reveal, if they had ingested abortion pills.
- ❖ There was no referral pathway for post abortion care for those that travelled.
- ❖ There were no pathways for return of foetal remains.
- ❖ Criminalisation had occurred of those seeking to self-abort.

# CEDAW

## **CEDAW Report made recommendations in two areas**

1. Legal and institutional framework recommendations:
  - ❖ Repeal of sections 58 and 59 of the Offences Against the Person Act 1861.
  - ❖ New legislation should provide expanded grounds for access to abortion.
  - ❖ There should be an interim halt on application of criminal law.
  - ❖ Enhanced monitoring and data collection was needed of the application of the law and self-induced abortions.

# CEDAW

## 2. Recommendations for Local sexual and reproductive health rights and services:

- ❖ Provide rights-based counselling and information on sexual and reproductive health services
- ❖ Ensure access to contraception and high quality abortion and post-abortion care.
- ❖ Reform sex education.
- ❖ Introduce awareness-raising campaigns on reproductive and sexual health.
- ❖ Introduce programmes to combat gender-based stereotypes.
- ❖ Provide protection from anti-abortion protestors.

# CENTRALISED BOOKING SYSTEM FOR THOSE TRAVELLING TO ENGLAND

- ❖ The booking system (CBS) was formally introduced in March 2018 following a policy change by UK government in June 2017.
- ❖ Preliminary indications are that the CBS is largely working well.
- ❖ However three matters are of concern:
  1. Access can be problematic for those with underlying health conditions.
  2. Challenges arise when the estimated gestation is inaccurate.
  3. Knowledge of the CBS is low amongst those seeking abortions.



# IMPLICATIONS OF IRISH REFERENDUM

- ❖ In May 2018 the Irish population voted by a majority of 66% to repeal the 8<sup>th</sup> amendment.
- ❖ The hugely positive result signalled that change is possible in jurisdictions previously regarded as 'conservative'.
- ❖ A large part of the success of the campaign resulted from the culmination of sustained activities by feminist, grassroots organisations.
- ❖ The campaign led to significant cross border solidarity between activists groups in the Republic of Ireland and Northern Ireland.
- ❖ In June 2018 Sinn Fein changed its previously limited policy on abortion to match proposed legal changes in the Republic of Ireland.
- ❖ The SDLP changed its policy to allow for a free vote by politicians.

# PRACTICAL IMPLICATIONS OF IRISH REFERENDUM

- ❖ Those needing abortions *MAY* be able to travel to the Republic of Ireland, this could be especially good for those unable to travel to England (caring responsibilities, unable to get time off work, movements restricted by partner).
- ❖ But if a waiting period is introduced this could be a barrier, unless for instance if the first consultation is undertaken by phone.
- ❖ Cost could be an issue – for those on low incomes travelling to England may still be less of a financial demand as they can currently access support for this.
- ❖ Migrants / asylum seekers may still face barriers.

# EMERGENCY DEBATE AT WESTMINSTER 5 JUNE 2018

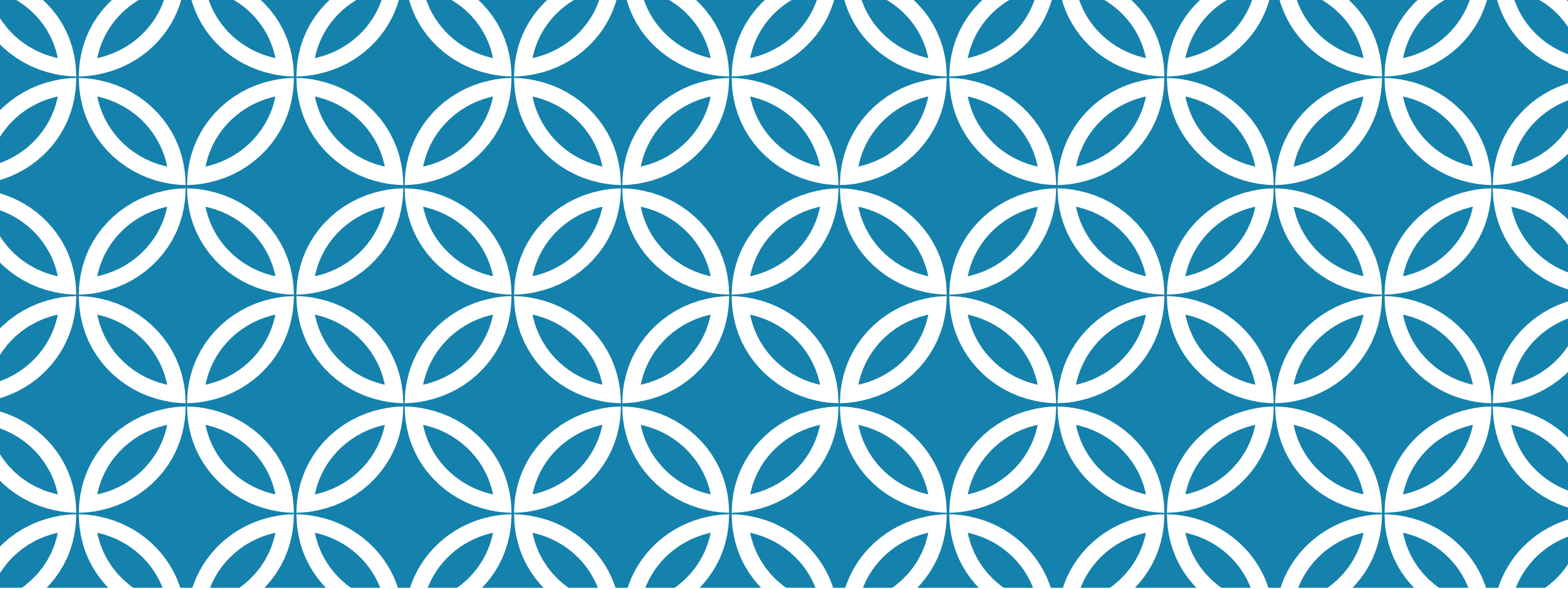
- ❖ Debate sought to consider revoking Sections 58 and 59 from the Offences Against the Person Act of 1861 (OAPA).
- ❖ The debate served to highlight the discrepancies faced by those in Northern Ireland compared to elsewhere in the UK.
- ❖ It is expected that further efforts will be made to revoking Sections 58 and 59 from the OAPA in the next 12 months.
- ❖ If these efforts are successful abortion will defacto become decriminalised in England and Wales, and Northern Ireland (Scotland's framework differs).

# SUPREME COURT (7TH JUNE 2018)

- ❖ The Supreme Court found that current law on abortion in NI breaches human rights legislation **by failing to provide exceptions to the prohibition** on abortion in cases where the foetus will not survive birth (referred to as cases of fatal foetal abnormality) or where the pregnancy is the result of rape or incest.
- ❖ The overall case failed on a technicality over who had brought the case, the NI Human Rights Commission. The Court ruled that – being an organisation rather than an individual - NIHRC did not have legal standing to bring the case, despite both lower courts ruling to the contrary.
- ❖ The Court was therefore unable to make a formal declaration of incompatibility regarding NI's abortion law under the Human Rights Act.

# FUTURE DIRECTIONS

1. The CEDAW investigation report reiterated that responsibility for human rights compatibility remains with the UK government. Legislative action to address the inadequacies of the current legal framework should be taken at this level.
2. Fulfilling obligations under CEDAW may require a more active approach to sex education, gender stereotyping, and protection from harassment:
  - Further analysis of gender stereotyping should be undertaken by Government.
  - Evidence on sex education practice across NI should be gathered and reviewed.
  - Current DoJ consultation on Public Space Protection Orders (? Buffer zones).
4. The implementation of the 2017 policy changes (CBS) requires evaluation.
5. The culmination of the CEDAW report and court judgements have led to a growing momentum of change - until this occurs, for many needing abortions, travelling to England or self-aborting at home, will remain the main options.



**THANK YOU**

