

Engender submission of evidence to the UK Government Women and Equalities Committee inquiry into abortion law in Northern Ireland

1. INTRODUCTION

Abortion in Northern Ireland remains extremely restricted under current law and women living in the region have little to no access to legal abortion. Consequentially, they are either forced to travel to other parts of the UK, including Scotland, or internationally, or to illegally procure abortifacient medication online.

As Scotland's representative member on the UK Joint Committee on Women, Engender unequivocally supports women in Northern Ireland's autonomy over their bodies and lives, and considers abortion access fundamental to women's rights and gender equality across the whole of the UK. The current law discriminates against and criminalises some UK women based upon their residence in Northern Ireland alone and places the UK Government in breach of its international obligations.

While abortion law is ordinarily a devolved matter in Northern Ireland, the UK has an international legal obligation to end this inequity and systemic violation of women's human rights in line with the UN Convention on the Elimination of Discrimination Against Women (CEDAW). Furthermore, the UK has consented to the establishment of an Inquiry Procedure through article 8 Optional Protocol, which allows the UN CEDAW Committee to investigate highlighted grave or systematic violations of the rights guaranteed by CEDAW. Inquiries are rarely undertaken by the Committee, however in February 2018 the Committee published its first, and to date only, Inquiry concerning the UK,¹ which found that the present Northern Irish Abortion Law violates the convention rights. In the absence of a Northern Irish power-sharing executive, the UK Government must act to remedy this continuing grave violation of women's rights.

¹ UN CEDAW Committee, (2018), *Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.*

2. SUMMARY

- The regulation of abortion in Northern Ireland is extremely regressive and denies women care, dignity and respect in pursuit of their human rights to reproductive healthcare
- The UK's international human rights obligations include the provision of access to abortion in the case of rape, incest, and fatal foetal abnormality, and the status quo is incompatible with these requirements
- Access to abortion is an essential aspect of women's equality and women in Northern Ireland currently benefit from fewer rights protections than counterparts in the rest of the UK due to the state of the law
- The UK Government should ensure that the views of the CEDAW Committee are implemented and that Northern Ireland regulation is compatible with the UK's human rights obligations
- There is no incompatibility between the UK's international legal obligation to protect the rights of women in Northern Ireland and the devolution of abortion law because the UK is currently the sole means of achieving change, and cannot use its internal affairs to deny the international obligation
- The Women and Equalities Committee should further examine the consequences of existing law for women in Northern Ireland's economic and social equality, including the cost and burden of travel to access abortion
- Women traveling to Scotland for abortion care still cannot access the same care as women ordinarily resident in Scotland, augmenting inequality of human rights protection in the UK.

3. THE CURRENT STATE OF ABORTION LAW IN NORTHERN IRELAND

Abortion in Northern Ireland remains almost totally illegal under the existing legal framework - one of only two places in Europe where abortion remains illegal, the other being Malta. Regulation is currently found in sections 58 and 59 of the 1861 Offences Against the Person Act, and section 25(1) of the Criminal Justice Act (Northern Ireland), 1945. Assisting or procuring an abortion beyond this limited scope, set out below, is punishable by a maximum penalty of life sentence.

Extremely narrow exceptions deriving from case law mean that legal abortions are only available in situations of permanent or long-term risk to the life or health of the pregnant person. No exceptions exist for fatal foetal abnormalities, rape or incest.

Consequentially only 13 terminations of pregnancy were carried out in HSC hospitals in Northern Ireland during 2016/17.²

As a result, women in Northern Ireland are unable to access the same or comparable health care necessary to give effect to their human rights that women in the rest of the UK have under the 1967 Abortion Act. This limits women's reproductive decision making and forces them to seek abortion care elsewhere, impacting upon their social and economic equality and has particular consequences for women in poverty or lacking the necessary and immediate resources to travel.

4. HUMAN RIGHTS AND THE LAW

International human rights law has consistently affirmed that it is a violation of rights for the state to deny abortion access where continuing the pregnancy would endanger the life or health of the pregnant woman, if there is a severe foetal abnormality, or if the pregnancy is the result of rape or incest. This represents a minimum, and additionally the UN Committee on Elimination of Discrimination Against Women (the CEDAW Committee) considers "laws that criminalise medical procedures only needed by women" to be a form of discrimination and systematically recommends decriminalisation of abortion in all cases.³

The Inquiry found that the UK is currently responsible for 'grave and systematic' violations of women's rights in Northern Ireland by unduly restricting their access to abortion in such a manner as to amount to torture or cruel, inhumane, or degrading treatment. It found that the very limited legal exceptions render abortion virtually impossible in Northern Ireland and deprive women of "*any real choice in influencing circumstances affecting their mental and physical health.*"

The Committee further asserted that the present law causes a 'chilling effect' on provision, as clinicians fear for their own potential consequences if interpreting the law incorrectly, denying access for even the few women who fall within the very limited scope of the existing exception.

5. CONSEQUENCES OF THE LAW FOR WOMEN'S EQUALITY

Engender is clear that access to safe and legal abortion care is essential to women's equality. Access to birth control and abortion has enabled women's higher levels of

² Northern Ireland Termination of Pregnancy Statistics 2016-17 <https://www.health-ni.gov.uk/news/northern-ireland-termination-pregnancy-statistics-2016-17>

³ CEDAW (1999) General Recommendation No. 24: Article 12 of the Convention (Women and Health)

educational attainment, increased the female employment rate, improved women's earnings potential, and reduced the gender pay gap.⁴

The current laws disadvantage Northern Irish women with regards to men but also as compared with women in the rest of the UK, where abortion is more easily accessed under the 1967 Act. The consequence is that women are required to travel from Northern Ireland to access healthcare, estimated at between 700 and 1,000 women a year. The economic and social costs of travel are enormous and have particular consequences for women experiencing domestic abuse, with work and childcare commitments, and those in situations of poverty – heavily noted by the CEDAW Committee. Additionally, it puts women at risk of negative health impacts associated with travel and the social stigma associated with abortion if their travel is discovered.

The Women and Equalities Committee should undertake further examination of the impacts of the law on women's equality, including the cost and burden of travel denying women the choice to access abortion within Northern Ireland has for women's equality across the whole of the UK.

6. REFORMING THE LAW TO PROTECT HUMAN RIGHTS

The CEDAW Committee recommended, amongst other legal reforms, that the UK pursue a repeal of sections 58 and 59 of the Offences against the Person Act 1861. Abortion law is devolved to Northern Ireland under the Belfast Agreement, however the current constitutional circumstances within Northern Ireland mean that women have had no opportunity to advocate and progress reforms within a sitting devolved administration.

We do not believe that the UK's obligations toward human rights are incompatible with the devolution settlement. As a signatory to CEDAW, and as per other international legal obligations accepted by the UK, the UK as a state is responsible for ensuring human rights are protected and fulfilled on its territory. Additionally, the UK has ratified CEDAW's Optional Protocol, and in doing so has agreed to give due consideration to the views and recommendations of the Committee. The UK clearly holds the international law obligation, and within domestic arrangements in the current context it is also the only means of achieving compatibility with the views of the Committee. The Committee itself was clear 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". Thus, the UK cannot invoke its internal arrangements (the

⁴ See Engender (2016) *Our Bodies, Our Choice; The case for a Scottish Approach to Abortion*

Belfast Agreement) to justify its failure to revise NI laws that violate the CEDAW Convention.”⁵

It is clear that the UK Government has both the means and the responsibility to address the incompatibility between human rights and ensure equal treatment of its citizens across the country. This position is further supported by the joint statement from four of the five largest political parties in Northern Ireland calling upon the UK to “ensure a human rights compliant framework governing access to abortion.”⁶

Unlike in the Republic of Ireland there is clearly no need for a referendum to change the law and we are clear that human rights should not be a matter for popular vote. However, it should be noted that there is evidence of clear public support within Northern Ireland for reform of the law. Figures from Amnesty International (2018) suggest that 65% of people in Northern Ireland support decriminalisation⁷ while the NI Life & Times survey (2016) found 76% supported legal abortion where a doctor said continuing a pregnancy would pose a threat to the woman’s physical or mental health.

7. THE EXPERIENCES OF NORTHERN IRISH WOMEN ACCESSING ABORTION IN SCOTLAND

Women from Northern Ireland may travel to Scotland (and the rest of the UK and internationally) in order to obtain an abortion, and since 2017 now receive abortion care free of charge in NHS services in Scotland.⁸ As in Northern Ireland, abortion law is now formally devolved to Scotland, however the Scottish Government has previously stated that there are no plans to restrict the law following its devolution⁹ and abortion was not discussed in this years’ Programme for Government. We therefore do not anticipate that Scottish access will be changed in the immediate term.

It is not known how many Northern Irish women receive abortion care in Scotland. Women in Scotland are less likely to be offered a surgical abortion, with a higher rate of medical abortions carried out than in England, requiring multiple appointments. Unlike England there are no 1-day early medical abortion services in Scotland.¹⁰ This

⁵ UN CEDAW. (2018). Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

⁶ <https://www.amnesty.org.uk/press-releases/northern-ireland-conservative-mps-reject-westminster-cannot-act-abortion>

⁷ <https://www.amnesty.org.uk/northern-ireland-abortion-law-poll>

⁸ Functions of Health Boards (Scotland) Amendment Order 2017

⁹ Scottish Government (2017) A nation with ambition: the Government's Programme for Scotland 2017-2018

¹⁰ <https://www.sexualhealthscotland.co.uk/pregnancy/abortion-services-in-scotland-for-women-who-live-in-northern-ireland>

increases the cost of travel for women from Northern Ireland and may make Scotland less suitable to their needs.

Additionally, women travelling from Northern Ireland are unable to access Early Medical Abortion at Home (EMAH) under the Scottish Guidance. Since introduced in 2017, women in Scotland have been able to start their abortion in a clinical setting and continue it in their home through a prescription of Misoprostol. While for women ordinarily resident in Scotland this may reduce the number of appointments they must travel to and offers a choice about care which reflects where she feels most comfortable and safe, women from Northern Ireland must continue to visit clinical settings for each stage. The Misoprostol prescription may only currently be given for the 'home-setting' and taking the prescription in a Northern Irish home would be to put the patient at risk of criminality.

The current rules undermine the equality of care and choice for women traveling from Northern Ireland further and the requirement of multiple appointments clearly increases costs and impacts upon potential work and childcare responsibilities. While the Scottish Government is considering the possibility of travel bursaries in addition to free access to services, no announcement in this regard has been forthcoming so far.

While we strongly welcome the steps the current Scottish Government has taken to ensure equality of access to NHS abortion services for women travelling from Northern Ireland we do not believe that it goes far enough. We support ongoing conversations around bursaries and improvements to abortion services within Scottish healthcare generally. In any event, subsidising travel does little to address the root cause of rights inequity for women in Northern Ireland – the rights of women in Northern Ireland to access safe, legal abortion care and support within their own region.

FOR FURTHER INFORMATION

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ABOUT US

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.