

Doctors for Choice UK response to the Abortion law in Northern Ireland inquiry

09 December 2018

1 / What are the views of the general public, women and medical and legal professionals in Northern Ireland about the law on abortion and whether it should be reformed? How have those views changed over time?

Doctors for Choice UK wholly supports proposals to reform abortion law in Northern Ireland and feel that the rights of women in Northern Ireland urgently need to be brought in line with the rest of the UK.

Abortion in Northern Ireland is currently governed by the Offences Against the Person Act 1861, a Victorian-era piece of legislation that criminalises women and anyone who helps them in causing an abortion with criminal sanctions that represent one of the most restrictive and punitive abortion regimes in the Western world.

Section 58 makes it a crime for a woman to cause her own abortion through any use of medication or instruments; punishment for this offence is now up to life in prison. Section 59 makes it a crime to assist a women in causing her abortion, which also includes health care professionals providing treatment in line with best medical practice. There is also legislation in Northern Ireland that requires citizens to report to police any knowledge of crimes relating to access to abortion, including doctors treating women who have disclosed accessing abortion pills online.

The current legal situation in Northern Ireland directly harms women who require access to abortion services and as doctors working in abortion services across the UK we see the negative impacts of this every day. The current law:

1. Fails to protect women:
 - a. By making it illegal and impossible to access safe services that, in other parts of the UK, are provided in line with international best practice. This often requires women to travel to mainland Britain, with significant emotional and financial burdens.
 - b. By forcing women to seek access to abortion services by, for example, buying abortion pills online. Although these services, such as Women on Web, are medically safe, using them constitutes a criminal offence and puts women at risk of prosecution for ending their own pregnancies.
 - c. By including them within the scope of sanctions.
2. Prevents best practice:
 - a. By making it illegal to commission and develop abortion services that provide essential reproductive health services.

- b. By directly undermining the doctor-patient relationship, with the duty to report to police any knowledge of criminal activity in relation to, for example, buying abortion pills online.
 - c. By failing to recognise the huge advancements in medical science which now make abortion a very safe procedure.
- 3. Criminalises doctors and other health care professionals:
 - a. By creating a legal vacuum, which leaves no legal framework that protects doctors for providing safe and timely abortion services.
- 4. Contributes to abortion stigma:
 - a. By exceptionalising abortion as a category separate from other medical procedures and enforcing punitive criminal sanctions.
 - b. By not reflecting recent polling data that has failed to find a moral consensus against abortion that could be used to justify the criminal sanctions that exist today.

Doctors in other parts of the UK rely on the Abortion Act 1967 as a legal defence to protect against prosecution, which has allowed the development of an abortion services that can operate within a legal framework but still treats abortion as a criminal rather than medical issue. We believe that the 1967 Act has its own problems, not least by placing clinically unwarranted barriers in between women and safe abortion services. For this reason, to ensure the right of women to access essential healthcare, any proposed reforms should include the decriminalisation of abortion through the repeal of Sections 58 and 59 rather than through the extension of the 1967 Act.

With a growing movement to decriminalise abortion, there has been discussion about having a gestational limit of 24 weeks enshrined in law. The vast majority of abortions are carried out early on in the pregnancy (in 2017, 90% of abortions are carried out before 13 weeks¹) with very few women requiring access to services after 24 weeks (in 2017, it was 0.1%). Although the number is very small, these women are often vulnerable and in extreme and distressing situations. The humane response in these situations would be to provide the support and healthcare women need, not criminalise them.

For this reason, we support full decriminalisation. However, we understand the political and pragmatic reasons for decriminalising abortion up to 24 weeks and recommend any future law on abortion recognise the vulnerability and distress of women seeking abortion after 24 weeks gestation, for example, by allowing sentencing at the discretion of the judge, recognising the woman's mental health needs and psychological state at the time of the abortion and afterwards.

¹ <https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2017>

Decriminalisation of abortion is supported by numerous professional medical bodies including the Royal College of Obstetricians and Gynaecologists², the Faculty of Sexual and Reproductive Health³, the British Medical Association⁴ and the Royal College of Midwives⁵.

There is also broad support for abortion law reform amongst the public, with polling from several organisations revealing overwhelming support for liberalisation and decriminalisation of abortion in Northern Ireland.

The 2016 Northern Ireland Life and Times⁶ survey found that support for abortion reform was consistently high across the political spectrum. For example, the polling results revealed the following agreed when asked if abortion should be legal where there is a fatal fetal abnormality:

- 88% of Alliance Party supporters
- 86% of UUP supporters
- 80% of Democratic Unionist Party (DUP) supporters
- 75% Social Democratic and Labour Party (SDLP) supporters
- 74% Sinn Fein (SF) supporters

A 2017 Trade Union Survey of “Abortion as a workplace issue”⁷ found that in Northern Ireland:

- 77% believe that an abortion should be permitted when a woman’s life is at risk
- 65% believe that an abortion should be permitted when the result of rape
- 63% believe that an abortion should be permitted when the result of incest
- 63% believe that an abortion should be permitted in cases of serious fetal abnormality
- 84% do not think that women should be prosecuted for having an abortion and only 9% think women should
- 72% disagree that the law in Northern Ireland should remain as it is and only 20% agree with the status quo

The 2018 Amnesty International survey⁸ found that:

- 65% of Northern Irish public believe having an abortion should not be a crime
- 78% of people in the rest of the UK believe that abortion in Northern Ireland should be decriminalised
- 80% agreed that a woman should have the choice of abortion in cases of rape or incest
- 73% agree that the woman should have the choice of abortion in cases of fatal fetal abnormality

² <https://www.rcog.org.uk/en/news/rcog-backs-decriminalisation-of-abortion/>

³ <https://www.fsrh.org/policy-and-media/fsrh-position-statements/fsrh-position-statement-on-abortion/>

⁴ <https://www.bma.org.uk/news/media-centre/press-releases/2017/june/leading-doctors-back-calls-to-decriminalise-abortion>

⁵ <https://www.rcm.org.uk/sites/default/files/RCM%20Abortion%20Statement.pdf>

⁶ <http://www.ark.ac.uk/nilt/results/abortionres.html>

⁷ https://www.unison-ni.org.uk/sites/default/files/TU%20Abortion%20Report%20Oct9_Final_Final_Edit.pdf

⁸ <https://www.amnesty.org.uk/press-releases/northern-ireland-abortion-75-uk-public-want-government-change-law-new-polls>

This polling shows that there is significant public support for abortion law reform in Northern Ireland, especially in circumstances of rape, incest, and fatal fetal abnormality. This is supported by a number of reports that specifically point to the criminalisation of abortion in these circumstances as infringing on the human rights of women in Northern Ireland (Article 8 of the European Convention on Human Rights) - this includes the report from the UN Committee on the Elimination of Discrimination Against Women (February 2018), and a ruling from the UK Supreme Court (June 2018).

2 / What are the experiences of women in Northern Ireland who have been affected by the law on abortion?

Despite the current legislation and potential criminal sanctions, women in Northern Ireland still have abortions. This is in line with evidence showing that abortions continue to occur in measurable numbers in all regions of the world, regardless of the status of abortion law⁹.

The main ways that women in Northern Ireland can access abortion services is:

- By travelling to Great Britain to access NHS care or private service providers
- By using telemedicine services that post the necessary medications (misoprostol and mifepristone) to a woman's home with instructions and support

Both of these pathways to abortion care present significant problems to women.

In July 2017, the government introduced a policy that gave women from Northern Ireland free access to NHS abortion care in England and Wales, and the Scottish parliament has introduced a similar policy. Whilst we believe that this is a positive step forward, there are still significant barriers faced by women:

- Women still have to travel to mainland Britain, rather than being able to access services in their own region. This can bring huge anxiety to women because they have to leave their friends and family who could provide vital support, potentially take more time off work, arrange expensive childcare, and access services in a foreign place and environment during a time when they are feeling vulnerable.
- Many young women are not used to travelling and are unfamiliar with how to obtain the necessary documents required by airlines to get to England.
- Although the procedure is free, women still struggle financially with travel and accommodation costs. The government policy does provide a grant for these costs but these are only available to women who fall under a certain income threshold, and

⁹ Sedgh, Gilda et al. (2012) 'Induced abortion: incidence and trends worldwide from 1995 to 2008' The Lancet, Volume 379, Issue 10041, pp. 625-32, page 626

research has shown that women are unaware that this specific grant is available. There are also other costs that are not covered by the grant, such as childcare.

- There is a lack of clarity over what information or help health care professionals can legally provide. In 2016 the Northern Ireland government issued a clarification that medical personnel treating women who present with miscarriage symptoms do not have an obligation to inquire about or report on attempted abortion. But research has shown that this clarification has not become widespread knowledge and many women are still reluctant to disclose any information at all to their doctor and afraid to attend follow-up care after their abortions¹⁰.

A growing body of literature from many different regions of the world shows that home-use of abortion pills bought on medically-safe online services, such as Women on Web, is increasingly becoming acceptable to women¹¹. However given the current legal framework in Northern Ireland, this way of accessing abortion services still presents many problems:

- Women who buy abortion pills online, or a person who does so for them, are at risk of criminal prosecution under the Offence Against the Person Act 1861. In recent years, at least three women have been prosecuted in Northern Ireland. These cases include a young woman who could not afford to travel to England and was reported to the police by her housemate. Another example includes a mother who bought pills online for her teenage daughter who was in an abusive relationship and was prosecuted on evidence provided by her GP surgery.
- Northern Irish Customs are obstructing safe treatment by confiscating packages containing pills or delaying their delivery. Research has shown that when packages are intercepted and delayed women end up using the medications at later gestations than they had anticipated, which puts women at increased risk of complications¹². Women have also reported thinking about using other unsafe methods of abortion whilst they wait for their packages to arrive.

3 / What are the responsibilities of the UK Government under its international obligations for taking action to reform abortion law in Northern Ireland? How should these be reconciled to the UK's devolution settlement?

¹⁰ Aiken ARA, et al. *BMJ Sex Reprod Health* 2018;0:1–7

¹¹ *ibid.*

¹² *ibid.*

In February 2018, the UN Committee on the Elimination of Discrimination Against Women found that there are “grave and systematic” breaches of UK citizens’ human rights when considering the laws governing abortion in Northern Ireland¹³:

- The Committee reached the conclusions that the criminal law in Northern Ireland “compels women in cases of severe fetal impairment, including fatal fetal abnormalities, and victims of rape or incest to carry pregnancies to full term, thereby subjecting them to severe physical and mental anguish, constituting gender-based violence against women” (paragraph 81).
- The Committee concluded that this discrimination was a result of the way in which the State “deliberately criminalises abortion and pursues a highly restrictive policy on accessing abortion” (paragraph 82).

They called on the UK government to repeal section 58 of the Offences Against the Person Act 1861.

In June 2018 the UK Supreme Court ruled that whilst it was not able to grant a Declaration of Incompatibility because of a procedural issue, a majority of the judges made clear that the current legislation in Northern Ireland violates the human rights of women¹⁴:

- “We need to be clear about what the current law requires of women in this context. It is not less than that they cede control of their bodies to the edict of legislation passed (in the case of the 1861 Act) more than 150 years ago and (in the case of the 1945 Act) almost 75 years ago. Binding the girls and women of Northern Ireland to that edict means that they may not assert their autonomy in their own country ... What is that, if it is not humiliation and debasement?” (paragraph 261)
- “To be required to travel away from home and to undergo an abortion in unfamiliar surroundings without the normal support network that a woman would expect and hope to have is in itself deeply upsetting ... that distress can only be increased and compounded by forcing the woman to seek termination of her pregnancy in a different country, away from her family and friends and without the support of her own doctor.” (paragraph 238)
- “...the present law treats the pregnant woman as a vehicle who must (as far as Northern Ireland is concerned) be expected to carry a fetus to birth, whatever the other circumstances, and whatever her wishes, as long as this experience does not end her life or ruin her health ... that approach fails to attach any weight whatsoever to personal autonomy and the freedom to control one’s own life: values which underpin article 8 of the Convention.” (paragraph 125)

The court held that in three crucial respects (fatal fetal abnormality, and pregnancy as a result of rape or incest) the law in Northern Ireland violates Article 8 of the European Convention on Human Rights (the right to private life).

¹³https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf

¹⁴<https://www.supremecourt.uk/cases/uksc-2017-0131.html>

We believe that there is a clear case for decriminalisation of abortion through the repeal of Sections 58 and 59, which have been shown to contravene international human rights law. Human rights are not governed by devolved administrations but by the UK Parliament in Westminster and as such it is within the remit of Parliament to move to decriminalise abortion in this way. This would ensure that the UK Government in meeting its obligations under international human rights law without overreaching any devolved settlements, and most importantly ensures that women in Northern Ireland can access safe, legal, and timely abortion services.