Executive Summary:
Joint submission from Dr Lindsey Earner-Byrne, Senior Lecturer in History, School of History, University College Dublin and Dr Diane Urquhart, Reader in Modern Irish History, Institute of Irish Studies, University of Liverpool, co-authors of The Irish Abortion Journey (Palgrave Macmillan, January 2019).

As historians of gender, sexuality and the family in Ireland, we have expertise in the history of abortion on the island. This submission focuses on how the views of the general public, women and the medical profession in Northern Ireland on abortion law have changed since the foundation of the state in 1921. It also explains the key historical factors that have shaped the law and practice of abortion in Northern Ireland.

Using archival evidence, existing scholarly literature, and personal testimony, this submission addresses:

- The significance of the Offences Against the People Act, 1861;
- Northern Ireland as a conservative state;
- The Morality of Women’s Health;
- The Politics of Medicine in Northern Ireland;
- The Impact of non-extension the 1967 Abortion Act to Northern Ireland;
- The experiences of women in Northern Ireland who have been affected by the law on abortion;
- Recommendations.

1. The significance of the Offences Against the People Act, 1861:

1.1 Sections 58 and 59 of the Offences Against the Person Act criminalised those who performed and those who procured abortions by the use of poison or instrument. This law criminalised women who sought abortions irrespective of their reasons. It also embedded in law the idea of female culpability.

1.2 This law has an enduring and harmful impact on women experiencing a crisis pregnancy including those experiencing a fatal foetal abnormality (FFA) diagnosis, cases in which the mother’s life or health was endangered or for pregnancies conceived as a result of rape or incest. The latter may be understood in the context of the limited understandings in 1861 of the impact of rape and/or incest, however, social attitudes to these crimes have evolved significantly but the law remains. Thus Northern Irish women, pregnant as a result of rape and/or incest, are denied bodily autonomy even though they are the victim of a crime.

2. Northern Ireland as a conservative state:

2.1 The purported ethos of the Northern Irish state has been predominantly Christian conservative with a pan-religious view of sexual morality and associated opposition to abortion. With increased secularisation, the pronouncement of Christian conservative views is no longer representative of the majority in Northern Ireland. Unlike the
Republic of Ireland, where six referenda on abortion law were held since 1983, the people of Northern Ireland have never had an opportunity to express their views. However, politicians have claimed that the Northern Irish people do not wish to see a liberalisation of abortion law. This rhetoric continues despite opinion polls which, since the 1990s, indicate that a majority favour more widely available legal abortion services in the province. A 1994 Northern Irish poll found that 72 per cent supported abortion in Northern Ireland for rape and incest pregnancies and 59 per cent for severe foetal abnormality (Colin Francome, ‘Attitudes of general practitioners in Northern Ireland toward abortion and family planning’, Family Planning Perspectives, 29: 5 (1997), 234-8).

2.2 Since its foundation, the Northern Irish state could reject UK laws on a limited basis. This affords the state the ability to use or block laws to promote its particular ethos. The UK’s Infant Life (Protection) Act, 1929, which permitted abortions to save the life of the mother, was not initially extended to Northern Ireland. This began a history of divergence from the rest of the UK in relation to abortion without putting such decisions to the electorate. It finally became law in Northern Ireland under the Criminal Justice (Northern Ireland) Act, 1945. However, there has been persistent confusion as to whether this act covers abortions prior to twenty-eight weeks due to the reference to a ‘child capable of being born alive’. In effect, it has been interpreted to refer only to abortions to save a mother’s life after twenty-eight weeks gestation. Family Planning Association, Abortion Practice and Provision in Northern Ireland. https://www.fpa.org.uk/sites/default/files/northern-ireland-abortion.pdf. This lack of clarity regarding Northern Ireland’s legal basis for abortion was, and remains, harmful to women and testing for medical practitioners.

3. The Morality of Women’s Health:


3.2 Birth control was available in Northern Ireland since the 1930s, but in practice it remained outside the reach of many, particularly poor and rural women, until the 1980s. This increased rather than lessened the need for abortion in Northern Ireland.

3.3 As early as the 1920s medics acknowledged that some women’s lives were endangered by pregnancy, however, because of moral conservatism and a fear of opposition from some religious leaders, few publicly promoted birth control or abortion on the grounds of health in Northern Ireland.

3.4 Despite a pan-religious consensus on moral issues in Northern Ireland, a cleavage emerged between the Roman Catholic Church and the Church of Ireland: in 1930, the latter reluctantly conceded that maternal health and social deprivation legitimised the
use of birth control within marriage. In the same year, the papal encyclical *Casti Connubii* [On Christian Marriage] reaffirmed that there were *never* any justifiable reasons to use birth control or perform therapeutic abortions (when a mother’s health was deemed at risk): doctors who performed abortions to save a mother’s life were described as ‘most unworthy of the noble medical profession’ (paragraph 64).

See, https://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19301231_casti-connubii.pdf. This has made it difficult for a pan-medical lobby, across religious lines, to develop behind the issue of abortion as a medical right.

4. The Politics of Medicine in Northern Ireland:

4.1 Doctors in Northern Ireland were careful not to openly challenge the conservative ethos of society (many also supported it). There was a general acceptance that to avoid condemnation by Catholic and Calvinist leaders, it was necessary to act surreptitiously in relation to birth control and abortion. This was not only due to a desire to avoid confrontation but also a belief that it would not be possible to treat all patients if cooperation from other faiths was withdrawn. This diverted attention from women’s health needs in relation to abortion.

4.2 Therapeutic abortions were performed in Northern Irish hospitals from the 1920s. 1930s medical opinion suggested that an abortion should be performed on women with pulmonary tuberculosis prior to the fifth month of pregnancy (See, *Ulster Medical Journal* [UMJ], 1: 4 (1932), 204-214). Medics also purported that cardiac problems provided grounds for abortion in NI (UMJ, 5: 4 (1936), 234-240). As noted in 1.1, the 1861 act did not provide legal grounds for abortion when the mother’s life was at risk and North Ireland was not covered by the Infant Life (Protection) Act, 1929. ‘Good faith abortions’ were legally permissible in Northern Ireland to save a woman’s physical and mental health after the 1938 ruling in *R v Bourne*. In 1967 the Ulster Medical Association was informed that the Bourne case established that an abortion was legal when performed by a doctor in ‘good faith’ to save the mother’s life or health (including mental health); abortion on demand was illegal, but it was also illegal to refuse to perform an abortion to save a woman’s life (UMJ, 36: 2 (1967), 111-117). The legality of ‘good faith’ abortions was confirmed by *Regina v Newton and Stungo* case (1958) which was pivotal to abortion practice in Northern Ireland. As in the Bourne case, the judge reaffirmed that maternal health included mental health.

4.3 Abortions performed in ‘good faith’ were not, however, established in statute law. A key argument against extending the British Abortion Act of 1967 to Northern Ireland was that statute law (e.g. the 1861 Act which criminalised abortion) and case law (which established the right of doctors to decide in ‘good faith’ what legitimised abortions) was the most suitable way to handle abortion in Northern Ireland. This conjoined realpolitik and moral conservatism: preserving the status quo meant that women could not dictate the terms of an abortion but nor could the Catholic authorities or any doctor’s religious views; both points were clarified by the Bourne ruling. It was feared that the 1967 Abortion Act would disturb the fragile denominational balance in medical politics and draw attention to the discreet medical decisions regarding abortion made on the basis of women’s health in Northern Irish hospitals from the 1920s.
4.4 Doctors were performing abortions for wider medical reasons than that defined by Bourne. A rubella outbreak in Northern Ireland in 1979 saw 69 of 150 pregnant women (49%) with rubella have therapeutic abortions (UMJ, 53: 1 (1984), 65-73). Prior to 2004, abortions were also provided in Northern Irish hospitals for patients with a FFA diagnosis (See para. 79, Family Planning Association Of NI [FPANI] v Minister for Health, Social Services and Public Safety [2004] NICA 39 (8 October 2004)). In 2004 abortion became more restricted in Northern Ireland due to Nicholson LJ’s ruling in FPANI v Minister for Health, Social Services and Public Safety (NICA 39 (8 October 2004), para. 73 stated: ‘it is unlawful to procure a miscarriage where the foetus is abnormal but viable, unless there is a risk that the mother may die or is likely to suffer long-term harm, which is serious, to her physical or mental health.’

5. The Impact of the non-extension the 1967 Abortion Act to Northern Ireland:

5.1 The non-extension of the 1967 Abortion Act to Northern Ireland left doctors in Northern Irish hospitals to interpret the existing case law and the concept of ‘good faith’ on an individual basis. Much therefore depended on the ethos of the hospital, for example, Mark Benson has found no ‘detailed evidence of any pre-twenty-eight week therapeutic abortions for any reasons, social or medical in the Catholic Mater Maternity Unit prior to 1968’. (see, Mark Benson, ‘The Provision of Abortion in Northern Ireland, 1900-1968’ [Unpublished PhD thesis, Queen’s University Belfast, 2017]).

5.2 Silence and resistance to reform characterise the NI political response to abortion. The devolved NI government has not seriously considered changes in public opinion, the widespread uncertainty regarding the legality of abortion practice in Northern Ireland or the impact of abortion travel on women. This negligence aids those who oppose abortion reform and facilitates the misperception, promoted by several politicians, that abortion practice in Northern Ireland is more flexible and compassionate than it is. For example, in 1992, Sammy Wilson (Democratic Unionist Party [DUP]) observed that therapeutic abortions in NI ‘normally cover a rape victim’ (Owen Bowcott, ‘Rape victim’s case stirs Unionist fears’, The Guardian, 20 February 1992). In fact, unless a rape victim can prove her life is endangered by the pregnancy, she has no legal right to an abortion in NI. The extent of political misinformation regarding NI’s abortion regime is significant and on-going, for example, in an NI Assembly debate in 2000 Jim Wells (DUP), opposing the extension of the 1967 Act to Northern Ireland, incorrectly claimed that grounds for legal termination in the province included: ‘proven contact with rubella…or…where there is a substantial genetic risk of having a mentally handicapped child’ (See, Official Report of Northern Ireland Assembly, 20 June 2000, http://archive.niassembly.gov.uk/record/reports/000620b.htm). These types of misleading declarations are symptomatic of how politicians have not only failed to provide legal clarity on the issue, but have in fact contributed to the general uncertainty.

5.3 Abortion care for NI women has also been unfairly brokered for political means. For example, during the peace talks, which resulted in the 1998 Good Friday Agreement, a deal ensured that abortion remained a devolved issue handled under criminal law (Fiona Bloomer et al (eds), Reimagining Global Abortion Politics (Policy Press 2019), 60). In 2008, when Alliance for Choice tried to get a bill through Westminster...
that would extend the 1967 act, another deal with Northern Irish politicians saw the amendment’s defeat (see Rosa Prince and Martin Beckford, ‘Abortion plans for Northern Ireland abandoned due to peace process’, The Telegraph, 14 Oct. 2008). In 2017, reform initiated outside the Northern Ireland assembly by the Westminster Labour MP Stella Creasy means that Northern Irish women now qualify for NHS care in Britain and thus no longer have to fund a private procedure costing £500-£2000. However, with no sitting NI Assembly and the DUP’s confidence and supply agreement with the incumbent Conservative government, the issue of abortion in Northern Ireland remains tightly controlled by those most opposed to reform. No consideration was given to the impact of the Northern Ireland Assembly’s suspension on Northern Irish women who, from January 2019, will not only be in a prejudicial position regarding their reproductive rights in a UK context but also in an island of Ireland setting. It is likely that Brexit will add further complexity to the abortion journeys of Northern Irish women.

5.4 Until the 2018 abortion referendum in the Republic of Ireland all the main NI parties sought to maintain the status quo in relation to abortion law to the extent that guidelines interpreting statute and case law were obstructed. Legal uncertainty bred caution, even if that could result in women being denied their legal right to an abortion in Northern Ireland. In 2001, FPANI took legal action against the Department of Health, Social Services and Public Safety [DHSSPS] on the grounds that it was failing to ensure women’s equal access to reproductive healthcare. Following a judicial review and a High Court Appeal, the DHSSPS was found to have failed in its duty to women seeking lawful terminations in Northern Ireland. Draft DHSSPS guidelines were subsequently issued in October 2007 (and rejected by the NI Assembly); in March 2009 the Society for the Protection of the Unborn Child [SPUC] sought a judicial review; in February 2010 SPUC sought another judicial review; the final draft was still unpublished in 2015 prompting a woman from Co. Antrim to initiate legal action over the failure to publish the guidelines. This highlights an obstructive assembly preoccupied with moral vote winning rather than women’s health or equity of healthcare in the UK.

6. The experiences of women in Northern Ireland who have been affected by the law on abortion:

6.1 Prior to the 1967 Abortion Act, Northern Irish women in need of an abortion, who did not meet the narrow and unclear legal criteria, often risked ‘back-street’ abortions. Throughout the 1930s-1960s doctors recorded the medical aftermath of such procedures: ‘injury – lacerations, perforations, or foreign bodies in the cervix, or…operation, interference, or drug-taking’ (UMJ, 10: 1 (April 1941), 2-4). These abortions usually came to the attention of law enforcement only when a woman was gravely ill or had died as a result of the procedure (See, L. McCormick, ‘No sense of wrongdoing’: abortion in Belfast 1917-67’, Journal of Social History, 49: 1 (2015), 124-48). Many more of these procedures likely occurred than has been recorded and they testify to the desperation some women felt to prevent a pregnancy coming to term. Post-1967, some Northern Irish women who could not travel for a termination tried to induce their own abortion. A 1992 survey found 11% of GPs reported treating women for self-induced abortions (Colin Francome, ‘Irish women who seek abortions in England’, Family Planning Perspectives, 24, 6 (November 1992), 265-8). These
often frightening, painful and dangerous experiences highlight the need for abortion law reform in Northern Ireland.

6.2 Most women in Northern Ireland who need an abortion for any reason other than the risk to their life or health must travel for a termination and, until 2017, pay for NHS or private procedures. The Ulster Pregnancy Information Service estimated that from 1971-1999 it counselled 1,000 women per annum, comprising half of all women who travelled from Northern Ireland for an abortion. The organisation’s premises were attacked by arsonists and closed in 1999 (‘The other troubles,’ The Guardian, 17 August 1999). Several court cases also reveal that women whose right to a termination in Northern Ireland has been established are often denied that procedure due to medical fears regarding prosecution. In the ‘K’ case (1993) the judge confirmed that a 14-year-old girl met the legal requirement for an abortion in Northern Ireland, but the procedure had to be carried out in Liverpool as no doctor in Northern Ireland would oblige. Such a situation is prejudicial to the health of Northern Irish women.

6.3 Recent research on the impact of abortion travel on women indicates that Northern Irish women have later abortions than women from England, Scotland and Wales. Making the decision to travel causes delays, which are compounded by the need to raise money and organise cover for absence at work or at home (See, Department of Health, ‘Abortion Statistics, England and Wales: 2014’ (June 2015)).

6.4 The stigmatisation of abortion leads many women who travel for abortion to avoid follow-up care and counselling upon their return to Northern Ireland. Many fear talking about their experiences because they believe, incorrectly, that they have broken the law. Research indicates travelling for an abortion compounds the stress and trauma involved (A. Rossiter and M. Sexton (ed.), The Other Irish Journey: A Survey Update of Northern Irish Women Attending British Abortion Clinics, 2000/2001 (London: Marie Stopes International, 2002).

6.5 Silencing women who experience abortion facilitates the continuance of a restrictive and unjust abortion regime in Northern Ireland. By contrast, enabling women to speak publically of their abortion experiences can be transformative. This was potential of this personal testimony was evidenced in the 2018 Referendum to Repeal the 8th amendment to the Irish constitution. This process is beginning in Northern Ireland with, for example, Sarah Ewart’s testimony regarding the trauma of abortion travel after an FFA diagnosis and the stories posted by Northern Irish women on ‘In Her Shoes - Women Of The Eighth’, (https://www.facebook.com/InHerIrishShoes/posts). This testimony almost universally confirms that having to travel for an abortion increases the physical and mental stress involved.

7. Recommendations

7.1 A consultation process should be organised in Northern Ireland to gather people’s experiences of abortion in a non-judgemental and transparent way, in order to foreground women’s care needs which are often complex and distinct.

7.2 A Northern Ireland referendum on abortion law reform is required to afford the people of Northern Ireland the opportunity to make their views known.