

Reforming abortion law in Northern Ireland: the need for decriminalisation

A joint briefing from Northern Ireland's Alliance for Choice and the British Pregnancy Advisory Service

Overview

- Women in Northern Ireland are subject to **one of the most restrictive and punitive abortion regimes in the Western world**
- Northern Irish women are **unable to access abortion** within their own borders and those that do **face life imprisonment**
- Current laws breach the rights of Northern Irish women – **this is not a question of health or home affairs law but of human rights which are reserved to Westminster**
- The **UN Committee on the Elimination of Discrimination Against Women told the UK government in February 2018 that abortion law in Northern Ireland breached UK citizens' human rights** and called for the decriminalisation of abortion by repealing sections 58 and 59 of the Offences Against the Person Act
- The law that criminalises Northern Irish women was **passed by the UK Parliament in 1861** – it is a law that governs Northern Ireland, England, and Wales and should be repealed at a UK level. The 1967 Abortion Act did not decriminalise abortion, it provided some exemptions to prosecution
- **Northern Ireland does not need a referendum** like Ireland – this is not a constitutional issue but a repeal of legislation
- **Simply moving to extend the Abortion Act 1967 would be unwanted and unwarranted.** It also would not solve the underlying issue that women seeking abortion outside this specific law, for example by buying pills online, would still be criminalised
- **This is not an English campaign** – the Northern Ireland Human Rights Commission, an inter-departmental group of the Northern Irish government, the UN Committee on the Elimination of Discrimination Against Women, the Royal College of Midwives, the Royal College of Obstetricians and Gynaecologists, Amnesty International Northern Ireland, the NIFPA and Alliance for Choice among many others :support reform.
- Public polling in Northern Ireland shows **nearly 60% of people support decriminalisation of abortion** compared to less than 20% who oppose, and **73% of DUP voters support abortion in some circumstances** - DUP MPs do not speak for the Northern Irish public

Background

In Northern Ireland, abortion is illegal in almost all circumstances, including those of rape, incest, and fatal foetal abnormality. In 2016/17, there were only 13 terminations of pregnancy in hospitals in Northern Ireland.

As a result, women from Northern Ireland are forced to travel to mainland Britain to access abortion services. In 2016, 724 women from Northern Ireland made that journey. In 2017, following cross-party calls for change, were finally able to access funded care. However we know travel still represents a huge logistical burden for women, many of whom must still pay hundreds of pounds for travel and accommodation, and who find that being forced to travel is distressing in itself as they must undergo a personal and often emotional medical procedure away from home, family, and friends. In addition, it does nothing to help women who cannot travel - perhaps because they are in coercive relationships or have work and childcare commitments that make it impossible.

Funding abortions for Northern Irish women in England is a step forward but it is not the solution.

Ireland

The Eighth Amendment was inserted into the Irish Constitution in 1983. It acknowledged the right to life of the unborn, which had the impact not only of outlawing abortion at a Constitutional level in all but the most extreme of circumstances, but also impacted on women's medical care during pregnancy where doctors feared contravening the foetus's Constitutional rights.

In May 2018, the Republic of Ireland voted resoundingly for reform to their Constitution to repeal the Eighth Amendment – enabling the introduction of legislation to allow women in Ireland to access abortion on request up to 12 weeks in line with much of the rest of Europe with no underlying criminalisation of women who sought abortion.

The Irish Constitution can only be amended by way of referendum. Northern Ireland, like the rest of the United Kingdom, does not have a codified constitution, and therefore a change in legislation is what is needed to have the same effect.

At the same time, human rights are not and should not be determined by referendums – they are there to protect against discrimination arising from populism. Furthermore, the referendum in Ireland required the participation of a large number of people who felt forced to make their private decisions public in order to evoke compassion and convince voters that they deserved their support. This should not be a necessary part of achieving healthcare.

The problem

The fundamental issue in Northern Ireland is not just provision but the underlying law.

At a basic level, **women are unable to access abortions in Northern Ireland**. Abortion remains illegal, there is no legal framework to protect doctors who provide them, and there is no commissioning of the service.

But more than that, **women who seek to access abortion within Northern Ireland by, for instance, buying medically-safe abortion pills online, are committing an offence that carries a sentence of up to life in jail.**

This is not an abstract threat. In recent years, at least three women have been prosecuted by the Northern Ireland Public Prosecution Service:

- One teenager who could not afford to travel to England received a suspended prison sentence for taking pills bought online after her housemates reported her to the police.
- A woman and her partner were forced to accept a police caution for purchasing pills online after her lawyers told the court that she was 'vulnerable and immature' with a history of self-harm that would be exacerbated by proceeding to trial.

- A mother who bought pills online for her 16-year old daughter who was in an abusive relationship has been waiting for more than two years to judicially review the decision to prosecute her on evidence received from her GP's surgery.

Current law

Abortion law in Northern Ireland consists primarily of one 150-year old piece of legislation – **the Offences Against the Person Act 1861**. This is the same piece of legislation that also underlies provision in England and Wales.

Section 58 makes it a crime for a woman, pregnant or not, to take any medication or use any instrument to attempt to cause her own abortion. In the original legislation, the penalty for this was 'to be kept in penal servitude for life' – a punishment which is now up to **life in prison**.

Section 59 makes it a crime to assist in causing an abortion – which includes doctors treating patients in line with best medical practice. The penalty for this is up to **5 years in prison**.

This type of criminalisation of women is out of line with almost all other Western countries. **Even nations with restrictive regimes such as Poland do not have provision to jail women for ending their own pregnancies. In the US, President Donald Trump was forced to retract the suggestion that there should be "some form of punishment" for women who have illegal abortions after public outcry.**

Northern Irish legislation also requires citizens to report to police knowledge of crimes that carry punishment of more than 5 years in jail. This also applies to doctors who treat women who disclose that they have purchased abortion pills online. This fundamentally undermines the doctor-patient relationship and puts women's health at risk by forcing concealment.

The Offences Against the Person Act 1861 is legislation passed by Westminster and legislation which it is in Westminster's power to repeal. It is not Northern Ireland-specific and its repeal would mean no woman in Northern Ireland, England, or Wales would be threatened with jail for ending her own pregnancy before 24 weeks.

Calls for change

There have been repeated calls from Northern Irish groups for review of the highly-restrictive abortion regime, primarily on the grounds of **human rights**. Although abortion law is devolved, **human rights law is a power reserved to the UK parliament in Westminster.**

- The **Northern Ireland Human Rights Commission** is currently judicially reviewing the decision of the Northern Irish Attorney General and Department of Justice to refuse to allow provision of abortion in cases of rape, incest, or fatal foetal abnormality. The Supreme Court is expected to rule on this case imminently.
- An **inter-departmental working group of the Northern Irish government**, commissioned in 2016 by previous Health and Justice Ministers and chaired by the Chief Medical Officer, recommended that the law be changed to provide for terminations in cases of fatal foetal abnormality
- The **UN Committee on the Elimination of Discrimination Against Women** told the UK government in February 2018 that abortion law in Northern Ireland breached UK citizens' human rights – saying that the breaches are "grave and systematic" and that "Denial of abortion and criminalisation of abortion amounts to discrimination against women because it is a denial of a service that only women need". They called on the UK government directly to repeal s.58 of the Offences Against the Person Act 1861.

- Northern Ireland-based NGOs have called repeatedly for decriminalisation via repeal of s.58 and s.59 of the Offences Against the Person Act 1861, including **Amnesty International Northern Ireland, the Family Planning Association, and the abortion rights group Alliance for Choice.**
- Medical organisations that cover Northern Ireland including the **British Medical Association, the Royal College of Obstetricians and Gynaecologists, and the Royal College of Midwives** support and campaign for the decriminalisation of women and medical professionals involved in providing abortion services.
- According to a 2016 Amnesty poll:
 - **58% of Northern Irish people think abortion should be decriminalised** so there would be no criminal penalty for women who have abortions in Northern Ireland; 22% are opposed to this change
 - **59% of Northern Irish people think abortion should be decriminalised so there would be no criminal penalty for doctors and medical staff who assist women** to have abortions in Northern Ireland; 21% are opposed to this change.
 - **73% of Democratic Unionist Party (DUP) voters would support provision of abortion in some circumstances,** at odds with the party.

The solution

To defend the human rights of women in Northern Ireland and to allow departments and organisations within Northern Ireland to develop their own system of abortion provision, **the Westminster Parliament must move to decriminalise abortion by repealing s.58 and s.59 of the Offences Against the Person Act 1861.**

The repeal of this 150-year old legislation is within the gift of Westminster and does not require a referendum in Northern Ireland.

Current law unduly criminalises women and doctors, and is **in contravention of international human rights law.** Human rights are not governed by devolved administrations but by the UK Parliament in Westminster.

Current UK law is **acting as a block to Northern Ireland formulating its own regime.** Repealing the provisions in the 1861 Act would allow healthcare professionals, local health and social care boards, and the Public Health Agency in Northern Ireland to put together a form of abortion provision that works best for Northern Irish women. Abortion as a medical procedure would be subject to the same stringent UK-wide regulations that govern all other medical procedures.

Simply **moving to extend the Abortion Act 1967 would involve undue overreach in devolved issues.** It also would not solve the underlying issue that women seeking abortion outside this specific law, for example by buying pills online, would still be criminalised, as imposing the Act would in no way guarantee local provision, particularly given that the Act effectively prevents the development of a GP-led/primary care service that is increasingly the model of care internationally.

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