ABOUT HUMANISTS UK

1. At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by over 70,000 members and supporters and over 100 members of the All Party Parliamentary Humanist Group. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

2. We campaign in favour of women’s sexual and reproductive rights, in particular with respect to abortion. Our position on abortion is ‘pro-choice’. We are a member of Voice for Choice, the coalition of UK pro-choice groups. We are a member of the Trust Women Coalition, as well as other pro-choice groups across the UK such as BPAS, Marie Stopes, Abortion Rights, FPA, Brook, Education for Choice, and the Abortion Support Network. We have acted as interveners in the key test case litigation on this issue in recent years in UK courts. We want Northern Ireland women to have access to safe, legal, free, and local abortion services, as women in Great Britain do and those in Republic of Ireland will shortly have.

EXECUTIVE SUMMARY

- We support the Westminster Parliament bringing forward legislation to decriminalise abortion in Northern Ireland by repealing sections 58 and 59 of the 1861 Offenses Against the Persons Act (OAPA).
- This policy is supported by the majority of the population in Northern Ireland and organisations representing the medical profession including the Royal College of Nursing (RCN), the British Medical Association (BMA), and the Royal College of Obstetricians and Gynecologists (RCOG).
- As far as international law is concerned abortion law in Northern Ireland is a human rights matter, and so a matter for the UK state as a whole.

RESPONSE TO INQUIRY QUESTIONS

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?

Public opinion

4. The overwhelming majority of the general public in Northern Ireland support the removal of current restrictions on abortion. This has been consistently shown by polling data over a number of years. Polling conducted by Amnesty International in 2014, 2016, and 2018 shows that the number of people supporting wider legal access to abortion has grown in the country. In 2014, 69% of people in Northern Ireland supported access to abortion in cases of rape, a figure which had increased to 72% in 2016. Meanwhile, in 2014, 60% of respondents supported access to abortion in cases of fatal foetal abnormality (FFA) - this had grown to 67% by 2016.1 According to Amnesty’s most recent polling, from October 2018, 65% of

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respondents in Northern Ireland agreed that abortion should not be crime.\(^2\) Polling funded by the Economic and Social Research Council and carried out as part of the 2017 Northern Ireland General Election showed that only 29% of voters opposed changing the law.\(^3\) It is clear that the current law is out of step with public opinion.

5. The anti-choice group Both Lives Matter recently published misleading polling data supposedly suggesting that the majority of people in Northern Ireland do not support a change in the law,\(^4\) in contrast to public opinion shown consistently over a number of years by Amnesty’s polls. However, the poll did not present the questions posed in an accurate policy context: it incorrectly stated that abortion is (solely) a devolved issue for Northern Ireland without considering the UK Government’s human rights obligations, and it wrongly stated that changes to the law would mean that abortion could be carried out for any reason, which is plainly inaccurate and misleading (and is not the case in any part of the UK or indeed Europe). Furthermore, the poll used contentious, suggestive, and emotive language, such as referring to a foetus as ‘unborn child’, which is highly likely to lead respondents. As such this poll does not accurately reflect trends in Northern Ireland public opinion and its findings are unreliable.

6. Public opinion is also being reflected by the increasingly pro-choice policies being adopted by Northern Ireland’s major political parties. With the exception of the DUP, all parties, including the Ulster Unionist Party and the Alliance Party, in Northern Ireland consider abortion to be a matter of conscience for their elected representatives, with most supporting reform of the law at least to the extent of allowing legal access in cases of FFA. All Alliance Party MLAs voted in favour of changing the law in cases of FFA in February 2016. In fact, support for reform has intensified following the referendum result in the Republic of Ireland, with Sinn Fein changing its policy to supporting reform in cases of FFA. Further, the SDLP have recently moved from opposing reform to a conscience vote position.

7. It is also the view of the Northern Ireland Departments of Health and Justice that the current abortion restrictions should not be maintained. In April this year, these two government departments published a joint report from their inter-departmental working group on termination of pregnancies in FFA cases, recommending a change to the law to allow legal abortion access.\(^5\)

8. Plainly, whilst the devolved institutions in Northern Ireland are not functioning, the women of Northern Ireland are unable to feel any practical benefit from the shift in political will towards reform, which is one of the reasons why we hold the position that central government must now act to protect their rights.

**Medical opinion**

9. There is also broad consensus across the medical profession that current restrictions are not

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\(^2\) Amnesty International UK, 75% think Northern Ireland abortion law should change, [https://www.amnesty.org.uk/northern-ireland-abortion-law-poll](https://www.amnesty.org.uk/northern-ireland-abortion-law-poll)

\(^3\) Social Marketing Research, NI General Election survey 2017 [http://doc.ukdataservice.ac.uk/doc/8234_esrc_ni_2017_election_survey_frequencies.pdf](http://doc.ukdataservice.ac.uk/doc/8234_esrc_ni_2017_election_survey_frequencies.pdf)


medically necessary and should not be maintained. In March 2018, the RCN launched a UK-wide survey of its members on the question of removing abortion from criminal law (across the UK including in Northern Ireland) and allowing it to be governed by medical regulation like all other medical procedures. 73.7% of nurses who responded were in favour of decriminalisation.6

10. Similarly, the BMA supports full decriminalisation. Speaking in 2017, BMA Medical Ethics Committee Chair John Chisholm commented on the organisation’s position,

‘Abortion is currently a crime, with exceptions, throughout the UK. Following the debate the majority of doctors were clear that abortion should be treated as a medical issue rather than a criminal one. What must be clear is that decriminalisation does not mean deregulation.’7

11. Similarly, the RCOG also supports the full decriminalisation of abortion. Its 2017 policy statement on this issue states,

‘The RCOG supports the removal of criminal sanctions associated with abortion in the UK. We believe that the procedure should be subject to regulatory and professional standards, in line with other medical procedures, rather than criminal sanctions. Abortion services should be regulated; however, abortion - for women, doctors and other healthcare professionals - should be treated as a medical, rather than a criminal issue.’

**Legal opinion**

12. In June 2018 the Supreme Court, having heard from many advocates on all sides of the debate, ruled that the current restrictions on abortion access in Northern Ireland are a violation of human rights in cases of rape, incest, or FFA. In a highly critical judgement the Court stated that ‘the present legislative position in Northern Ireland is untenable and intrinsically disproportionate in excluding from any possibility of abortion pregnancies involving fatal foetal abnormality or due to rape or incest… the present law clearly needs radical reconsideration.’ [emphasis added]8

13. The Supreme Court was unable to make a declaration of incompatibility because the party bringing the case, the Northern Ireland Human Rights Commission, was deemed not to have standing to do so. This is a legal technicality and does not affect the substance of the compelling findings of breaches to human rights arising from the current regime. If a case is taken by a victim, we anticipate that such a declaration would be made. Such a case has been filed at the High Court in Belfast.

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

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6 Royal College of Nursing, Decriminalisation of Termination of Pregnancy: RCN Membership Response https://www.rcn.org.uk/professional-development/publications/pub-007005
14. Overwhelmingly, the current restrictions on abortion have negative consequences for the women of Northern Ireland, who must travel to the rest of the UK for an abortion, risk life imprisonment by taking illicitly purchased online abortion pills at home, or continue their pregnancies against their will and in violation of their rights. As described in more detail below, these consequences have been described by the United National Human Rights Council as cruel, inhumane, and degrading treatment.

15. From 2016 to 2017, there were 13 abortions carried out legally in Northern Ireland hospitals. During that same period, an estimated 800 women per year were forced to travel to England to receive the same medical care. Alliance for Choice has compiled a collection of personal testimonies of women who have made this journey, which highlight the additional medical, financial, and emotional burdens that the current restrictions cause to women as they take what is often a difficult personal decision about their medical care. Burdens that their compatriots resident in England, Scotland, and Wales do not have to face.^

16. The requirement to travel means that women are often forced to seek abortions later into their pregnancies than they would have chosen to if care was available locally. The later into a pregnancy an abortion is performed, the higher the risk of medical complications arising. The procedure and the whole experience is more emotionally distressing. This is particularly the case in pregnancies where the foetus is diagnosed with a FFA, which are by their nature likely to be diagnosed only in the later months of the pregnancy.

17. Additionally, women are also likely to experience the ongoing effects of this procedure, including heavy bleeding, cramping, and pain, whilst travelling back to Northern Ireland. They, therefore, have no access to ongoing medical care from the hospital or clinic where they underwent the procedure. This means not only that there is no continuity of care for Northern Ireland women, but it also denies them the dignity of being able to manage those effects at a time and place suitable to them.

18. The requirement to travel is also an equality problem, as wealthier women are able to access medical care in Great Britain, whereas women from lower income backgrounds are unable to do so due to the cost and logistical arrangements for travel. This burden has been somewhat reduced by the decisions taken by the Westminster, Scottish, and Welsh Governments in 2017 to remove charges of up to £2,000 faced by these women for accessing these services on the NHS, and to introduce a central booking system that allow poorer women to apply for travel and accommodation bursaries. However, Northern Ireland women still face burdens in many areas such as when they do not meet the threshold to receive bursaries; the cost of repatriation of foetal remains in cases of FFA; the possibility that women who are minors need to be accompanied whilst travelling; the possibility of needing to arrange childcare for any children that women leave behind in Northern Ireland when they make the trip; any lost income that may result from time off work women have to take; and the provision of aftercare in the context of a woman being in transit whilst managing the effects of the termination.

19. The current restrictions also have a chilling effect on the patient-doctor relationship. It is impossible to know due to these restrictions how many women seek to terminate their pregnancies illicitly using online-purchased misoprostol and mifepristone. However, one online supplier, Women on Web, reported sending 1,636 women across the island of Ireland such medication between 2010 and 2012.

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20. For example, Humanists UK is intervening in a human rights case about a mother procuring abortion pills for her daughter, which was heard in Northern Ireland recently. The case, known as JR76, challenges the decision to prosecute the mother after she supplied the pills to her daughter: the teenager became pregnant whilst she was under sixteen, in circumstances that made her the victim of a sexual crime according to the law in Northern Ireland. The prosecution was brought about after the family sought support for the teenager, when social services reported the matter to the police. The police were then supplied with the daughter’s confidential GP records without her knowledge or consent, i.e. forming a breach of patient-doctor confidentiality. The current restrictions on abortion and the requirement for all public officials in Northern Ireland to report knowledge of criminal activity means that women cannot have confidence that they will receive impartial and accurate information from medical professionals without fear of repercussions.

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?

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

22. 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) and Article 12 of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). This includes a right to access information relating to abortion services and the means for a pregnant women to exercise her right to determine if she will have children, when, and how many. Preventing access to abortion is therefore not only a violation of the right to health, but also a violation of the principle of equality and non-discrimination, as it criminalises only women.

23. The United Nations Human Rights Committee (UNHRC) has established in two rulings (Mellet v Ireland, and Wheelan v Ireland) that the denial of abortion in the case of FFA violates the pregnant woman’s rights under the United Nations International Covenant on Civil and Political Rights. The UNHRC found in both cases such a prohibition, which forces women to endure the delays and the additional burdens of travelling abroad for abortion access, constitutes cruel, inhuman or degrading treatment.

24. The lack of access to abortion services in Northern Ireland featured prominently as a recommendation from the United Nations Third Periodic Review of Human Rights in the United Kingdom.

25. The UN Committee on Eradication of Discrimination Against Women (CEDAW) told the UK

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10 Article 14 reads ‘The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s own health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to a system of health protection, which provides equality of opportunity for people to enjoy the highest attainable level of health.’


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.

26. 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)\textsuperscript{13} 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].’\textsuperscript{14}

27. 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.

28. Similarly, the European Convention on Human Rights is a contract between the member states of the Council of Europe.\textsuperscript{15} It was the UK Parliament that signed up to the Convention, and not the Northern Ireland Assembly. It is the UK Parliament that is therefore obliged to fulfil the UK’s obligations under the Convention.

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\textsuperscript{13} 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.’


\textsuperscript{15} As per the preamble: https://www.echr.coe.int/Documents/Convention_ENG.pdf