Written submission from Voice for Choice (ANI0317)

About Voice for Choice

Voice for Choice is the national coalition of organisations working alongside the All-Party Parliamentary Group on Sexual and Reproductive Health in the UK to campaign for a woman’s choice on abortion. Members include organisations and individuals whose everyday work relates to abortion – as service providers, advocates, educators, trainers, academics or counsellors. We meet regularly to share information, plan joint activities and support each other’s work.

Members of Voice for Choice include Abortion Rights, Antenatal Results and Choices, Humanists UK, FPA, BPAS, Brook, Doctors for Choice UK, Education for Choice, Marie Stopes UK, Lawyers for Choice, Alliance for Choice, the TUC, and the London-Irish Abortion Rights Campaign.

BACKGROUND ON CURRENT RESTRICTIONS

The 1967 Abortion Act has never been extended to Northern Ireland. The law governing abortion in Northern Ireland, the 1861 Offenses Against the Persons Act, is one of the most restrictive in the world, such that abortion is unlawful in all but the most extreme cases, and even in cases of rape, incest, or fatal foetal abnormality. The criminal sanctions imposed are amongst the harshest in the world, with the maximum sentence being life imprisonment.

Due to these restrictions around 1,000 Northern Ireland women are known to make the costly and distressing trip to Great Britain each year to access abortion services. Others choose to take abortion pills at risk of prosecution - from 2010-2012 a single online supplier of abortion pills covertly sent these drugs to 1,636 women in Northern Ireland.

In June, the Supreme Court determined that Northern Ireland’s laws that ban abortion in almost all circumstances are incompatible with the European Convention with regard to pregnancies that arise from rape or incest or if there is a diagnosis of fatal foetal abnormality. It was deemed to breach Article 8 of the European Convention on Human Rights - the right to private and family life.

The Offences Against the Person Act 1861 applies to England, Wales, and Northern Ireland and underpins abortion access for women from all countries of the UK. Its restrictions not only mean that abortion in Northern Ireland is almost impossible to access, but that in England and Wales women who end their own pregnancies, for instance by buying pills online, are committing an offence. Any woman from Scotland who travels over the border to England to access care (around 200 women a year) are also subject to the restrictions imposed by the OAPA.

THE UK PARLIAMENT’S RESPONSIBILITIES

As far as international law is concerned abortion in Northern Ireland is a matter for the UK.

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1 There have been several recent prosecutions of women in Northern Ireland. In 2016 a 21-year-old woman was given a suspended prison sentence for buying online abortion pills after she was unable to raise funds to travel to England for a termination. She was reported to police by her housemates after foetal remains were found at her home. In January 2017, a couple received police cautions for buying abortion medication online. A judicial review of a decision to prosecute a mother in Northern Ireland who procured abortion pills for her underage daughter, who became pregnant by an abusive partner, is due to be heard before the High Court.
The right to reproductive health is well-established as an integral part of the international human right to health. Abortion is a core element of this right, as outlined in the UN Convention on Economic, Social and Cultural Rights (ICESCR), Article 12 of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), and the UN International Covenant on Civil and Political Rights.

The UN Committee on Eradication of Discrimination Against Women (CEDAW) told the UK Government in February 2018 that it is its responsibility to ensure that women’s and girls’ rights are upheld in Northern Ireland. This responsibility is not in any way negated by the abortion law being a devolved issue in Northern Ireland or the fact that the Legislative Assembly is not currently in session. The buck stops with the UK Parliament.

It stated, ‘The Committee recalls that under international law of State responsibility, all acts of State organs are attributable to the State [i.e. the UK itself, not Northern Ireland]. The Vienna Convention on the Law of Treaties provides in Article 27 that a party to a treaty may not invoke the provisions of its internal law as a justification for its failure to perform it. Moreover, the Committee’s General Recommendation (GR) No. 28 (2010) on the core obligations of States parties reiterates that the delegation of government powers ‘does not negate the direct responsibility of the State party’s national or federal Government to fulfil its obligations to all women within its jurisdiction’[emphasis added].’

Thus, the UK cannot invoke its internal arrangements (the Belfast Agreement) to justify its failure to revise Northern Ireland laws that violate the CEDAW Convention.

Similarly, the European Convention on Human Rights is a contract between the member states of the Council of Europe. It was the UK Government that signed up to the Convention, and not the Northern Ireland Government. It is the UK Government that is therefore obliged to fulfil the UK’s obligations under the Convention.

REPEALING SECTIONS 59/60 OF THE OFFENCES AGAINST THE PERSON ACT 1861

The UK Parliament must move to decriminalise abortion by repealing s.59 and s.60 and amending section 58 of the Offences Against the Person Act 1861. This would remove a piece of UK law that was imposed upon Northern Ireland some 157 years ago. It would have the effect of ending the ban on abortion in Northern Ireland, as well as taking abortion in England and Wales out of criminal law up to 24 weeks.

Crucially, decriminalisation would not create a regulatory vacuum. Outside of criminal law, clinicians and healthcare professionals would be able to treat women according to medical regulations, like all other medical procedures, such as those prescribed by the Royal College of Midwives and the Royal

2 CEDAW’s General Recommendation No.28: ‘The accountability of the States parties to implement their obligations under article 2 is engaged through the acts or omissions of acts of all branches of Government. The decentralization of power, through devolution and delegation of Government powers in both unitary and federal States, does not in any way negate or reduce the direct responsibility of the State party’s national or federal Government to fulfil its obligations to all women within its jurisdiction. In all circumstances, the State party that ratified or acceded to the Convention remains responsible for ensuring full implementation throughout the territories under its jurisdiction.’


4 As per the preamble: https://www.echr.coe.int/Documents/Convention_ENG.pdf
College of Obstetricians and Gynaecologists.

There is no evidence that decriminalisation increases the number of abortions performed. No referendum is required, not least given that human rights, including the right to access healthcare, should not be determined by popular vote.

ABORTION BILL 2017-19

On 23 October 2018, Diana Johnson MP and a cross-party coalition of MPs introduced a Ten Minute Rule Bill to decriminalise abortion in England, Wales, and Northern Ireland. It is scheduled to have its second reading on 25 January 2019.

This Bill proposes to amend the law relating to abortion in England and Wales, and Northern Ireland. This bill aims to remove criminal liability in respect of abortion performed with the consent of the pregnant woman up to the twenty-fourth week of pregnancy; to repeal sections 59 and 60 of the Offences Against the Person Act 1861; to create offences of termination of a pregnancy after its twenty-fourth week and non-consensual termination of a pregnancy; to amend the law relating to conscientious objection to participation in abortion treatment; and for connected purposes.

Our members support the Bill, as it would create law that is based on women’s welfare and best medical practice.

The Bill ensures that abortion up to 24 weeks would no longer be a crime for either a woman or a healthcare professional in England, Wales, or Northern Ireland. After 24 weeks, current law (including offences and penalties) would remain in place.

Non-consensual abortion caused either on purpose or recklessly by violence or administration of abortion pills without consent will be subject to a new criminal offence that would carry a life sentence. Additionally, the current law allowing healthcare professionals to conscientiously object to hands-on participation in abortion treatment would be retained in England and Wales and extended to Northern Ireland.

The Bill will not remove regulation of abortion – decriminalisation does not mean deregulation. Abortion would be treated like any other clinical procedure and would be governed by long-standing medical regulation. Abortion would need to be performed in line with professional guidance and only by qualified healthcare professionals; any service or individual involved in poor practice would face disciplinary and potentially criminal sanctions. There is nothing in the 1967 Abortion Act that makes provision for the safeguarding of young or vulnerable women, access to counselling services, or specifies that informed consent must be obtained before an abortion can be lawfully performed. The Act is entirely silent on these issues. These provisions and safeguards are all contained in entirely separate bodies of regulation, common law and legislation, which would remain firmly in place were abortion decriminalised.

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