ARK welcomes the opportunity to provide this evidence which summarises the findings of ESRC-funded research into public attitudes to abortion in Northern Ireland, the experiences of women who take abortion pills obtained from the internet and the views of constitutional experts in NI about the responsibilities of the UK government in relation to abortion law reform, within the UK’s devolution settlement.

Introduction

ARK is Northern Ireland’s Social Policy Hub. It is a joint Ulster University and Queen’s University research centre and part of its work involves running the Northern Ireland Life and Times (NILT) Survey, an annual survey of the views of the Northern Ireland public on a range of social and political issues. NILT is widely regarded as a robust and independent survey and the most authoritative source of public attitudes in NI. In 2016, supported by ESRC funding, the NILT asked a representative sample of the NI public about their views relating to abortion and abortion law. This is the most comprehensive survey of public attitudes on abortion to date. The findings shows strong support for reform of abortion law and also suggest that the views of some political parties in NI are out of step with those of their voters.

Public Attitudes and how they have changed

The NILT findings show that the Northern Ireland public are firmly in favour of reform of abortion law. Most respondents (63%) expressed the view that “It is a woman’s right to choose whether or not to have an abortion”. A large majority of respondents thought that abortion should be legal where: the life of a woman is at risk (83%) and where there is a serious threat to her mental or physical health (76%). Only 19 per cent of people expressed the view abortion should definitely or probably be illegal if “a doctor says that there is more risk to the life of a pregnant woman if she continues with a pregnancy than if she were to have an abortion”. Eighty one per cent of respondents said that abortion should definitely/probably be legal where the foetus has a serious abnormality and will not survive the birth and 73 per cent also feel this should be the case where the foetus has a serious abnormality and may not survive beyond the birth. With regard to rape and incest, 54 per cent think that abortion should definitely be legal if a woman has become pregnant because of rape or incest with a further 24 per cent saying it should probably be legal in such situations. There was less support for abortion being legal where a woman wants an abortion because she has become pregnant and does not want to have children with 43 per cent of people holding the view that abortion should definitely not be legal in this situation.

The 2016 NILT findings also show that the public strongly oppose the criminalisation of women who have abortions with 70 per cent of respondents said that a woman should never go to prison for having an abortion. The majority of respondents (63 per cent) also

1 http://www.ark.ac.uk/publications/updates/update115.pdf
disagreed that doctors should face criminal charges if they carry out an abortion. Importantly, 70 per cent of those taking part in NILT believe that abortion should be a matter for medical regulation and not criminal law.

There is some evidence of how attitudes have changed over time. In the 1998, 2004 and 2008 NILT surveys, about fifty per cent of respondents said it was not at all or only sometimes wrong to have an abortion if there was a strong chance of serious defect in the baby. As outlined above many more people in 2016 think that the law should allow abortion in such circumstances. In 1990, 71 per cent of respondents to the Northern Ireland Social Attitudes survey were in favour of the law allowing abortion where a women had become pregnant as a result of a rape; in 2016, 78 per cent of NILT respondents said that the law should definitely/probably allow abortion in cases of rape or incest.

As is also the case in Britain, people with a religious affiliation have also become more accepting of abortion in some circumstances. In Northern Ireland, while the views of Catholics and Protestants have become more liberal, this is particularly notable among Catholics. In 1990, only 28 per cent of Catholics compared to 75 per cent of Protestants and 78 per cent of those with no religion thought that the law should allow abortion where there is a strong chance of a serious defect in the baby. In 2016, 72 per cent of Catholics agreed that abortion definitely or probably should be legal where the foetus has a fatal abnormality and the baby will not survive beyond the birth.

The NILT survey asks respondents what party they voted for in the last election and this allows some analysis of the views of voters of specific political parties. Findings reveal strong support for abortion reform in Northern Ireland across voters for all the main political parties. In cases of fatal or serious foetal abnormality, where the life or health of the mother is at serious risk and in cases of rape and incest the overwhelming majority of supporters of each of the main parties said that in their view abortion should definitely/probably be legal. Where there is a fatal foetal abnormality 88 per cent of Alliance Party supporters said that abortion should be legal with 86 per cent of UUP voters, 80 per cent of Democratic Unionist Party (DUP) supporters and 75 and 74 per cent of Social Democratic and Labour Party (SDLP) and Sinn Fein (SF) supporters respectively agreeing that it should be legal. Across a range of scenarios which respondents were asked to express a view on, Alliance supporters were the most likely to support legalisation of abortion followed by UUP supporters. SF and SDLP supporters were the least likely to say that abortion should definitely be legal in the seven scenarios posed in the Life and Times survey. While the DUP has said it will not support any change in the law in NI, its supporters believe abortion should definitely or probably be legal in six out of the seven scenarios showing a higher level of support for reform of abortion law than SF or SDLP voters.

The experiences of women obtaining illegal abortions by using pills obtained via the internet

2 http://www.ark.ac.uk/pdfs/Features/feature7.pdf
Who are the women who use pills outside the law and why do they do so?

The study had access to a sample of 330 women, living in Northern Ireland, who accessed abortion pills from the feminist website Women Help Women. The women in the sample ranged in age from 14 to 47, with a mean age of 27.5 years and the majority were using contraception when they became pregnant. A clear majority of the women (n=263) were at 6 weeks or earlier gestation when they obtained the pills.

Four out of five of those in the sample gave at least one reason why they needed an abortion; the reasons given were similar to those given in studies of women in England and Scotland; the majority (55%) gave more than one reason. Financial problems (38%) were the reason most often cited, followed by too soon (27%) and I feel I’m too young (26%), while 15% said their family is complete. Of those who gave a reason, two percent said this pregnancy is the result of rape.

The new abortion legislation in the Republic of Ireland decriminalises abortion and makes it available on request to 12 weeks, largely because the Citizens’ Assembly and Joint Oireachtas Committee rejected proposals for a separate rape ground. This was “to avoid any suggestion that a woman should be required to prove that she has been raped or to participate in any criminal process”\(^3\). The Citizens’ Assembly was convinced by evidence from a range of victim support organisations that any law requiring rape victims to ‘prove’ they’d been raped would reinforce trauma, thus abortion at the woman’s request up to 12 weeks gestation was proposed by the Citizens’ Assembly and endorsed by the Joint Committee\(^4\) and by the referendum of 25\(^{th}\) May.

The views and experiences of women using pills outside the law

There were three main themes to the experiences of the women we interviewed in depth: the most common and concerning theme was fear that seeking medical assistance would lead to arrest, this was followed by a general fear of prosecution if anyone discovered what they were doing. The third theme was a positive one: the relief of not having to travel to end the pregnancy, with the implications that has for work and for childcare.

Younger women, particularly those who had not already given birth presented the most worrying scenarios. Several of them were very worried that they might need medical assistance, yet they did not seek it. While these pills are very safe, their safety record is based on those who take them being near a hospital and able to get medical help e.g. blood transfusions if required. The experiences of the women we interviewed are concerning since they raise the fear that a young woman may bleed to death for fear of prosecution.

This participant sums up a lot of the experiences we heard:

> It was the aloneness that I think really accentuated ... it was terrifying. It really was… I ended up having my phone constantly connected to the charger, because I was just

\(^3\) http://journals.kent.ac.uk/index.php/feministsatlaw/article/view/173

Googling frantically, constantly, is this normal? Is this normal? How long does it take to die of haemorrhage? It was ridiculous. And checking my heart rate. Checking my temperature..... And it is the fact that there is now this massive fear of criminal reprisal that women will not go and seek help. And it would make you worry as well, you know like, if somebody did get quite sick that they would maybe not seek medical attention for fear of potentially being criminalised over it. (Orla, 21 when she took the pills)

This young woman is a low paid care worker whose main concern was not missing a day’s work:

I would say first of all [the worst thing] was, I suppose the fear... And I suppose thinking, am I bleeding too much? One minute you thought, I am not bleeding enough. The next you thought, am I bleeding too much? ... I was constantly checking my skin in the mirror. Reading over symptoms and all again. Constantly checking have I got any rashes, you know. Just panicking. Is everything going OK? Am I feeling alright? And then I suppose... then a fear of being found out and not knowing what would lie ahead for you. (Laura, 24)

This young woman thought she was going to die – yet didn’t seek medical assistance:

I turned round to my partner and was like, we need to go to the hospital. Even though I knew I couldn’t go because what I had done was completely illegal. And I was saying to him, and it was really dramatic because I kept thinking, I am going to die. I think I am going to die, we need to go to hospital. But he was like we can’t.... Like you do get prosecuted and everything like that. But yeah, I wouldn’t have gone for medical help, no. (Marie, 19 at time of abortion)

Most of the women who shared their stories with us were very aware that what they were doing is illegal and this affected who they were willing to tell, just in case that person would inform the police. This feeling was exacerbated when a 19-year old was given a three month prison sentence (suspended) after her flat mates called the police because she had taken abortion pills.

...it was annoying and isolating not being able to actually tell people. And it also sort of made you feel a bit nervous about who can I trust, because what if somebody then turns around and tells the police on you or something? And you are in the middle of this process and all of a sudden the police arrive at the door or something? That’s a bit horrible as well. It makes you kind of look at all your connections and your friendships in a bit of a different light. Which I think is so wrong. Like would we be doing that for any other medical procedure? No. (Tracy, late 30s, 5 children)

Some of the women didn’t know that what they were doing was illegal:

I suppose it was a bit ignorant of me... I didn’t read that much into knowing that it was actually illegal. I knew that abortion wasn’t offered here, but because it is part of the UK, I didn’t think it was actually illegal. I just thought it’s not offered here... but... as I say, I was that desperate I didn’t see no other way. (Laura, 24)
But most of the women were clear that the illegality was something that they are willing to risk:

*I knew that it was illegal. I was worried. But for all the spiral now about the people being taken to court and whatever else, I never thought on that. And I don’t think it would have stopped me.* (Joan, late 40s, mother of 5)

We asked our participants whether, had the free NHS abortions been available at the time they took abortion pills outside the law, they would have travelled for a legal abortion? While some said they would have travelled if money had not been an issue, a majority said that they would have used the pills anyway. Being able to afford to take time off work was the main reason for this; using the pills, they could plan their abortion around their work schedule. Travelling, especially for those living outside of Belfast, would mean taking at least two days off work. Childcare, being able to have an earlier abortion and keeping an abusive partner from knowing about the abortion were the other reasons given for not availing of the free NHS abortions in England.

*I only needed to take one day off work and kind of planned it around when my kids weren’t going to be here* (Tracy, late 30s, 5 children).

...it would have been trying to get the kids watched and getting away. And explaining why you were going and who you were going with...And then I would have had to share with my ex-husband ... so it [free NHS abortion] probably wouldn’t have made a difference to me. (Joan, late 40s, 5 children)

*I was able to carry out the abortion far earlier... And at the same time I was able to stay at home. I wasn’t having to go... and feel like an outcast ... that discomfort of feeling that you are being ... as I say, outcast, swept away over the sea.* (Sally, 22, 1 child)

**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?**

The UN Committee on the Elimination of Discrimination Against Women has been clear that the UK government has not met its obligations under the CEDAW Convention with strongly worded Concluding Observations on abortion following examination of the UK government in 2008 and 2013. In February 2018 the CEDAW Committee published findings of an Optional Protocol Inquiry into reproductive rights. It reported that ‘thousands of women

http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsl
and girls in Northern Ireland are subjected to grave and systematic violations of rights through being compelled to either travel outside Northern Ireland to procure a legal abortion or to carry their pregnancy to term’. CEDAW made 13 recommendations for action, including the establishment of a mechanism to advance women’s rights, monitoring authorities’ compliance with international standards concerning access to sexual and reproductive health, including access to safe abortions.

In its response to the CEDAW Committee the UK Government argued that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. Therefore, the government argued, the issue of abortion is a devolved matter for the NI Assembly to legislate on. There are a number of issues to be considered with regard to this position. In the 1998 NI Act, abortion was not listed as reserved or devolved. Because of the historical criminal legislation governing abortion it has been treated as part of criminal justice powers – hence the claim that responsibility for abortion was devolved with policing and justice. The Act devolving policing and Justice does not list or discuss abortion. In the NI Act 1998 Human Rights is clearly listed as a reserved responsibility – with NO exemptions. As a Human Rights issue the Westminster government is responsible for the application of its HR obligations as the state party.

The NI Act asserts the right of the Westminster Government to legislate on any issue. While the convention is that it would normally only do so with the consent of the devolved administration (as was the case with welfare reform legislation) it is certainly not precluded from intervening by any legislative measure.

Even if the NI Assembly was to be restored there is no prospect of it passing abortion reform legislation – as noted by the CEDAW Committee in its Optional Protocol Inquiry Report. The consociational approach to governance has been a barrier to effective social policy making and a scenario of consociationalism dominated by two main parties has led to crisis. Extensive use of veto mechanisms such as the Petition of Concern mean that legislation can be blocked even if abortion legislation had the support of the majority of MLAs.

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