 

**BRITISH-IRISH PARLIAMENTARY ASSEMBLY**

**TIONÓL PARLAIMINTEACH NA BREATAINE-NA hÉIREANN**

**REPORT**

**from**

**Committee D (Environment and Social)**

**on**

**The cross-jurisdictional implications of abortion policy in the**

**BIPA jurisdictions**

**October 2019**

**Background to the inquiry**

1. The law on abortion in these islands, originally underpinned by the 1861 Offences Against the Person Act, has diverged significantly in recent years. This divergence creates challenges for policy-makers. But it also creates economic and social consequences for women who travel between jurisdictions for abortions, and has implications for the protection of their reproductive rights.
2. While the Committee wished to avoid overlap with other parliamentary inquiries into abortion, we felt that the cross-jurisdictional focus of BIPA’s work meant that we were uniquely placed to consider this important aspect of abortion policy. The Committee investigated the political, logistical, statistical and societal impact and interaction of the different regimes. Although most women across our jurisdictions are able to access abortion services – if not necessarily where they live – this access is shaped by varying financial, legal and healthcare contexts.
3. We took evidence in Liverpool in October 2017, and in London in December 2017. The inquiry was paused during the referendum on the 8th Amendment of the Irish Constitution in May 2018. The Committee resumed its inquiry with an evidence session in October 2018 in Belfast, and another in January 2019 in Dublin. We are grateful to all of our witnesses for their assistance.
4. The Committee first discussed a draft report at the BIPA plenary in Wicklow, Ireland, in May 2019. The plenary decided that exceptionally, a Member of the Committee would produce an alternative view which would be attached as an annex to the report. BIPA reports are usually decided by unanimity.[[1]](#footnote-1) The report and its annexes would then be discussed at the British plenary in Warwick in October 2019.
5. In the meantime, decisions were made by the UK Parliament and the High Court of Northern Ireland with a significant bearing on the conclusions of the report that we had drafted, and particularly on the conclusions which focused on abortion in Northern Ireland. The Northern Ireland (Executive Formation etc) Act 2019 was enacted on 24 July 2019. The Act extended the deadline for the restoration of the Northern Ireland Executive to 21 October 2019. However, under an amendment introduced by Stella Creasy MP, because the Executive was not restored by that date, Secretary of State for Northern Ireland is required to:
   1. implement recommendations on abortion made in the 2018 UN Committee of the UN Convention on the Elimination of Discrimination Against Women (CEDAW) report;[[2]](#footnote-2)
   2. repeal sections 58 and 59 of the Offences Against the Person Act 1861, and require that no investigation may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those sections under the law of Northern Ireland (whenever they were committed);
   3. make, by regulation, whatever other changes to the law of Northern Ireland are necessary for complying with the CEDAW report's recommendations, including “provision for the purposes of regulating abortions” and “the circumstances in which an abortion may take place”, with these regulations to come into force by 31 March 2020.[[3]](#footnote-3)
6. The repeal of sections 58 and 59 will decriminalise the following actions in situations where a pregnancy has not reached 28 weeks of gestation (though, when the new regime is implemented, the gestation period may be shortened). These actions are currently considered to be offences against the person:
   1. a woman administering drugs, or using an instrument or “other means whatsoever” with intent to cause her own miscarriage;
   2. any person taking any of the same actions with intent to cause the miscarriage of any woman; or
   3. any person supplying or procuring drugs, any instrument, or anything whatsoever, with intent to cause the miscarriage of any woman.

As it stands, the law in Great Britain will be different from that in Northern Ireland.[[4]](#footnote-4)

1. On 3 October 2019 the High Court of Northern Ireland ruled that Northern Ireland’s abortion law breached the UK's human rights commitments. The case was taken by Sarah Ewart, who challenged the law after she was denied a termination in 2013, despite medical opinion that her foetus would not survive outside the womb.[[5]](#footnote-5) The High Court judge said that in light of the Northern Ireland (Executive Formation etc) Act, which will decriminalise abortion in Northern Ireland, she would not make a formal declaration of incompatibility with human rights legislation.
2. We have decided to publish this report in the form that it was drafted just before the passage of this Act. Many of our witnesses gave evidence while abortion policy in Northern Ireland still diverged significantly from that in the other BIPA jurisdictions, and it would be unfair to those witnesses to attempt to rewrite this report to reflect recent developments. At the end of the report, in Annex A, we list a series of conclusions about the cross-jurisdictional aspects of abortion policy as they affect the health and rights of women in these islands, which, we hope, reflect the wide range of views that we heard in evidence. In that annex we have underlined the conclusions that we hope will still be relevant as these islands start to consider the implications of a regulatory landscape which has changed considerably since we began this inquiry.

**Legal and policy frameworks in the BIPA jurisdictions**

1. This first section of the report provides a general description of the laws and policies on abortion across the jurisdictions, giving a general, factual, description of the various frameworks. The second section describes how, according to our witnesses, the differences between abortion provision may create cross-jurisdictional challenges.
2. Abortion laws in the United Kingdom were first set out in the1861 Offences Against the Person Act. This Act underpinned abortion policy on the island of Ireland until the 1922 Constitution of the Irish Free State, after which the Act continued to apply in Northern Ireland. In the decades which followed, the legislative and regulatory framework evolved in different ways across the jurisdictions.

England and Wales

1. Abortion law in England, Scotland and Wales was amended by the 1967 Abortion Act. The Parliament of Northern Ireland did not adopt this Act. Under the 1967 Act, an abortion can legally be carried out up to a 24-week limit, and can be legal beyond that in cases where the woman’s health is threatened, or if there is a substantial risk of severe foetal abnormality. The Act requires two registered medical practitioners to authorise abortion, believing “in good faith” that it falls under one of the following grounds:
   1. that the pregnancy has not exceeded its 24th week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or
   2. that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
   3. that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
   4. that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.[[6]](#footnote-6)
2. Various attempts have been made to fully decriminalise abortion in England and Wales. Most recently, Diana Johnson, a Labour MP, tabled a backbench ‘ten-minute rule’ Bill, which would decriminalise abortion across the UK. This Bill is now awaiting its Second Reading in the House of Commons.[[7]](#footnote-7)

Scotland

1. Abortion law in Scotland was also amended by the 1967 Abortion Act. Abortion policy was devolved to Scotland as part of the Scotland Act 2016.[[8]](#footnote-8) At present, the legal position remains the same as in England and Wales.

Isle of Man

1. Reforms to the abortion law on the Isle of Man came into force on 24 May 2019. The Abortion Reform Act was given Royal Assent in January 2019. The Act permits women on the island to request an abortion within the first 14 weeks of pregnancy.[[9]](#footnote-9) This is longer than the 12 weeks in Ireland (see below), and does not require doctors’ consent, as in England and Wales. Previously under Manx law abortions could only be carried out if a woman was raped, or because of concerns about mental health.[[10]](#footnote-10)
2. The recent legislative developments on the Isle of Man represent a significant change in abortion policy in the Crown Dependency. However, these developments came too late for us to take them into account during this inquiry. The new law will need time to bed in before it can be the subject of an inquiry by a Committee such as ours. While we may turn to abortion policy on the island in the future, we acknowledge that there are likely to be few cross-jurisdictional implications because abortion will normally only be available women who are resident on the Isle of Man.[[11]](#footnote-11)

Channel Islands

*Jersey*

1. Under the Termination of Pregnancy (Jersey) Law 1997, abortion is “not to be unlawful”:

* “where it is necessary to save a pregnant woman’s life”;
* “to prevent grave permanent injury” to a pregnant woman’s physical or mental health;
* before 24 weeks where there is a “substantial risk that, if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped”;
* or before 12 weeks if “the woman’s condition causes her distress” and the requirements for consultation set out in the law have been complied with.

These requirements are for two consultations not less than seven days apart, with the woman having received information about, for instance, counselling and adoption.[[12]](#footnote-12)

*Guernsey, Herm and Jethou*

1. The Abortion (Guernsey) Law 1997 sets out both the criminal offence and when abortion is lawful. Abortion is lawful if two recognised medical practitioners are of the opinion, formed “in good faith”, that:

* abortion is “immediately necessary to save the life of the pregnant woman”;
* abortion is “necessary to prevent grave permanent injury to the physical and mental health of a pregnant woman”;
* the pregnancy has not exceeded 24 weeks’ gestation and “that, at the time of the diagnosis, there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped”; or
* the pregnancy has not exceeded 12 weeks’ gestation and “the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family.”[[13]](#footnote-13)

Ireland

1. In 1983, following a referendum, Article 40.3.3 of the Irish Constitution was amended to include “the right to life of the unborn”. This amendment is referred to as the “8th Amendment”. The amendment entrenched the-then legal position, as originally set out in the 1861 Act, that abortion was illegal in the state.

1. In 1992, in what became known as the “X case”, a 14-year-old rape survivor was initially prevented from travelling to England to terminate her pregnancy. This decision was overturned by the Supreme Court, which ruled that a woman had a right to an abortion if there was a “real and substantial risk” to her life. After a further referendum in 1992, the Constitution was amended to state that the 8th Amendment did not restrict the freedom to travel to another state to have a termination[[14]](#footnote-14), or the distribution of information about abortion services in foreign countries.
2. In 2013, following the death of Dr Savita Halappanavar, who was refused a termination which might have saved her life on the grounds that a foetal heartbeat was still present, the Protection of Life During Pregnancy Act was passed. The Act provided for legal termination of pregnancies in cases of a risk of loss of life from physical illness or from suicide.[[15]](#footnote-15)
3. After the 2016 General Election, the Programme for Government of the new Irish Government included a commitment to set up a Citizens’ Assembly to examine a number of constitutional and public policy issues, including the 8th Amendment. In April 2017, the Citizens’ Assembly voted to replace or amend, rather than repeal, the 8th Amendment, and recommended that abortion should be available up to 12 weeks after conception. On 4 April 2017 an Oireachtas Committee on the Eighth Amendment of the Constitution was established to consider the Citizens’ Assembly report and recommendations On 20 December 2017 it published its final report, which concluded that Article 40.3.3 should be removed from the Constitution.[[16]](#footnote-16)
4. In the resulting referendum held on 25 May 2018, the 8th Amendment of the Constitution of Ireland was repealed, with a 66.4 per cent vote in favour. The President of Ireland signed the Health (Regulation of Pregnancy) Act, implementing the new regime, on 20 December last year. Abortion services commenced on 1 January 2019.
5. The Act allows for a termination:

* under section 9, where there is a risk to the life of or of serious harm to the health of a pregnant woman, after examination by two medical practitioners;
* under section 10, in cases of emergency, where there is an immediate risk to the life of or of serious harm to the health of a pregnant woman, after an examination by one medical practitioner;
* under section 11, where two medical practitioners are of the opinion formed “in good faith” that that there is present a condition affecting the foetus which is likely to lead to the death of the foetus either before, or within 28 days of, birth; and
* under section 12, where there has been a certification that the pregnancy has not exceeded 12 weeks, and after a period of three days after this certification.

1. Under section 23, it is an offence punishable by a fine or imprisonment of up to 14 years intentionally to end the life of a foetus outside the provisions of the Act. This offence does not apply in the case of a woman ending her own pregnancy.[[17]](#footnote-17)

Northern Ireland

1. The effect of the Parliament of Northern Ireland’s decision not to adopt the 1967 Abortion Act was that the 1861 Act continued to apply. Sections 25 and 26 of the Criminal Justice Act (Northern Ireland) 1945 (which are derived from the corresponding provisions of the Infant Life (Preservation) Act 1929) are also applicable. Between 1972, when the Parliament was suspended and Direct Rule from London introduced, and 2010, when criminal justice and policing powers were devolved, abortion law in Northern Ireland was the responsibility of the UK Government. Successive UK governments did not bring Northern Ireland laws in line with those in England, Wales and Scotland.
2. Abortion law in Northern Ireland falls within the scope of the criminal law. The Department of Justice in Northern Ireland has responsibility for the policy. Three cases under section 58 of the Offences Against the Person Act 1861 have been brought in the last 30 years.[[18]](#footnote-18) In 2014/15, there were 16 terminations in hospitals in Northern Ireland, and 13 in 2016/17.[[19]](#footnote-19)
3. It is a criminal offence to terminate a pregnancy unless a woman’s life is at risk, or if there is a permanent or serious risk to her mental or physical health. Fatal foetal abnormalities, rape, or incest, are not, on their own, sufficient grounds for an abortion. In 2015 the High Court ruled that restrictions on abortion in the case of fatal foetal abnormalities, rape, or incest were incompatible with the human rights of women. The Attorney General of Northern Ireland appealed the decision, which was overturned by the Court of Appeal in June 2017. In 2016, a Belfast woman was given a suspended sentence for buying drugs online to terminate her pregnancy. Three and a half years ago, in February 2016, the Northern Ireland Assembly voted not to change the law on abortion. A proposal to legalise abortion in cases of fatal foetal abnormality was defeated in the Assembly by 59 votes to 40, and a proposal to legalise abortion in cases of rape or incest was defeated by an even wider margin.[[20]](#footnote-20)
4. The Northern Ireland Assembly Working Group on Fatal Foetal Abnormality presented a report to Ministers in October 2016, but the report was not published until April 2018. It concluded that some improvements could be made to the care and support of women with a fatal foetal abnormality diagnosis by improving the standard of care under the existing legal framework; that there was a substantial body of evidence to underwrite the need for legislative change in relation to termination of pregnancy for fatal foetal abnormality; that health professionals had identified a number of scenarios where they considered their duty of care to patients was being compromised; and that there were women who faced risks to their physical health, mental health including acute trauma and distress, and possible financial hardship, because they could not access the health service that they required.[[21]](#footnote-21)
5. The Working Group recommended that:

“a change is made to abortion law to provide for termination of pregnancy where the abnormality is of such a nature as to be likely to cause death either before birth, during birth or in the early period after birth. ‘In the early period after birth’ means those circumstances where life might still be present after birth, but there is no medical treatment which would make the condition survivable and the only option is appropriate, specialised end of life care. Where a diagnosis has been made of such an abnormality, it is to be accepted that the continuance of such a pregnancy poses a substantial risk of serious adverse effect on a women’s health and wellbeing.[[22]](#footnote-22)

1. Shortly after the report was finalised, in January 2017 the Northern Ireland Assembly ceased functioning. The UK Government has stressed that abortion is a devolved matter, and that any changes to the regulation of abortion in Northern Ireland should be determined by the Northern Ireland Assembly and Northern Ireland Executive.[[23]](#footnote-23) However, since the Assembly’s suspension, there have been a number of legal and political attempts to make changes to abortion policy in Northern Ireland. At the heart of this debate is whether access to abortion should be viewed as a human rights issue. For advocates of this position, proposals for changes to abortion provision which make reference to human rights legislation would apply to Northern Ireland with or without a functioning Executive and Assembly, since the UK Government would be obliged to uphold women’s rights. [[24]](#footnote-24)
2. Firstly, the Committee of the UN Convention on the Elimination of Discrimination Against Women (CEDAW) said that “highly restrictive” access to abortion compels women to travel outside of Northern Ireland to undergo legal abortions or self-administer with abortion pills[[25]](#footnote-25), and that there were “grave” violations of rights under the European Convention on Human Rights considering that Northern Ireland criminal law compels women in cases of severe foetal impairment, including fatal foetal abnormality, and victims of rape or incest, to carry pregnancies to full term, thereby subjecting them to severe physical and mental anguish. The Committee suggested that this constituted gender-based violence against women.[[26]](#footnote-26)
3. The Committee’s recommendations do not have a legally binding effect, and they do not require the UK to act in response to its findings; as such, this should be taken as an advisory report. The House of Commons Women and Equalities Committee has nevertheless suggested that the UK Government should set out a clear framework to address the report’s recommendations.[[27]](#footnote-27)
4. Secondly, in June 2018, the UK Supreme Court dismissed an appeal brought by the Northern Ireland Human Rights Commission (NIHRC). The dismissal came because the organisation did not have the legal standing to bring a case – only individuals may do so.[[28]](#footnote-28) This is a condition that must be met under section 7 of the Human Rights Act 1998 in order to endow the court with the jurisdiction to issue a declaration of incompatibility with the Human Rights Act. The Supreme Court did not, therefore, make such a declaration in respect of Northern Ireland abortion law. Then-Secretary of State Karen Bradley MP suggested that she would legislate to permit the NIHRC to bring such cases,[[29]](#footnote-29) and the woman on whose behalf the NIHRC brought the original case, Sarah Ewart, began her own legal challenge at the Belfast High Court.[[30]](#footnote-30)
5. After they made their judgment, a majority of the Supreme Court judges released a non-binding[[31]](#footnote-31) statement suggesting that, in cases of fatal foetal abnormality and sexual crime, the existing law was incompatible with Article 8 of the European Convention on Human Rights (the right to privacy and family life).[[32]](#footnote-32)
6. Thirdly, the UK Parliament passed an amendment to the 2018 Northern Ireland Bill, sponsored by the Labour MPs Stella Creasy and Conor McGinn. The amendment requires the Northern Ireland Secretary of State to provide guidance relating to any assertion that Northern Ireland’s laws are incompatible with human rights. However, in evidence to the Women and Equalities Committee, the Northern Ireland Office stated that since justice and health policy remained devolved, any such guidance could not change the current law on abortion in Northern Ireland.[[33]](#footnote-33)
7. In a separate but related development, the High Court in London ruled that women from Northern Ireland were not legally entitled to free abortions on the NHS in England. This decision was subsequently confirmed by the UK Supreme Court. However, in June 2017, the UK Government announced that it would fund abortions in England for women from Northern Ireland for free. The Scottish and Welsh Governments soon followed suit.

**Cross-jurisdictional issues**

1. The developments that we have listed, and particularly Ireland’s recent decision to legalise abortion, create a number of cross-jurisdictional implications that require the attention of BIPA administrations.

1. We have identified the following areas where differences in abortion policy could affect the treatment, experience, health, and wellbeing of women across our jurisdictions:

* Women travelling across jurisdictions for terminations, including:
  + The impact of changes to legislation in Ireland on women travelling for abortions
  + Costs of travel for women seeking terminations in other jurisdictions
  + The treatment of foetal remains
  + Staffing and skills issues
  + Guidance and the law
  + Rights of women who travel for abortions
  + The suspension of the Northern Ireland Assembly
  + The online availability of abortion pills

1. We consider each of these in turn, and draw conclusions about their impact.

Women travelling across jurisdictions for terminations

*The impact of changes to legislation in Ireland on women travelling for abortions*

1. Following the referendum to appeal the 8th amendment of the Constitution of the Republic of Ireland, the abortion regulatory regime in Ireland differs markedly from that in Northern Ireland. One of the ramifications of these different regulatory and legislative approaches to abortion is that women will continue to travel between jurisdictions for terminations, both from Northern Ireland to Great Britain and the Republic of Ireland, and perhaps still from Ireland to Great Britain.

1. While abortions in Ireland do not require doctors’ consent up to 12 weeks, and abortions up to 24 weeks in Great Britain require the consent of two doctors, effectively the law in Great Britain offers women a longer timeframe after conception in which to seek a termination.[[34]](#footnote-34)
2. There are no reliable figures for the number of women who might travel from Northern Ireland and Ireland in the future to seek abortions.[[35]](#footnote-35) We heard evidence that the numbers of women travelling for a termination might be falling, but this was perhaps the result of the greater online availability of abortion pills.[[36]](#footnote-36)
3. However, the situation which pertained in the Republic of Ireland before the referendum suggests that sizeable numbers women will go to different jurisdictions for terminations. Under the previous law, it was estimated that 3,500 Irish women travelled abroad for terminations every year. It is thought that 3,625 women from the Republic of Ireland underwent a termination in England in 2016.[[37]](#footnote-37) UK Government statistics found that, in 2014, 12 women a day travelled from Ireland to Britain to have an abortion.[[38]](#footnote-38)
4. It was also estimated that, in 2014, 837 abortions were performed in England to Northern Ireland residents, and 724 in 2016[[39]](#footnote-39), while one witness suggested that 1000 women travelled from Northern Ireland each year for a termination in Great Britain.[[40]](#footnote-40) These figures may well be an understatement, as some of the women might have given addresses in the UK when requesting an abortion.[[41]](#footnote-41) Dr Tony Holohan, Chief Medical Officer at the Irish Department of Health, told us that the health authorities were planning for up to 10,000 women from Northern Ireland to access abortion services in the Republic of Ireland, though the true figure could eventually be smaller.[[42]](#footnote-42)

*Costs of travel for women seeking terminations in other jurisdictions*

1. There are significant costs associated with travelling for a termination. Dr Siobhan Donohue, Chairperson of Termination for Medical Reasons, said that while abortion was a traumatic experience, it was made worse by the costs and logistics associated with travel.[[43]](#footnote-43) Costs include the financial outlay for accommodation and travel fares. But they also include other costs. Women might, for example, need to take time off work to travel to another jurisdiction.[[44]](#footnote-44) They might also need to pay for aftercare, once the procedure is completed.
2. These costs mean that women with greater resources will be able to afford such travel more easily, while those with less money might turn to insecure sources of funds such as money lenders.[[45]](#footnote-45) Dr Sarah Cooper, Lecturer in Politics, University of Exeter, told us that a common thread across all jurisdictions was that access to services varies depended on a woman’s social position.[[46]](#footnote-46) Other factors which might prevent women and girls from travelling include their age – they may still live in their family home, for example – the threat of violence or coercion from partners or family members[[47]](#footnote-47), illness or disability[[48]](#footnote-48), a lack of travel documentation[[49]](#footnote-49), or their responsibilities to care for children or other dependents.[[50]](#footnote-50)
3. The funding now provided by the UK, Welsh and Scottish Governments to women from Northern Ireland who seek abortions in Great Britain is therefore more likely to be accessed by those with the financial means to travel (even though there is some money available for means-tested travel[[51]](#footnote-51)), and those whose time commitments enable them to do so.[[52]](#footnote-52) Travel to the Republic of Ireland would be cheaper for women from Northern Ireland, but they would be obliged to pay a fee of around £450 for terminations there.[[53]](#footnote-53) These women will weigh up the various costs of travelling south or east to access abortion services.
4. In Ireland, women with higher incomes are more likely to be able to travel to Great Britain to terminate a pregnancy after 12 weeks than their counterparts with lower incomes. However, evidence suggests that women who seek abortions at a later stage in the gestation period tend to come from lower-income backgrounds.[[54]](#footnote-54) Risks to women’s health can increase the later that a termination occurs, and can be exacerbated if women travel later in their pregnancy.[[55]](#footnote-55)
5. **Proponents of abortion reform in Northern Ireland have argued that the comparatively restrictive nature of the abortion regime there has meant that in the past was abortion was, in effect, exported to Great Britain for a solution.[[56]](#footnote-56)**
6. **Evidence that we received suggests that Ireland might now take the place of Great Britain as a destination for some Northern Ireland women seeking an abortion.**
7. **In addition, women from Ireland will continue to travel to Great Britain due to the longer legal limit before which abortions are permitted there.**
8. **But statistics about the number of women likely to travel for these reasons are, as yet, unavailable. This is an issue with clear cross-jurisdictional implications for the health services of these islands, and, while paying particular attention to women’s right to privacy and anonymity, such data should be collected as soon as possible.**
9. **Without a clearer picture, it will be difficult to ascertain, for example, how often poorer and more marginalised women travel to access such services. Now that they have decided to fund abortions for Northern Ireland women travelling to Great Britain for terminations, the Scottish, Welsh and UK Governments should analyse the extent to which this funding is accessed by women from different social classes, communities, and marginalised groups.**
10. **Furthermore, once its new abortion regulatory regime is fully established, the Government of Ireland should assess how many women still travel to Great Britain for terminations, and how many women from Northern Ireland access abortion services in the Republic of Ireland.**

*The treatment of foetal remains*

1. We heard evidence that travelling home after a termination with foetal remains is traumatic for women.[[57]](#footnote-57) The way that the remains are dealt with by medical professionals can also have an impact on women’s mental and emotional wellbeing. There is little information available to women and girls who travel outside their jurisdictions about bringing home the remains of the foetus, for burial or genetic testing.[[58]](#footnote-58)
2. **We agree with the that there should be specific information for women about their rights to bring home foetal remains or the remains of unborn children, and that border agencies should ensure that women and their families who travel with remains should be treated with dignity.[[59]](#footnote-59)**

*Staffing and skills issues*

1. As long as women travel across the jurisdictions for abortions, it is vital that women receive the best possible care. Women’s health is paramount.
2. Great Britain has over 50 years’ experience of working with women seeking abortions. Yet we heard evidence that there is a shortage of skills to care for women seeking late terminations.[[60]](#footnote-60)
3. Scotland has fewer medical professionals than England and Wales with the ability to care for women seeking abortion after 18 weeks. Professionals’ expertise is usually limited to cases where the woman’s life or health are endangered, or cases of foetal anomaly. Women who wish to have terminations under other grounds often have to travel to England after this point. Some will have to pay the costs, while others will be funded in advance of travel.[[61]](#footnote-61)
4. Witnesses also underlined the lack of perinatal hospice clinics in Northern Ireland, although they welcomed the opening of a new perinatal unit at the Royal Victoria Hospital, Belfast.[[62]](#footnote-62) Perinatal clinics care for women, and babies with fatal foetal abnormality, in the periods immediately before and after birth. Witnesses stressed that such facilities should provide access to specialist midwives and bereavement counsellors.[[63]](#footnote-63)
5. **As new services and new forms of provision develop, clinical knowledge should be shared across these islands. Services in Great Britain have not been set up to support women travelling there for abortions. New training programmes should be established, to provide the best support and care to women who travel in order to have a termination.**
6. **On the island of Ireland, medical professionals should also hold cross-jurisdictional discussions about the provision of perinatal hospital care, to facilitate access for women and babies from both sides of the border to clinics in Northern Ireland and the Republic of Ireland.**

*Guidance and the law*

1. A number of witnesses told us that healthcare professionals in Northern Ireland were sometimes reluctant to give advice to women about the abortion regulatory regime in Northern Ireland, and about access to abortion services elsewhere in the United Kingdom. Healthcare professionals are often concerned that it may be illegal to give advice about abortion, and do not wish to risk criminal prosecution.[[64]](#footnote-64)

1. Particular uncertainty surrounds the legality of referrals to the UK Government-funded scheme providing free abortions in England.[[65]](#footnote-65) Yet it is not unlawful to refer patients to this scheme. In some cases, for example where a doctor might consider that referring a patient to abortion services in another jurisdiction is medically the best course of action, but is concerned that the law may prevent such a referral, a woman’s health may be put at risk.[[66]](#footnote-66)

1. Medical professionals in Northern Ireland should follow the 2016 [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-termination-pregnancy.pdf), which states that medical professionals may signpost abortion services in other jurisdictions.

“In [certain] circumstances it would be lawful to provide a pregnant woman in Northern Ireland with information about the circumstances in which it may be lawful to terminate her pregnancy if she was in another jurisdiction. Again it would be lawful to advise her that she is free to travel to such other jurisdiction for the purposes of ascertaining whether it would be lawful to have her pregnancy terminated there, and, if so of securing its termination.”[[67]](#footnote-67)

1. **Abortion laws in Northern Ireland now diverge significantly from those in Ireland and Great Britain. But this factor should not prevent necessary discussions between parties in the various jurisdictions. It should be permissible and legal, for example, for medical professionals in Northern Ireland to liaise with counterparts in Great Britain and Ireland on the cross-jurisdictional implications of these different approaches.**
2. **We are concerned that a lack of clarity among healthcare professionals about their duties under Northern Ireland law could be detrimental to women’s health and wellbeing. The Department of Health in Northern Ireland should reissue guidance for healthcare professionals, making it clear that referring patients to the funded scheme or signposting patients on how to get information about the funded scheme is not unlawful.[[68]](#footnote-68)**
3. **In so doing, it should work with the Department of Justice to explain to doctors in clear terms what sort of advice would be deemed illegal under Northern Ireland abortion law. It should reiterate that the 2016** [**Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland**](https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-termination-pregnancy.pdf) **permits medical professionals to signpost abortion services in other jurisdictions to their patients.**

*Rights of women who travel for abortions*

1. We sketched out briefly above how certain parties had begun to promote changes to abortion policy as a human rights issue. The UN CEDAW report assessed abortion regulation in these terms, and a report on abortion by the House of Commons Women and Equalities Committee built on the CEDAW rights analysis.[[69]](#footnote-69)
2. In our conclusions we have restricted ourselves to a discussion of the wellbeing of those women and girls who travel across jurisdictions for terminations. Abortion regulation in Northern Ireland is a devolved matter since it comes under criminal law. We heard that a potential ramification of this devolved arrangement was that women and girls who seek abortion in another jurisdiction after becoming pregnant even as a result of rape and incest, and healthcare professionals working with them, could face prosecution, though we also heard that this was unlikely.[[70]](#footnote-70)
3. **Women who seek abortions in other jurisdictions following rape or incest should not be prosecuted for doing so. We recognise that justice is devolved in Northern Ireland, and as such the Attorney General for Northern Ireland should issue guidance to state that it will not be in the public interest to prosecute survivors of rape and incest, or any professionals treating them, for not reporting abortions to the police.[[71]](#footnote-71)**
4. **We stress, however, that any restriction on women’s ability to access abortion services, and any legal process which has a detrimental effect on their recovery or general health and wellbeing, is likely to amount to an abrogation of their human rights. In the context of the United Kingdom, it will be the responsibility of the UK Government to ensure that these women’s rights are protected.**

The suspension of the Northern Ireland Assembly

1. We described above how the suspension of the Northern Ireland Assembly had led to calls from certain actors for the UK Government to change abortion law in its absence.[[72]](#footnote-72) During the inquiry we heard that some surveys had suggested that the majority of the people of Northern Ireland were in agreement with this sentiment.[[73]](#footnote-73) Witnesses told us how the suspension of the Assembly had had a direct effect on discussions about the legal and policy framework pertaining to women who travel from Northern Ireland for abortions.[[74]](#footnote-74)
2. **While we respect the Northern Ireland devolution agreement, we underline how the cross-jurisdictional implications that we have outlined will remain with or without a functioning Northern Ireland Assembly. Reinstating the Assembly will, however, offer the people – and particularly the women – of Northern Ireland a greater role in discussions about these implications. The current stasis is unacceptable when women’s health and wellbeing are at risk.**
3. **On the other hand, the UK Government has made the decision to provide free services for women from Northern Ireland seeking an abortion in England, and the Scottish and Welsh Governments have followed suit. Scrutiny of these arrangements rests with the UK, Scottish and Welsh Parliaments.**
4. **The current suspension of the Northern Ireland Assembly must not stand in the way of discussions between the BIPA jurisdictions on these important issues. The Governments of the UK and Ireland should use the cooperation structures available to them, such as the British-Irish Council, to prioritise discussions on the cross-jurisdictional implications of different approaches to abortion on these islands.[[75]](#footnote-75)**
5. **We heard convincing evidence about the value of the Citizens’ Assembly process which preceded the recent referendum in Ireland in involving people in decision-making.[[76]](#footnote-76) We therefore recommend the Citizens’ Assembly process as a potentially instructive model for engaging the public in this important debate.**

The online availability of abortion pills

1. Another topical issue in each of the BIPA jurisdictions is the increasing online availability of abortion pills. It is illegal everywhere in these islands to take drugs to bring on a miscarriage without doctors’ consent, although in England and Wales, and in Scotland, doctors can legally prescribe pills to patients. In 2016, 375 doses were intercepted in England, Wales, and Scotland (an increase from 270 in 2015, 180 in 2014 and five in 2013).[[77]](#footnote-77)
2. Dawn Purvis, the former Director of the Marie Stopes Clinic in Northern Ireland, said that there was a correlation between the availability of the pills and the numbers of surgical abortions decreasing, because abortion pills are much less expensive than travelling to other jurisdictions. But we heard that while the numbers of women travelling for terminations were indeed falling, women were being prosecuted for taking online pills.[[78]](#footnote-78) In 2016, a case where a Belfast woman was given a suspended sentence for buying drugs online for her daughter to terminate a pregnancy received widespread coverage.
3. The British Medical Journal recently published a study of women in Ireland and Northern Ireland who sought abortion pills online: the study found that almost 95% of the women surveyed safely ended their pregnancy without surgical intervention.[[79]](#footnote-79) However,we heard concerns about the risks to women’s health of taking medication without medical supervision.[[80]](#footnote-80) Dr John Chisholm of the British Medical Association believed that terminations through online medication raised issues of safety and after-care, in particular in Northern Ireland.[[81]](#footnote-81) We learnt that the pills could have a harmful effect on women suffering from asthma or heart conditions.
4. Where women and girls in Northern Ireland purchase abortion pills online and subsequently present with healthcare concerns, some medical professionals up to now have felt unable to treat them for fear of prosecution.[[82]](#footnote-82) In cases where there is a conflict between doctors’ duty of confidentiality and the law, some of our witnesses felt that women’s health should always come first.[[83]](#footnote-83)
5. **We heard evidence that differences between abortion provision across these islands have led to an increase in women taking online abortion pills. We also heard concerns about the risks to women’s health of taking medication without medical supervision.**
6. **None of the BIPA jurisdictions will wish women’s health to be endangered in this way. It is not illegal anywhere in these islands for doctors to give advice to women – and particularly vulnerable women – which is necessary to protect their health. We therefore recommend that the advice given to women and medical professionals about the medical and legal consequences of taking online abortion pills be clarified and distributed more widely across each jurisdiction. In particular, the Chief Medical Officer of Northern Ireland should reassure doctors that such advice would not contradict the 2016 Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland.**

**Annex A – list of conclusions**

The conclusions that are **underlined** should continue to have relevance if the provisions ofThe Northern Ireland (Executive Formation etc) Act 2019 are enacted.

* **Proponents of abortion reform have argued that the comparatively restrictive nature of the abortion regime in Northern Ireland has meant that in the past the issue was, in effect, exported to Great Britain for a solution.**
* **Evidence that we received suggests that Ireland might now take the place of Great Britain as a destination for some Northern Ireland women seeking an abortion, though the costs and time associated with travel may discourage from them doing so.**
* **In addition, women from Ireland might continue to travel to Great Britain due to the longer legal limit before which abortions are permitted there.**
* **But statistics about the number of women likely to travel for these reasons are, as yet, unavailable. This is an issue with clear cross-jurisdictional implications for the health services of these islands, and, while paying particular attention to women’s right to privacy and anonymity, such data should be collected as soon as possible.**
* **Without a clearer picture, it will be difficult to ascertain, for example, how often marginalised women travel to access such services. Now that they have decided to fund abortions for Northern Ireland women travelling to Great Britain for terminations, the Scottish, Welsh and UK Governments should analyse the extent to which this funding is accessed by women from different social classes, communities, and marginalised groups.**
* **Furthermore, once its new abortion regulatory regime is fully established, the Government of Ireland should assess how many women still travel to Great Britain for terminations, and how many women from Northern Ireland access abortion services in the Republic of Ireland.**
* **We agree with the recent report of the House of Commons Women and Equalities Committee that there should be specific information for women and girls about their rights to bring home foetal remains or the remains of unborn children, and that border agencies should ensure that women and their families who travel with remains should be treated with dignity.**
* **As new services and new forms of provision develop, clinical knowledge should be shared across these islands. This could include providing training in how to provide the best support and care to women who travel in order to have a termination.**
* **On the island of Ireland, medical professionals should also hold cross-jurisdictional discussions about the provision of perinatal hospital care, to facilitate access for women and babies from both sides of the border to clinics in Northern Ireland and the Republic of Ireland.**
* **Abortion laws in Northern Ireland now diverge significantly from those in Ireland and Great Britain. But this factor should not prevent necessary discussions between parties in the various jurisdictions. It should be permissible and legal, for example, for medical professionals in Northern Ireland to liaise with counterparts in Great Britain and Ireland on the cross-jurisdictional implications of these different approaches.**
* **We are concerned that a lack of clarity among healthcare professionals about their duties under Northern Ireland law could be detrimental to women’s health and wellbeing. The Department of Health in Northern Ireland should reissue guidance for healthcare professionals, making it clear that referring patients to the funded scheme is not unlawful.**
* **In so doing, it should work with the Department of Justice to explain to doctors in clear terms what sort of advice would be deemed illegal under Northern Ireland abortion law. It should reiterate that the 2016** [**Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland**](https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-termination-pregnancy.pdf) **permits medical professionals to signpost abortion services in other jurisdictions to their patients.**
* **Women who seek abortions in other jurisdictions following rape or incest should not be prosecuted for doing so. We recognise that justice is devolved in Northern Ireland, and as such the Attorney General for Northern Ireland should issue guidance to state that it will not be in the public interest to prosecute survivors of rape and incest, and professionals treating them, who have not reported abortions to the police.**
* **We stress, however, that any restriction on women’s ability to access abortion services, and any legal process which has a detrimental effect on their recovery or general health and wellbeing, would amount to an abrogation of their human rights. In the context of the United Kingdom, it will be the responsibility of the UK Government to ensure that these women’s rights are protected.**
* **While we respect the Northern Ireland devolution agreement, we underline how the cross-jurisdictional implications that we have outlined will remain with or without a functioning Northern Ireland Assembly. Reinstating the Assembly will, however, offer the people – and particularly the women – of Northern Ireland a greater role in discussions about these implications. The current stasis is unacceptable when women’s health and wellbeing are at risk.**
* **On the other hand, the UK Government has made the decision to provide free services for women from Northern Ireland seeking an abortion in England, and the Scottish and Welsh Governments have followed suit. Scrutiny of these arrangements rests with the UK, Scottish and Welsh Parliaments.**
* **The current suspension of the Northern Ireland Assembly must not stand in the way of discussions between the BIPA jurisdictions on these important issues. The Governments of the UK and Ireland should use the cooperation structures available to them, such as the British-Irish Council, to prioritise discussions on the cross-jurisdictional implications of different approaches to abortion on these islands.**
* **We heard convincing evidence about the value of the Citizens’ Assembly process which preceded the recent referendum in Ireland in involving people in decision-making. We therefore recommend the Citizens’ Assembly process as a potentially instructive model for engaging the public in this important debate.**
* **We heard evidence that differences between abortion provision across these islands have led to an increase in women taking online abortion pills. We also heard concerns about the risks to women’s health of taking medication without medical supervision.**
* **None of the BIPA jurisdictions will wish women’s health to be endangered in this way. It is not illegal anywhere in these islands for doctors to give advice to women – and particularly vulnerable women – which is necessary to protect their health. We therefore recommend that the advice given to women and medical professionals about the medical and legal consequences of taking online abortion pills be clarified and distributed more widely across each jurisdiction. In particular, the Chief Medical Officer of Northern Ireland should reassure doctors that such advice would not contradict the 2016 Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland.**

**Annex B – Alternative view of BIPA Committee D Member**

1. Abortion policy varies across the BIPA jurisdictions. This variation is entirely legitimate in terms of human rights. It is recognised, for example, within the jurisprudence of the European Court of Human Rights (ECHR) that abortion is a matter for states to decide within their margin of appreciation.[[84]](#footnote-84) There is a debate over the extent of this margin,[[85]](#footnote-85) but at the current time the jurisprudence of the European Court on Human Rights allows for divergence of approaches on how abortion is regulated amongst signatories to the ECHR.[[86]](#footnote-86) Notably, the Court did not condemn Irish abortion law when this was more restrictive either than it is now or than the law in Northern Ireland.
2. Until 22 October 2019, Northern Ireland had operated under different abortion legislation from Great Britain for many years; and now, more recently, from the Republic of Ireland. The law on abortion in Northern Ireland was governed by sections 58 and 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945, as interpreted by the courts. These provisions restrict legal abortions to situations where the life of the mother is at risk and continuing the pregnancy would adversely affect her physical or mental health in a manner that is “real and serious‟ and “permanent or long term”. The law is clear that the mother’s life need not be put at risk. The Department of Health, Social Services and Public Safety issued Guidance on Termination of Pregnancy in Northern Ireland, which states: “Health and social care professionals must be clear that the law in Northern Ireland requires the life of the pregnant woman to be the priority. There is no upper gestational age limit as to when a pregnancy may be terminated if a medical practitioner decides in good faith that continuance of the pregnancy threatens the life of the woman, or would adversely affect her physical or mental health in a manner that is ‘real and serious’ and ‘permanent or long term’”.[[87]](#footnote-87)
3. On 22 October, the law on abortion in Northern Ireland changed as a result of section 9 of the Northern Ireland (Executive Formation etc) Act 2019. This legislative change was the product of an amendment tabled to emergency legislation with no reference to abortion by Stella Creasy MP and further amended by Baroness Barker in the House of Lords. The legislation’s primary purpose was to change the date at which a fresh Assembly election would need to be held. However, contrary to previous precedent, amendments which were completely unrelated to the original purposes of the Bill were allowed to be tabled leading to a Bill which led to the Bill considering a wide variety of social and political issues in Northern Ireland. In a highly unusual step within UK law, the amendment passed by Parliament required the provisions of a report conducted by the UN Convention on the Elimination of Discrimination Against Women (CEDAW) Committee to be implemented in full.[[88]](#footnote-88) This report made a series of recommendations with regard to Northern Ireland’s law and policy in this area.
4. In terms of statute, this provision removed sections 58 and 59 of the Offences Against the Persons Act while leaving section 25 of the Criminal Justice Act (Northern Ireland) in place. This had the functional effect of legalising abortion up to the point at which an unborn baby/foetus is ‘capable of being born alive.’ The 1945 Act sets out that this point comes at 28 weeks’ gestation. It is important to be cognisant of the legal advice of the British Medical Association (BMA) with regard to this point. In a 2017 paper, the BMA stated the standard medical threshold of viability is understood to be around 24 weeks’ gestation but“the medical threshold does not, however, change the statutory presumption of 28 weeks” under the 1945 Act. They go on to say “the statutory presumption of 28 weeks would need to be rebutted on the individual facts of each case”.[[89]](#footnote-89)
5. The Act introduces a moratorium on investigations and criminal proceedings with regard to offences committed under sections 58 and 59 of the Offences Against the Person Act. In addition, it gives the Secretary of State the power to introduce regulations with regard to how abortions will be conducted in Northern Ireland. These regulations must be introduced by 31 March 2020. The CEDAW report requires the Government to legislate to allow for abortion in at least these cases:
   1. “Threat to the pregnant woman’s physical or mental health without conditionality of ‘long-term or permanent’ effects;
   2. Rape and incest; and
   3. Severe foetal impairment, including FFA, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term.”
6. The decision to only require the regulations to be in place by 31 March 2020 has the effect of creating a legislative vacuum in Northern Ireland which may last up to five months where abortion up to the point at which an unborn baby/foetus is “capable of being born alive” is legal but there is no legislative framework in place to regulate how abortion is conducted. It is acknowledged that a number of codes of practice already exist for medical professionals operating in Northern Ireland will continue to apply. However, the key point to note in this five-month period is that there is no legislative requirement to notify any statutory body or agency that an abortion has taken place; there is no requirement for abortions to take place in a particular place or clinic; and there is no body in place with the power to inspect abortion clinics or other medical clinics providing abortions in Northern Ireland.[[90]](#footnote-90) A legal opinion by well-respected QC David Lock has outlined these points clearly.[[91]](#footnote-91)
7. The Northern Ireland Office has at the time of writing produced guidelines for healthcare professionals with regard to this five-month interim period. The guidelines set out that during the interim period, “there are no plans” for additional abortion services to be provided in Northern Ireland itself.[[92]](#footnote-92) The only scenarios during the interim period where abortions will be performed in Northern Ireland would be in cases “where a fatal or serious foetal anomaly has been detected”.[[93]](#footnote-93) This goes beyond what was deemed required by the United Kingdom Supreme Court in the *Northern Ireland Human Rights Commission* case, who ruled unanimously that it was consistent with the European Convention on Human Rights to legislate against allowing for abortion on the grounds of non-fatal disabilities. This case will be discussed further below. No definition is provided of what constitutes a “serious foetal anomaly” in the guidelines themselves. During this five-month period, all other women who seek an abortion within the new legislative framework will be funded to travel to Great Britain. The grounds on which the NIO has made this decision is due to “the absence of a legal abortion framework in which services could operate” during the interim period.[[94]](#footnote-94) The NIO has not indicated who will be funding this new arrangement during the interim period.
8. Finally, the Government is required under the terms of the CEDAW convention to introduce additional regulations or adopt in policy the following recommendations:
   1. “Provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion;
   2. Ensure accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral and emergency, long term or permanent and adopt a protocol to facilitate access at pharmacies, clinics and hospitals;
   3. Provide women with access to high-quality abortion and post-abortion care in all public health facilities, and adopt guidance on doctor-patient confidentiality in this area;
   4. Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory curriculum component for adolescents, covering early pregnancy prevention and access to abortion, and monitor its implementation;
   5. Intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception;
   6. Adopt a strategy to combat gender-based stereotypes regarding women’s primary role as mothers; and
   7. Protect women from harassment by anti-abortion protestors by investigating complaints, prosecuting and punishing perpetrators.”

It is worth noting that at the time of writing it is not clear how the Government will seek to implement these recommendations. It seems highly likely that a number of these provisions will be subject to legal challenge from parties holding variable views as they engage other human rights provided to British citizens under the European Convention on Human Rights.

1. This new legislative framework was introduced with no consultation with the people of Northern Ireland. The contrast with the legislative process adopted in the Republic of Ireland in the run up to the referendum on the 8th Amendment to the Irish Constitution and beyond is stark. In the Republic of Ireland a lengthy debate was conducted and full legislative scrutiny through parliamentary processes were adopted. In contrast, the law change on abortion in Northern Ireland was tagged onto a Bill nothing to do with abortion and was subject to no consultation and highly limited debate in both Houses of Parliament. The Bill was rushed through Parliament using accelerated procedure on the basis that it was supposed to only be changing the date by which the next election must be held.
2. No MP who takes their seat at Westminster with a democratic mandate from Northern Ireland supported this provision when it came to a vote in the House of Commons during the report stage of the Northern Ireland (Executive Formation etc) Bill. The final provision was completely re-written in the House of Lords, and a five-month gap introduced between removing the old law and introducing the new law, and this re-write only subject to 17 minutes of debate in the elected House when it returned for debate.

The Northern Ireland Assembly

1. Before July 2019, it was widely accepted that decisions about the law and policy in Northern Ireland as respects ‘transferred’ matters must be made in Northern Ireland. This is the basis of the devolution settlement within the UK. Parliament made a decision in 2010 to transfer powers over criminal justice to Northern Ireland in the full knowledge that this would give the Northern Ireland Assembly the right to decide the law on abortion so far as contained in two criminal law statutes.
2. The difficult history of Northern Ireland and the challenges of forming power-sharing institutions are well known to parliamentarians in all of the jurisdictions within BIPA. The travails facing the power-sharing institutions at the current time are a matter of deep regret and all jurisdictions represented at BIPA should be encouraging dialogue so that the Northern Ireland Assembly is operating again as soon as possible.
3. Parliament decided to override the devolution settlement and to ignore the fact the Northern Ireland Assembly had deliberated on and voted on abortion law far more recently than any other United Kingdom legislature in 2016. In this vote a clear and decisive cross-community vote of MLAs opposed any legislative change.[[95]](#footnote-95) This proved to be of no consequence to members of the House of Commons who took the view that they knew better than those actually elected by the people of Northern Ireland to represent them.
4. A number of witnesses to the Committee’s inquiry stressed that it should be the right of devolved administrations within the United Kingdom to decide what their law in this area should be.[[96]](#footnote-96) In a poll conducted by ComRes in October 2018, 64% of people (and 66% of women) said that any change in the law on abortion should be made by representatives in Northern Ireland.[[97]](#footnote-97) The right of the people of Northern Ireland to chart their own course in this area should have been respected. However, the truth is that it simply was not by Parliament during the passage of the Northern Ireland (Executive Formation etc) Act 2019.
5. Furthermore, policy on human rights remain the responsibility of the Assembly, not the UK Government.[[98]](#footnote-98) Under Schedule 2, paragraph 3 of the Northern Ireland Act 1998, observing and implementing international obligations, and obligations under the ECHR, is transferred to the Northern Ireland Assembly. Whilst the UK is the state party to these international treaties, it is for the devolved administrations, here the Northern Ireland Assembly and Executive, to ensure that their domestic laws and actions are compliant. The observance and implementation of international obligations and obligations under the ECHR (so far as they are otherwise within the competence of the Assembly) are matters for the Northern Ireland Assembly.[[99]](#footnote-99)
6. In order to fully understand the outrage felt in Northern Ireland, however, consideration needs to be given to actual provision. It would have been possible to devise legislation that only removed the existing legislation once the new legislation was ready. It is understood that it would take five months to develop the new legislation but mindful of that the deletion of the existing legislation should have been timed with when the new legislation is ready. This is what happened in the Republic of Ireland following the removal of the 8th Amendment. The fact that the Bill needlessly repeals the existing legislation five months before new legislation is required places women in Northern Ireland at risk in a manner in which women in England have never been. During the five months while abortion provision will be made legal up until just prior to the point at which a child is capable of being born alive, there will be no abortion-specific regulation of private clinics as in England and as legal opinions by both the former Labour MP, David Lock QC and Ian Wise QC make plain, there is a genuine risk of ‘backstreet abortion’ provision being legalised for the first time in any UK jurisdiction.
7. In this regard it is worth quoting from both opinions. Ian Wise QC writes at paragraph 9 of his opinion: “It is important to recognise that because the 1967 Act does not apply to Northern Ireland and as there are currently no abortion clinics there, the detailed regulatory provisions governing abortion clinics in England and Wales are not in place in Northern Ireland. It is possible the regulations introduced on 31 March 2020 might address this, but that would not change the fact that between 22 October 2019 and 31 March 2020 it will be legal for private clinics to operate in Northern Ireland without the same level of protections for pregnant women currently in place in England and Wales. Important safeguards are for example found in Regulation 20 of the Care Quality Commission (Registration) Regulations 2009 which contains “requirements relating to the termination of pregnancies”. Among these requirements is the obligation to ensure that two medical opinions are provided before an abortion is carried out, a restriction on terminations after the 20th week of gestation and the requirement for detailed records of terminations to be kept. The absence of these requirements in Northern Ireland leads me to the view that there is a real possibility that the safeguards currently deemed necessary in England and Wales will not be in place in Northern Ireland in the likely event that abortion clinics are opened there, at least between 22 October 2019 and 31 March 2020. Whereas this lacuna would have ordinarily been expected to have been addressed by the devolved Stormont Assembly, in the absence a functioning Assembly there is a danger that important safeguards for women seeking abortions are not put in place. In consequence of the above, premises may open in Northern Ireland after 22 October 2019 to provide abortions which are not required to be registered thereby effectively opening the door to legal backstreet abortions.”[[100]](#footnote-100)
8. David Lock QC writes in his opinion: “A person who was not a doctor (whether a nurse, other clinical professional or with no qualifications) who provides abortion services outside any form of clinic, agency or establishment does appear to not need to be registered under the 2003 Order. Further, there does not appear to be any other regulatory regime that will apply to such a person or any law which means that such a person will necessarily be acting unlawfully (although that does not mean that other criminal offences may not be committed depending on the precise facts of an individual case.)”
9. He also writes: *“*In general, under the common law it is lawful to do anything unless there is a specific legal prohibition against doing that thing. Thus an individual is entitled to carry out any form of activity unless the activity is regulated by law and the regulatory framework imposes restrictions on the way in which the activity can be undertaken. As far as I have been able to determine, once section 9 of the 2019 Act comes into force in Northern Ireland, there will be no regulatory framework which applies in Northern Ireland to prevent anyone (whether medically qualified or not) providing abortion services outside of any clinic, agency or establishment which requires to be registered under the 2003 Order.”
10. He continues: “It follows that an unintended consequence of section 9 of the 2019 Act may be the possible return of unregulated “backstreet abortion.”
11. The comments made in favour of Northern Ireland introducing a Citizens’ Assembly to consider the subject of abortion are noted. At this point, the discussion of whether or not a Citizens’ Assembly should have been utilised is moot. However, as this debate may return in future, it is pertinent to consider the subject briefly. Without question, arguments can be made in favour of deliberative democratic processes. However, it should be noted that for some the creation of a Citizens’ Assembly assumes that there is a problem to be solved. In addition, it is also not clear how such an Assembly would operate or to whom it would report in the absence of the Northern Ireland Assembly. Some argue the true Citizens’ Assembly for Northern Ireland is indeed the Northern Ireland Assembly, whose members have a mandate to debate and deliberate on the law on abortion. The role of the Northern Ireland Assembly should be upheld and not diminished by a Citizens’ Assembly.
12. **Due cognisance needs to be given to the damage done to the devolution settlement by the decision made by the UK Parliament in how they acted in relation to the Northern Ireland (Executive Formation etc) Bill 2019. Many people in Northern Ireland feel deeply disenfranchised as a consequence of the process adopted to amend the law on abortion. It is of little doubt that no other legislature in these islands would have tolerated their law on abortion being amended in the way Northern Ireland’s law was amended at Westminster. Many living in Northern Ireland feel like they have been treated as second-class citizens in this legislative process. Reflection is required from Westminster parliamentarians on how legislation pertaining to Northern Ireland is handled and will be handled in the future in light of how this process was managed.**
13. **Efforts should continue to restore the Northern Ireland Executive and it is hoped the Assembly when it is restored will follow the due process which should have been given to this area of law when it was considered at Westminster.**

The Case for Changing the Law on the Basis of Human Rights.

1. It has been argued that there is a strong case for changing the law on abortion in Northern Ireland on the basis of human rights, in particular with reference to a report published by the UN CEDAW Committee and a ruling of the UK Supreme Court. Indeed, Westminster made a decision to legislate in Northern Ireland based on the report of the UN CEDAW Committee. However, it is important to reflect on the status of this report and whether the United Kingdom was in any sense required to legislate in this regard.

*Is there a right to abortion in international law?*

1. The CEDAW Committee advocates that abortion law should be decriminalised in all situations and is especially critical of the situation in Northern Ireland. The Committee recommends, despite the fact that the CEDAW Convention, which defines its remit, does not even mention abortion and the fact that the Committee is not a judicial body and does not have standing to ‘read in’ such a right to abortion[[101]](#footnote-101) “that abortion be decriminalised in all cases” and asserts that “States’ parties are obligated not to penalise women resorting to, or those providing such services [abortion]”*.*[[102]](#footnote-102)Moreover, Lord Wilson in the case before the UK Supreme Court, *R (A and B) v Secretary of State for Health*, confirmed that there is no right to abortion in any international treaties:

“The conventions and the covenant to which the UK is a party carefully stop short of calling upon national authorities to make abortion services generally available. Some of the committees go further down that path. But, as a matter of international law, the authority of their recommendations is slight.”

1. Furthermore, given the status of the Committee, its recommendations are non-binding: a point acknowledged by the Chief Commissioner of the Northern Ireland Human Rights Commission.[[103]](#footnote-103) Hence there is no reason for either the Assembly, once it is reconstituted, to act; nor for the UK Government to override the devolution settlement.[[104]](#footnote-104) The UK Parliament made a decision to legislate, but it is important to note that it was not required to do so.[[105]](#footnote-105)
2. This same argument was put in evidence to the Committee by the Attorney General for Northern Ireland, John Larkin QC. Mr Larkin stated that there was nothing in international law that requires a particular solution with regard to abortion. There is no imperative in international law that even a limited form of abortion be introduced. He also indicated that that there was no right to abortion in the European Convention on Human Rights.[[106]](#footnote-106)
3. In summary, the views of the **CEDAW Committee are advisory and there is no right to abortion in the text of the CEDAW Convention, nor in any international convention or treaty.**

*The Case before the Supreme Court*

1. The case brought by the Northern Ireland Human Rights Committee (NIHRC) before the Supreme Court in June 2018 dealt with the law on abortion in specific scenarios: pregnancies as a result of rape or incest, and pregnancies with a diagnosis of a foetal disability.[[107]](#footnote-107) The Justices **were unable to make any binding judgment** but continued to make comments on the substantive issues considered in the case. By a majority of 5-2, the Supreme Court Justices suggested that, had they been able to, they would have made a declaration of incompatibility under Article 8 of the ECHR in regard to the law for a life-limiting condition deemed fatal before, during or shortly after birth. A majority of 4-3 would have declared incompatibility in cases of sexual crime. They also unanimously affirmed that it was compliant with the ECHR to restrict access to abortion in cases of serious (but not fatal) foetal abnormality. The conclusions of the justices are therefore not binding and fall far short of the recommendations made in the CEDAW Inquiry, which suggested abortion be removed from the criminal law entirely in Northern Ireland.
2. Following the decision made by the Supreme Court, a new case was launched by Ms Sarah Ewart with regard to cases pertaining to life limiting conditions deemed fatal before, during or shortly after birth. On October 3 2019, the High Court in Belfast ruled in her favour finding that the law on abortion in Northern Ireland is incompatible with Article 8 of the European Convention on Human Rights on the grounds that it does not allow for abortion in cases where an unborn child/foetus is identified as having a life-limiting condition deemed fatal before, during or shortly after birth. This ruling only pertained to this narrow ground. At the time of writing, Justice Keegan did not make an order declaring that the law on abortion in Northern Ireland is incompatible with Article 8 of the ECHR. She was seeking further written submissions as to whether such a declaration would be necessary in light of the Northern Ireland (Executive Formation etc) Act 2019.[[108]](#footnote-108)
3. However, even if such a declaration were made, under the Human Rights Act 1998 **a declaration of incompatibility would not be binding upon the Northern Ireland Government nor the UK Government**.[[109]](#footnote-109) Indeed, Lady Hale stated that there would be a “do nothing” option for Parliament to choose and that “the democratic will, as expressed through the elected representatives of the people, rules the day”.[[110]](#footnote-110)
4. It is important to note the fact that the ruling made by Justice Keegan at the High Court only pertained to a very narrow ground. It does not in any way require Parliament to legislate to allow for widespread access to abortion on request up to the point at which a baby/foetus has been found to be “capable of being born alive” as has been legislated for in the Northern Ireland (Executive Formation etc) Act 2019.
5. **Given this analysis of the devolution settlement, the CEDAW Committee and the Supreme Court ruling, the conclusion is that** **it remains the case that there is no human right to abortion on request. The decision of the High Court, which may be subject to appeal, only made a declaration of incompatibility with regard to cases involving** **babies/foetuses identified to have life-limiting conditions deemed fatal before, during or shortly after birth.**

Supporting all women

1. It is acknowledged that many women who become pregnant face challenging and difficult situations. For various reasons, including income, immigration status or as a result of being victims of violence women may be in a vulnerable position when they become pregnant. For some jurisdictions within BIPA, the answer here is to provide widespread access to abortion to ensure women in this situation have the ability to terminate a pregnancy. A number of those who gave evidence to the Committee argued in favour of decriminalising abortion on this basis.[[111]](#footnote-111)
2. However, this was not the only perspective put forward by those who gave evidence. For a number of witnesses, there are two lives involved in every pregnancy and both lives deserve care and protection. For example, Peter D. Williams of Right to Life argued that from the very beginning of human life in the womb each of us are unique individuals, and that children need special safeguards and care before and after birth.[[112]](#footnote-112) From this perspective, a number of witnesses argued for high-quality and improved services for women facing crisis pregnancies rather than allowing for widespread access to abortion.[[113]](#footnote-113)

**There should be improved services for women facing crisis pregnancies in Northern Ireland.**

Impact of legislation on the foetus/unborn child

1. It would be remiss not to note the fact that many who gave evidence to the inquiry highlighted the impact that the laws on abortion have for the foetus/unborn child as well as for mothers. While for some who gave evidence, the foetus/unborn child is only a potential person with rights, this was far from being the unanimous view of those who gave evidence.[[114]](#footnote-114)
2. Dawn McAvoy of the campaign group Both Lives Matter pointed to evidence presented by the campaign group that she represents indicating that the law on abortion in Northern Ireland has led to 100,000 individuals being alive today who would otherwise not be if Northern Ireland had adopted the 1967 Abortion Act.[[115]](#footnote-115) Following a billboard campaign presenting this claim, a number of individuals complained to the Advertising Standards Authority (ASA) stating it was inaccurate and offensive. After a five-month long investigation involving an independent health statistician, the ASA dismissed the complaints and came to the following conclusion: “On balance, we concluded that the evidence indicated that there was a reasonable probability that around 100,000 people were alive in Northern Ireland today who would have otherwise been aborted had it been legal to do so.”[[116]](#footnote-116) In an evidence session in London in December 2017, Dr Ruth Fletcher questioned this figure. However, she provided no evidence to back up her assertion that it was false.[[117]](#footnote-117) Up to this point, no evidence has been brought forward to contradict this claim by proponents of law change in Northern Ireland. It does not come as a surprise therefore that many in Northern Ireland want to maintain a legislative framework which restricts access to abortion, due to the number of people alive today because of the current law.
3. Official Government statistics indicate that 8,635,391 abortions have been recorded in England and Wales since the passage of the 1967 Abortion Act. In 2018, 205,295 abortions were recorded in England and Wales.[[118]](#footnote-118) This was far beyond what was anticipated before the passage of the 1967 Abortion Act.[[119]](#footnote-119)

How the laws in the Republic of Ireland and Northern Ireland impact women in Ireland

1. Before July 2019 and the passage of the Northern Ireland (Executive Formation etc) Act 2019, it was suggested that abortion law should be reformed in order to mirror the recent changes in the Republic of Ireland. Without question, the decision of the ROI to change its legislative framework on abortion means that women in Northern Ireland can go across the border for an abortion as of January 2019. However, at the time of writing, no data has been released by the Government of the Republic of Ireland indicating how many women from Northern Ireland have sought access to abortion over the border.
2. In evidence provided to this committee, it was suggested by Dr Tony Holohan, the Chief Medical Officer at the Irish Department of Health, that health authorities are preparing for up to 10,000 Northern Irish women to seek abortions in the Republic of Ireland. This figure seems very high considering the number of women who travel to Great Britain at the current time to seek abortion and the fact that in the last year for which published figures are available there were only 23,075 live births in Northern Ireland in 2017.[[120]](#footnote-120) This abortion rate would be higher than that for England and Wales.[[121]](#footnote-121) This figure will of course be the subject of analysis when the Irish Government publishes figures for the number of abortions taking place in Ireland in due course.
3. The new legislative situation caused by the Northern Ireland (Executive Formation etc) Act 2019 will have repercussions for the Republic of Ireland. While this issue has been virtually absent from the debate around this legislation, the law on abortion in Northern Ireland will be considerably more liberal than the law in the Republic of Ireland under the Health (Regulation of Termination of Pregnancy) Act 2018. Numerous questions arise in light of the difference. If a woman resident in Northern Ireland seeks an abortion in Northern Ireland up to 12 weeks’ gestation, will they be able to obtain a termination? And if so, who will fund the abortion? Will women from the Republic of Ireland be able to access abortion services beyond 12 weeks’ gestation in Northern Ireland? And if so, will this be funded by the Irish state? What records will be kept of the number of women from the Republic of Ireland seeking abortions in Northern Ireland? These are only some of the questions which arise.
4. The decision of the British Government to fund women travelling from Northern Ireland to England to obtain abortions, and the subsequent decisions made by Scotland and Wales, are noted. This has had an impact on the number of women travelling from Northern Ireland for the purposes of seeking an abortion. Medical professionals are able to “signpost” women to these services,[[122]](#footnote-122) but whether a doctor can refer a patient has not been tested in the courts.[[123]](#footnote-123) The British Government has indicated in guidelines provided by the Northern Ireland Office that funding will be provided for any woman who wants an abortion to travel to England, covering the costs of travel, any accommodation costs and the costs of the abortion. This arrangement will continue beyond the end of the interim five-month period until the Government is confident that abortion services are in place in Northern Ireland.[[124]](#footnote-124) At the time of writing it is not clear whether this arrangement will be funded out of the block grant or whether the British, Scottish and Welsh administrations will continue to fund it.

|  | Number of women travelling from Northern Ireland to GB for an abortion | |
| --- | --- | --- |
|  | England and Wales | Scotland |
| 2016 | 724[[125]](#footnote-125) | No data |
| 2017 | 861[[126]](#footnote-126) | No data |
| 2018 | 1053[[127]](#footnote-127) | <10[[128]](#footnote-128) |

1. **A relatively small number of women from Northern Ireland travel to England and Wales to have an abortion each year. There are not yet any statistics on the number of women from Northern Ireland travelling to the ROI**. **The Northern Ireland (Executive Formation etc) Act 2019 is going to change this situation significantly.**

The use of abortion pills in NI

1. The previous legal situation until 22 October and medical guidance on abortion in Northern Ireland was set out in 2016.[[129]](#footnote-129) As outlined above, abortion was lawful in Northern Ireland if the mother’s life is at risk, or if continuing the pregnancy would adversely affect her physical or mental health in a manner that is “real and serious” and “permanent or long term”. If an abortion does not meet one of those criteria, the use of abortion pills would be considered as illegally obtaining an abortion. The Northern Ireland (Executive Formation etc) Act 2019 has, by contrast, made the taking of abortion pills entirely legal in Northern Ireland once they are obtained.
2. It is important to note that this is not the case throughout the rest of the United Kingdom. It is illegal to take medication for the purposes of procuring an abortion (sections 58 and 59 of the Offences Against the Person Act 1861), unless this is done with the agreement of two doctors, who agree that the proposed abortion comes within the exceptions set out in the Abortion Act 1967. This medication would then need to be prescribed to women for whom it is clinically indicated by a registered medical practitioner. In Great Britain, the first of these pills is taken at the clinic or hospital and the second pill is permitted to be taken at home. During this time, the women remains under the duty of care of the registered medical practitioner and has access to an emergency helpline should any complications arise.
3. Throughout the United Kingdom it is an offence to supply prescription medication without a licence.[[130]](#footnote-130) The Northern Ireland (Executive Formation etc) Act 2019 has not changed this situation. There is a clear logic to this as prescription medications can be harmful if not used under proper supervision; in some cases they can be misused; and medications bought over the internet may not be what they are advertised to be posing dangers to those who take them. Individuals who have supplied abortion pills outside of this regime have been prosecuted.[[131]](#footnote-131)
4. Given this context, any advice from doctors anywhere in the United Kingdom must respect the 2012 Human Medicines Regulations. In no other circumstance would a doctor encourage their patient to obtain medication from the internet (or by other means) without a prescription. There are clear legal and policy reasons to maintain this provision to ensure the safety of patients. **A clear message should be given that patients should not seek to purchase prescription medication over the internet without the supervision of medical professionals.**
5. This is particularly significant given the potential safety implications of self-administering abortion pills, which are powerful drugs and can lead to complications and serious side effects. These complications include severe bleeding and haemorrhage (acknowledged by the Royal College of Obstetricians and Gynaecologists (RCOG)),[[132]](#footnote-132) uterine cramping, and the need for surgical intervention following an incomplete abortion. In a 2009 study of 42,600 women in Finland who had an abortion, the complication rate following medical abortion was 20% and haemorrhage rates were 15.6%.[[133]](#footnote-133) In another Finnish study of 24,000 women 15.4% were later diagnosed with bleeding, 2% had an infection, 10.2% an incomplete abortion, and 13% required a subsequent surgical abortion.[[134]](#footnote-134) Three other studies[[135]](#footnote-135) show rates of necessary surgery after early medical abortions ranging from 3.5% to 7.9%, and up to 33% for later medical abortions. This means roughly one in 20 women administering abortion pills for an early medical abortion require subsequent surgery to remove foetal remains inside the uterus.
6. There are also complications associated with women self-administering abortion pills without the oversight of a medical professional. In Great Britain, women take the first abortion pill, mifepristone, at a clinic and are then given instructions on administering misoprostol, the second pill, at home after an interval of 24-48 hours. The efficiency and complication rate in taking these pills is affected by both the method of administration and the timing interval. If women take these pills simultaneously, without the recommended 24-48 hour interval, their effectiveness significantly decreases.[[136]](#footnote-136) This is acknowledged by the British Pregnancy and Advisory Service (BPAS)[[137]](#footnote-137), and the RCOG[[138]](#footnote-138) recommend against simultaneous administration. According to a 2007 study, this can lead to a failure to expel the foetus at a rate of 27% at 7 weeks and 31% at 7-8 weeks gestation.[[139]](#footnote-139)
7. In Northern Ireland,the Northern Ireland Office (NIO) has issued guidelines which briefly consider the issue of abortion pills. These guidelines recognise that “during the interim period some women may continue to attempt to purchase medical abortion pills online”.[[140]](#footnote-140) It will be legal for women to buy such medication although it would be illegal for these pills to be supplied. The guidelines make clear that “women who may require medical help following use of medical abortion pills bought on the internet will be able to seek medical assistance as needed within Northern Ireland.” As no offence takes place when abortion pills are taken, there would be no requirement on medical professionals to report that an offence has taken place under section 5 of the Criminal Law (NI) Act 1967. It is widely acknowledged that these medications should only be available with instruction from physicians via prescription. There is a real risk of abortion pills being used beyond the recommended gestation of 9 weeks and 6 days. If this occurs, this can be damaging for the health of the woman concerned. The current situation runs the risk of being dangerous for women. Further guidance is certainly required in this area.

Section 5 guidance

1. A number of witnesses raised the question of the status of section 5 of the Criminal Law (NI) Act 1967 as it pertains to abortion in Northern Ireland.[[141]](#footnote-141) This statute, which is unique to Northern Ireland, requires individuals to report a criminal offence to the relevant authorities in the event the crime in question is punishable by over 5 years in prison. This statute therefore would require individuals to report criminal offences under sections 58 and 59 of the Offences Against the Person Act.
2. In light of the legislative changes brought in through the Northern Ireland (Executive Formation etc) Act 2019, the issue raised by most of those who gave evidence is no longer relevant. It may remain the case that section 5 of the Criminal Law (NI) Act 1967 should be reviewed. However, the issue which arose around sections 58 and 59 of the Offences Against the Person Act 1861 no longer exists.

Perinatal hospice service

1. A number of witnesses coming from differing positions on the question of abortion referred to the need for high-quality perinatal hospice care for mothers who are informed their foetus/unborn child has a life-limiting condition deemed fatal before, during or shortly after birth.[[142]](#footnote-142) Evidence was given by John Wyatt, Emeritus Professor of Neonatal Paediatrics, University College, London that perinatal hospice care was “under-developed” in both jurisdictions in Ireland.[[143]](#footnote-143)
2. **We recommend that all jurisdictions within BIPA ensure high-quality perinatal hospice care is available, ideally close to the home of the mother**.
3. We understand the pressures facing health services within BIPA jurisdictions so we do not wish to be prescriptive as to how this should be achieved. However, it is clear from some of the evidence that we heard that change is necessary in this area.[[144]](#footnote-144) It should not be assumed by medical professionals that abortion in such circumstances is the best option for a mother given this diagnosis regarding her child.
4. We also support the recommendations included in the Alternative Report by Eddie Hughes MP in the Westminster Women and Equalities Select Committee Report into *Abortion in Northern Ireland* that:

“The Northern Ireland Department of Health should review the inconsistencies of care for pregnant women with a diagnosis of a fatal foetal abnormality between the Trusts and seek to put in place advice that will address this; just as would occur in England and Wales if there is a postcode lottery of care.”

And

“The Northern Ireland Department of Health should review whether improvements to the maternal health strategy and the implementation of the Regional Centre can be implemented as soon as possible to improve the overall care for women with a diagnosis of a fatal foetal abnormality.”

**Conclusions and recommendations**

1. Due cognisance needs to be given to the damage done to the devolution settlement by the decision made by the UK Parliament in how they acted in the Northern Ireland (Executive Formation etc) Act 2019. Many people in Northern Ireland feel deeply disenfranchised as a consequence of the process adopted to amend the law on abortion. It is of little doubt that no other legislature in these islands would have tolerated their law on abortion being amended in the way that Northern Ireland’s law was amended at Westminster. Many living in Northern Ireland feel like they have been treated as second-class citizens in this legislative process. Reflection is required from Westminster parliamentarians about how legislation pertaining to Northern Ireland is handled and will be handled in the future in light of how this process was managed.
2. Efforts should continue to restore the Northern Ireland Executive and it is hoped that the Assembly when it is restored will follow the due process which should have been given to this area of law when it was considered at Westminster.
3. Official Government statistics indicate 8,635,391 million abortions have been recorded in England and Wales since the passage of the 1967 Abortion Act. This was far beyond what was anticipated before the passage of the 1967 Abortion Act.
4. Given this analysis of the devolution settlement, the CEDAW Committee and the Supreme Court ruling, the conclusion is that it remains the case that there is no human right to abortion on request. The decision of the High Court in the Ewart case, which may be subject to appeal, only made a declaration of incompatibility with regard to cases involving babies/foetuses identified to have life-limiting conditions deemed fatal before, during or shortly after birth.
5. There should be improved services for women facing crisis pregnancies in Northern Ireland.
6. In Northern Ireland, if the Northern Ireland (Executive Formation etc) Act 2019 is left in place, new guidelines on how healthcare professionals should consider abortion pills are urgently needed. In the near future the Northern Ireland Department of Health should introduce such guidelines.
7. All jurisdictions within BIPA should ensure high-quality perinatal hospice care is available, ideally close to the home of the mother.
8. The Northern Ireland Department of Health should review the inconsistencies of care for pregnant women with a diagnosis of a fatal foetal abnormality between the Trusts and seek to put in place advice that will address this.
9. The Northern Ireland Department of Health should review whether improvements to the maternal health strategy and the implementation of the Regional Centre can be implemented as soon as possible to improve the overall care for women with a diagnosis of a fatal foetal abnormality.

**Annex C – list of meetings and witnesses**

* Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission
* Dr Fiona Bloomer, Lecturer in Social Policy, Ulster University
* Emma Campbell, Co-chair of Alliance for Choice Northern Ireland
* Dr John Chisholm, BMA Medical Ethics Committee
* Dr Sarah Cooper, Lecturer in Politics, University of Exeter
* Dr Siobhan Donohue, Chairperson of Termination for Medical Reasons
* Dr Ruth Fletcher, Senior Lecturer in Medical Law, Queen Mary University of London
* Ann Furedi, Chief Executive, British Pregnancy Advisory Service
* Liam Gibson, Northern Ireland Executive Officer, Society for the Protection of Unborn Children
* Dr Tony Holohan, Chief Medical Officer at the Irish Department of Health
* Goretti Horgan, Lecturer in Social Policy, University of Ulster
* Breedagh Hughes, Northern Ireland Director, Royal College of Midwives
* John F. Larkin QC, Attorney General for Northern Ireland
* Dawn McAvoy, Co-founder, Both Lives Matter
* Anthony McCarthy, Society for the Protection of Unborn Children
* Dr Sheelagh McGuinness, Reader in Law, University of Bristol
* Orla O’Connor, Director, the National Women’s Council of Ireland
* Dawn Purvis, former Director of Marie Stopes Northern Ireland Clinic
* Professor Lesley Regan, President, Royal College of Gynaecologists and Obstetricians
* Ruairi Rowan, Senior Advocacy Officer, Family Planning Association
* Anne Scanlan, Director of Education and Media, Life Matters
* Bernie Smyth, Founder and Director of Precious Life
* Dr Imogen Stephens, Medical Director and Responsible Officer, Marie Stopes UK
* Dr Jane Suiter, Dublin City University
* Grainne Teggart, Campaigns Manager, Amnesty International Northern Ireland
* Helen Watt, Anscombe Bioethics Centre
* Peter D. Williams, Executive Consultant, Right to Life
* Professor John Wyatt, Emeritus Professor of Neonatal Paediatrics, University College London

1. The alternative view is in Annex B. [↑](#footnote-ref-1)
2. See pp12-13 below. [↑](#footnote-ref-2)
3. <http://www.legislation.gov.uk/ukpga/2019/22/section/9/enacted> [↑](#footnote-ref-3)
4. See p5 below. [↑](#footnote-ref-4)
5. See pp13-14 below. [↑](#footnote-ref-5)
6. <https://www.legislation.gov.uk/ukpga/1967/87/section/1> [↑](#footnote-ref-6)
7. <https://services.parliament.uk/bills/2017-19/abortion.html> [↑](#footnote-ref-7)
8. Scotland Act 2016, section 53 <http://www.legislation.gov.uk/ukpga/2016/11/section/53/enacted>; evidence from John F. Larkin QC, Attorney General for Northern Ireland. [↑](#footnote-ref-8)
9. <https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0001/AbortionReformAct2019_1.pdf> [↑](#footnote-ref-9)
10. <http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1995/1995-0014/TerminationofPregnancyMedicalDefencesAct1995_1.pdf> [↑](#footnote-ref-10)
11. Abortion Reform Act, Part 2, section 4(a), <https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0001/AbortionReformAct2019_1.pdf> [↑](#footnote-ref-11)
12. BMA views, *The law and ethics of abortion*, November 2014 (updated October 2018), p13 [↑](#footnote-ref-12)
13. BMA views, *The law and ethics of abortion*, November 2014 (updated October 2018), p13 [↑](#footnote-ref-13)
14. <http://www.irishstatutebook.ie/eli/1992/ca/13/enacted/en/print>; <http://www.irishstatutebook.ie/eli/1992/ca/14/enacted/en/print> [↑](#footnote-ref-14)
15. <http://www.irishstatutebook.ie/eli/2013/act/35/enacted/en/pdf> [↑](#footnote-ref-15)
16. <https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_the_eighth_amendment_of_the_constitution/reports/2017/2017-12-20_report-of-the-joint-committee-on-the-eighth-amendment-of-the-constitution_en.pdf> [↑](#footnote-ref-16)
17. <https://data.oireachtas.ie/ie/oireachtas/act/2018/31/eng/enacted/a3118.pdf> [↑](#footnote-ref-17)
18. Evidence from Peter D. Williams, Executive Consultant, Right to Life. [↑](#footnote-ref-18)
19. <https://www.health-ni.gov.uk/news/northern-ireland-termination-pregnancy-statistics-2016-17> [↑](#footnote-ref-19)
20. Evidence from Liam Gibson, Northern Ireland Executive Officer, Society for the Protection of Unborn Children. [↑](#footnote-ref-20)
21. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1584/158411.htm> [↑](#footnote-ref-21)
22. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1584/158411.htm> [↑](#footnote-ref-22)
23. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1584/1584.pdf>, p23 [↑](#footnote-ref-23)
24. It should be noted that there are differing opinions about whether or not human rights is a devolved responsibility. Under Schedule 2 of The Northern Ireland Act 1998, international relations fall under excepted matters. However, under Schedule 2 para 3(c) of that Act, this does not include “observing and implementing international obligations”, including the European Convention on Human Rights. The Northern Ireland Office made this suggestion in their written submission to the Women and Equalities Committee report. Written submission from the Northern Ireland Office (ANI0411) to the Women & Equalities Committee Abortion Law in Northern Ireland inquiry, <https://bit.ly/2GHf96w>, para 17; evidence from John F. Larkin QC, Attorney General for Northern Ireland. [↑](#footnote-ref-24)
25. <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf> [↑](#footnote-ref-25)
26. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1584/1584.pdf>, p27 [↑](#footnote-ref-26)
27. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1584/1584.pdf>, p28 [↑](#footnote-ref-27)
28. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1584/1584.pdf>, p32 [↑](#footnote-ref-28)
29. <https://www.bbc.com/news/uk-northern-ireland-47389854> [↑](#footnote-ref-29)
30. <https://www.bbc.co.uk/news/uk-northern-ireland-47058629>; see p4 above. [↑](#footnote-ref-30)
31. Evidence from Dawn McAvoy, Co-founder, Both Lives Matter. [↑](#footnote-ref-31)
32. <https://www.bbc.co.uk/news/uk-northern-ireland-44395150> [↑](#footnote-ref-32)
33. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1584/1584.pdf>, p23 [↑](#footnote-ref-33)
34. It may be, for example, that women who are unsure of their precise gestation dates will travel to Great Britain within this additional 12-week period. Cf. evidence from Dr Tony Holohan, Chief Medical Officer at the Irish Department of Health. [↑](#footnote-ref-34)
35. Evidence from Professor Lesley Regan, President, Royal College of Gynaecologists and Obstetricians. [↑](#footnote-ref-35)
36. Evidence from Bernie Smyth, Founder and Director of Precious Life. [↑](#footnote-ref-36)
37. Evidence from Professor Lesley Regan, President, Royal College of Gynaecologists and Obstetricians. [↑](#footnote-ref-37)
38. <https://www.gov.uk/government/statistics/report-on-abortion-statistics-in-england-and-wales-for-2014> [↑](#footnote-ref-38)
39. Evidence from Breedagh Hughes, Northern Ireland Director, Royal College of Midwives. [↑](#footnote-ref-39)
40. Evidence from Emma Campbell, Co-chair of Alliance for Choice Northern Ireland. [↑](#footnote-ref-40)
41. Evidence Dr John Chisholm, BMA Medical Ethics Committee; evidence from Grainne Teggart, Campaigns Manager, Amnesty International Northern Ireland. [↑](#footnote-ref-41)
42. Evidence from Dr Tony Holohan, Chief Medical Officer at the Irish Department of Health. [↑](#footnote-ref-42)
43. Evidence from Dr Siobhan Donohue, Chairperson of Termination for Medical Reasons. [↑](#footnote-ref-43)
44. Evidence from Dr Fiona Bloomer, Lecturer in Social Policy, Ulster University. [↑](#footnote-ref-44)
45. Evidence from Dr Ruth Fletcher, Senior Lecturer in Medical Law, Queen Mary University of London. [↑](#footnote-ref-45)
46. Evidence from Dr Sarah Cooper, Lecturer in Politics, University of Exeter. [↑](#footnote-ref-46)
47. Evidence from Goretti Horgan, Lecturer in Social Policy, University of Ulster; evidence from Dr Sheelagh McGuinness, Reader in Law, University of Bristol. [↑](#footnote-ref-47)
48. Evidence from Emma Campbell, Co-chair of Alliance for Choice Northern Ireland. [↑](#footnote-ref-48)
49. Evidence from Orla O’Connor, Director, the National Women’s Council of Ireland. [↑](#footnote-ref-49)
50. Evidence from Emma Campbell, Co-chair of Alliance for Choice Northern Ireland. [↑](#footnote-ref-50)
51. Evidence from Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission. [↑](#footnote-ref-51)
52. Evidence from Dr John Chisholm, BMA Medical Ethics Committee. [↑](#footnote-ref-52)
53. Evidence from Dr Tony Holohan, Chief Medical Officer at the Irish Department of Health. [↑](#footnote-ref-53)
54. Evidence from Dr Tony Holohan, Chief Medical Officer at the Irish Department of Health. [↑](#footnote-ref-54)
55. Evidence from Dr Imogen Stephens, Medical Director and Responsible Officer, Marie Stopes UK. [↑](#footnote-ref-55)
56. Evidence from Ann Furedi, Chief Executive, British Pregnancy Advisory Service; evidence from Dr Sarah Cooper, Lecturer in Politics, University of Exeter; evidence from Dawn Purvis, former Director of Marie Stopes Northern Ireland Clinic. [↑](#footnote-ref-56)
57. Evidence from Dr Fiona Bloomer, Lecturer in Social Policy, Ulster University. [↑](#footnote-ref-57)
58. Evidence from Dr Fiona Bloomer, Lecturer in Social Policy, Ulster University. [↑](#footnote-ref-58)
59. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1584/1584.pdf>, p40 [↑](#footnote-ref-59)
60. Evidence from Dr Sheelagh McGuinness, Reader in Law, University of Bristol. [↑](#footnote-ref-60)
61. Evidence from Dr Sheelagh McGuinness, Reader in Law, University of Bristol. [↑](#footnote-ref-61)
62. Evidence from Dawn Purvis, former Director of Marie Stopes Northern Ireland Clinic; evidence from Emma Campbell, Co-chair of Alliance for Choice Northern Ireland. [↑](#footnote-ref-62)
63. Evidence from Dawn Purvis, former Director of Marie Stopes Northern Ireland Clinic. [↑](#footnote-ref-63)
64. Evidence from Ruairi Rowan, Senior Advocacy Officer, Family Planning Association. [↑](#footnote-ref-64)
65. Evidence from Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission. [↑](#footnote-ref-65)
66. Evidence from Dr Siobhan Donohue, Chairperson of Termination for Medical Reasons. [↑](#footnote-ref-66)
67. [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-termination-pregnancy.pdf), March 2016, paragraph 5.13, p18; <https://www.parliament.uk/documents/commons-committees/women-and-equalities/Correspondence/Letter-from-Jackie-Doyle-Price-MP-regarding-Abortion-in-Northern-Ireland-190328.pdf> [↑](#footnote-ref-67)
68. Evidence from Dawn Purvis, former Director of Marie Stopes Northern Ireland Clinic. [↑](#footnote-ref-68)
69. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1584/1584.pdf>, p28 [↑](#footnote-ref-69)
70. Evidence from John F. Larkin QC, Attorney General for Northern Ireland. [↑](#footnote-ref-70)
71. Evidence from Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission. [↑](#footnote-ref-71)
72. Evidence from Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission. [↑](#footnote-ref-72)
73. Evidence from Grainne Teggart, Campaigns Manager, Amnesty International Northern Ireland. [↑](#footnote-ref-73)
74. Evidence from Anne Scanlan, Director of Education and Media, Life Matters [↑](#footnote-ref-74)
75. Evidence from Dr Siobhan Donohue, Chairperson of Termination for Medical Reasons; evidence from Orla O’Connor, Director, the National Women’s Council of Ireland. [↑](#footnote-ref-75)
76. Evidence from Dr Ruth Fletcher, Senior Lecturer in Medical Law, Queen Mary University of London; evidence from Dr Jane Suiter, Dublin City University. [↑](#footnote-ref-76)
77. Evidence from Peter D. Williams, Executive Consultant, Right to Life. [↑](#footnote-ref-77)
78. Evidence from Dawn Purvis, former Director of Marie Stopes Northern Ireland Clinic. [↑](#footnote-ref-78)
79. <https://www.bmj.com/content/357/bmj.j2011> [↑](#footnote-ref-79)
80. Evidence from Breedagh Hughes, Northern Ireland Director, Royal College of Midwives. [↑](#footnote-ref-80)
81. Evidence from Dr John Chisholm, BMA Medical Ethics Committee. [↑](#footnote-ref-81)
82. Evidence from Dr Ruth Fletcher, Senior Lecturer in Medical Law, Queen Mary University of London; evidence from Breedagh Hughes, Northern Ireland Director, Royal College of Midwives; evidence from Dr Sheelagh McGuinness, Reader in Law, University of Bristol. [↑](#footnote-ref-82)
83. Evidence from Dr Sheelagh McGuinness, Reader in Law, University of Bristol; evidence from Ruairi Rowan, Senior Advocacy Officer, Family Planning Association. [↑](#footnote-ref-83)
84. The decision of the European Court on Human Rights in *Vo v France* [2004] ECHR 326 remains the position of the Court to this day: “It follows that the issue of when the right to life begins comes within the margin of appreciation which the Court generally considers that States should enjoy in this sphere, notwithstanding an evolutive interpretation of the Convention, a ‘living instrument which must be interpreted in the light of present-day conditions’ (see *Tyrer v. the United Kingdom*, judgment of 25 April 1978, Series A no. 26, pp. 15-16, § 31, and subsequent case-law). The reasons for that conclusion are, firstly, that the issue of such protection has not been resolved within the majority of the Contracting States themselves…and, secondly, that there is no European consensus on the scientific and legal definition of the beginning of life.” [↑](#footnote-ref-84)
85. See the varying non-binding views expressed by Supreme Court Judges in the Northern Ireland Human Rights Commission Supreme Court decision, [2018] [UKSC 27](https://www.supremecourt.uk/cases/docs/uksc-2017-0131-judgment.pdf) [↑](#footnote-ref-85)
86. <http://hudoc.echr.coe.int/eng?i=001-61887> [↑](#footnote-ref-86)
87. [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-termination-pregnancy.pdf), Department of Health, Social Services and Public Safety, March 2016, page 8 [↑](#footnote-ref-87)
88. <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf> [↑](#footnote-ref-88)
89. <https://www.bma.org.uk/-/media/files/pdfs/employment%20advice/ethics/decriminalisation%20of%20abortion%20-%20march%202017%20update.pdf?la=en> [↑](#footnote-ref-89)
90. The Regulation and Quality Improvement Authority (RQIA) is often pointed to as the body which would conduct such inspections. However, as became clear when Marie Stopes International opened a clinic in Belfast in 2012, the RQIA has limited powers in this regard which did not extend to requiring Marie Stopes to reveal how many legal abortions they conducted under the law in Northern Ireland in place at the time. The powers available to the RQIA are not the same as are available to the Care Quality Commission. [↑](#footnote-ref-90)
91. This opinion is available on request. [↑](#footnote-ref-91)
92. Northern Ireland Office UK Government Guidance for Healthcare Professionals in Northern Ireland on Abortion Law and Terminations of Pregnancy in the Period 22 October 2019 to 31 March 2020 In Relation to the Northern Ireland (Executive Formation etc) Act 2019- <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/837166/Guidance_for_the_medical_profession_in_Northern_Ireland.pdf> 4 [↑](#footnote-ref-92)
93. Ibid 5. [↑](#footnote-ref-93)
94. Ibid 4. [↑](#footnote-ref-94)
95. [http://data.niassembly.gov.uk/HansardXml/plenary-10-02-2016.pdf p120-121](http://data.niassembly.gov.uk/HansardXml/plenary-10-02-2016.pdf%20p120-121) [↑](#footnote-ref-95)
96. Evidence from Bernie Smyth, Director of Precious Life; Liam Gibson, Northern Ireland Political Officer, Society for the Protection of Unborn Children; and evidence from Dawn McAvoy, Co-founder, Both Lives Matter [↑](#footnote-ref-96)
97. Northern Ireland Abortion Poll, Comres, 21 October 2018 <https://www.comresglobal.com/polls/northern-ireland-abortion-poll/> [↑](#footnote-ref-97)
98. Submission to the Women & Equalities Committee Inquiry into Abortion in Northern Ireland from the Northern Ireland Office ([ANIO411](http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/abortion-law-in-northern-ireland/written/93802.pdf)), para 26 [↑](#footnote-ref-98)
99. *Ibid,* Northern Ireland Office ([ANIO411](http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/abortion-law-in-northern-ireland/written/93802.pdf)), para 17 [↑](#footnote-ref-99)
100. Full opinion is available on request. [↑](#footnote-ref-100)
101. Legal Opinion, Hill QC, Op Cit, para 4 [↑](#footnote-ref-101)
102. [CEDAW/C/OP.8/GBR/1](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhslpSf4Lt4DUhQcPE9cYLQWXp9oGqAL3Woj45pH3yBTbo%2b0I6DYTNbR9SrwMeY01b%2b9zmLiHN6I5d56JFzEj8QUqzvfZmADyHJ%2bPVef401375), Op Cit, paragraphs 5, 56 and 58 [↑](#footnote-ref-102)
103. Oral evidence to the Women & Equalities Committee Inquiry into Abortion in Northern Ireland, 27 February 2019 [Q411](http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/abortion-law-in-northern-ireland/oral/97489.pdf) [↑](#footnote-ref-103)
104. According to Professor Hill QC, the Committee “does not have the capacity or standing to give a binding adjudication on the United Kingdom’s obligations under CEDAW or on the proper interpretation of CEDAW. The interpretative function under the CEDAW is reserved, not to Committee, but to the International Court of Justice”. See Legal Opinion, para 4 as part of Submission to the Women & Equalities Committee Inquiry into Abortion in Northern Ireland from CARE in Northern Ireland ([ANI0190](http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/abortion-law-in-northern-ireland/written/93450.pdf)) [↑](#footnote-ref-104)
105. Legal Opinion, Hill QC, Op Cit, para 4 [↑](#footnote-ref-105)
106. Evidence from John Larkin QC [↑](#footnote-ref-106)
107. [2018] [UKSC 27](https://www.supremecourt.uk/cases/docs/uksc-2017-0131-judgment.pdf) [↑](#footnote-ref-107)
108. <https://judiciaryni.uk/judicial-decisions/summary-judgment-court-delivers-abortion-legislation-judgment> [↑](#footnote-ref-108)
109. Human Rights Act 1998, [section 4(6)](https://www.legislation.gov.uk/ukpga/1998/42/section/4) [↑](#footnote-ref-109)
110. [2018] [UKSC 27](https://www.supremecourt.uk/cases/docs/uksc-2017-0131-judgment.pdf), 39 [↑](#footnote-ref-110)
111. Evidence from Emma Campbell, Co-chair, Alliance for Choice; Dawn Purvis, former Director, Belfast Marie Stopes Clinic; and Grainne Teggart, Campaigns Manager, Amnesty International Northern Ireland [↑](#footnote-ref-111)
112. Evidence from Peter D Williams, Right to Life [↑](#footnote-ref-112)
113. Evidence from Bernie Smyth, Director of Precious Life and Dawn McAvoy, Co-Founder Both Lives Matter [↑](#footnote-ref-113)
114. See the evidence of Peter D Williams Right to Life; Anne Scanlan, Director of Education and Media, Life Matters; Helen Watt, Anscombe Bioethics Centre; Professor John Wyatt, Emeritus Professor of Neonatal Paediatrics, University College London; Anthony McCarthy, Society for the Protection of Unborn Children; Dawn McAvoy, Both Lives Matter; Bernie Smyth, Director of Precious Life; and Liam Gibson, Northern Ireland Political Officer, Society for the Protection of Unborn Children. [↑](#footnote-ref-114)
115. Evidence from Dawn McAvoy, Co-founder, Both Lives Matter [↑](#footnote-ref-115)
116. <https://www.asa.org.uk/rulings/both-lives-matter-a17-370344.html> [↑](#footnote-ref-116)
117. Evidence from Dr Ruth Fletcher, Senior Lecturer in Medical Law, Queen Mary University of London [↑](#footnote-ref-117)
118. See Abortion Statistics England and Wales [2018](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808560/2018_Abortion_Statistics_-_Data_tables__1_.ods): Table 1. [↑](#footnote-ref-118)
119. “The Department of Health expected that legal abortion would be provided through existing gynaecological services without any additional funding; the extra case load was expected to be small. In practice, referrals increased rapidly and competed with the care of other gynaecological patients,” David Paintin, [‘Abortion law reform in Britain 1964-2003: A Personal Account’,](http://www.abortionreview.org/images/uploads/Paintin_memoir.pdf) BPAS, 2015. In addition, “The rate of legal abortions rose sharply after the introduction of the Act. While 2,800 legal terminations were reported in the whole of 1962, almost 10,000 were performed in the fourth quarter of 1968 alone. Numbers continued to increase rapidly over subsequent years, reaching 167,149 in 1973 for England and Wales alone, before declining slightly over subsequent years.” Sheldon et al, [‘The Abortion Act (1967): a biography’,](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/0154A74D64F785229FA26581BE7A8CC1/S0261387518000284a.pdf/abortion_act_1967_a_biography.pdf) *Legal Studies* (2019), 39, 18–35 [↑](#footnote-ref-119)
120. <https://www.nisra.gov.uk/publications/birth-statistics> [↑](#footnote-ref-120)
121. In 2017 in England and Wales, there were [679,106 live births](https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/livebirths/bulletins/birthsummarytablesenglandandwales/2017) and [192,900 abortions](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/763174/2017-abortion-statistics-for-england-and-wales-revised.pdf) for residents of England and Wales. Were the same rate of abortions compared to live births to occur in NI, it would be expected there would be 6,554 abortions. The rate of abortions for women aged 15-44 in 2017 in E&W as [16.7 per 1,000 resident women](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/763174/2017-abortion-statistics-for-england-and-wales-revised.pdf). Using this rate and the population statistics for the number of women in Northern Ireland aged 15-44 ([Table A1](https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/MYE17-Bulletin.pdf)) 2017 Mid-year Population Estimates for Northern Ireland, were the same rate of abortions to occur, the number of abortions would be 6,024. [↑](#footnote-ref-121)
122. [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-termination-pregnancy.pdf), Department of Health, Social Services and Public Safety, March 2016, para 5.11, p18 [↑](#footnote-ref-122)
123. *Ibid,* para 5.13, p 18. See also [Q287](http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/abortion-law-in-northern-ireland/oral/96399.html), Oral evidence to the Women and Equalities Committee, 25 January 2019 [↑](#footnote-ref-123)
124. Op Cit NIO Guidelines, p5 [↑](#footnote-ref-124)
125. Abortion Statistics England and Wales [2016](https://www.gov.uk/government/statistics/report-on-abortion-statistics-in-england-and-wales-for-2016), Table 12A [↑](#footnote-ref-125)
126. Abortion Statistics England and Wales [2016](https://www.gov.uk/government/statistics/report-on-abortion-statistics-in-england-and-wales-for-2016), Table 12A [↑](#footnote-ref-126)
127. Abortion Statistics England and Wales [2018](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808560/2018_Abortion_Statistics_-_Data_tables__1_.ods), Table 12A [↑](#footnote-ref-127)
128. The 2018 report stated that “based on the last ten years of data the NHS in Scotland dealt with nearly 20 terminations to women from Northern Ireland.” NHS Scotland Termination of Pregnancy Year Ending [December 2018](https://www.isdscotland.org/Health-Topics/Sexual-Health/Publications/2019-05-28/2019-05-28-Terminations-2018-Report.pdf), p19 [↑](#footnote-ref-128)
129. [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-termination-pregnancy.pdf), Department of Health, Social Services and Public Safety, March 2016, p8 [↑](#footnote-ref-129)
130. Article 18(1), 34 and 35 of the 2012 Human Medicines Regulations [↑](#footnote-ref-130)
131. <https://www.gov.uk/government/news/woman-sentenced-to-27-months-for-selling-abortion-pills-illegally>; <https://www.securingindustry.com/pharmaceuticals/mhra-helps-track-and-charge-counterfeit-drugs-seller-/s40/a2225/#.Wzv6M_ZFwmI> [↑](#footnote-ref-131)
132. ‘The care of women requesting induced abortion: evidence-based clinical guideline number 7’, Royal College of Obstetricians and Gynaecologists, November 2011, p. 34 [↑](#footnote-ref-132)
133. Niinimaki et al, ‘Immediate complications after medical compared with surgical termination of pregnancy’, *Obstetrics & Gynecology*, 2009 Oct; 114(4):795-804 <https://www.ncbi.nlm.nih.gov/pubmed/19888037> [↑](#footnote-ref-133)
134. Niinimaki, Gissler et al, 2011. ‘Comparison of rates of adverse events in adolescent and adult women undergoing medical abortion: population register based study’, *BMJ (Clinical research ed*), 2011; 342 <https://www.bmj.com/content/342/bmj.d2111>; Winikoff et al, ‘Two distinct oral routes of misoprostol in mifepristone medical abortion: a randomized controlled trial’, *Obstetrics & Gynecology,* 2008 Dec; 112(6): 1303-10 <https://www.ncbi.nlm.nih.gov/pubmed/19037040>; Raymond et al, ‘First-trimester medical abortion with mifepristone 200 mg and misoprostol: a systematic review’, *Contraception*, 2013 Jan: 87 (1) 26-37. <https://www.ncbi.nlm.nih.gov/pubmed/22898359> [↑](#footnote-ref-134)
135. Mulligan, Messenger, ‘[Mifepristone in South Australia—The first 1343 tablets](https://www.racgp.org.au/download/documents/AFP/2011/May/201105mulligan.pdf)’ *Australian Family Physician* Vol. 40, no. 5, May 2011: 342-345 [↑](#footnote-ref-135)
136. Highlights of prescribing information, revised 2016.<https://www.accessdata.fda.gov/drugsatfda_docs/label/2016/020687s020lbl.pdf>; ‘Early medical abortion at home up to 9 weeks + 6 Days gestation (EMAH) guidelines for early medical abortion with self-administration of misoprostol in the home setting’, Annex B, Scottish Abortion Care Providers (SACP) Network, 2017 <https://www.sehd.scot.nhs.uk/cmo/CMO(2017)14.pdf> [↑](#footnote-ref-136)
137. <https://www.bpas.org/abortion-care/abortion-treatments/the-abortion-pill/abortion-pill-up-to-10-weeks/> See Options table for medical abortion up to 9 weeks of pregnancy [↑](#footnote-ref-137)
138. The care of women requesting induced abortion: evidence-based clinical guideline number 7’, Royal College of Obstetricians and Gynaecologists, November 2011, pp. 70-71 <https://www.rcog.org.uk/globalassets/documents/guidelines/abortion-guideline_web_1.pdf> [↑](#footnote-ref-138)
139. Lohr et al, ‘Oral mifepristone and buccal misoprostol administered simultaneously for abortion: a pilot study’, *Contraception*, 2007, Sep; 76(3):215-20 <https://www.ncbi.nlm.nih.gov/pubmed/17707719> [↑](#footnote-ref-139)
140. Op cit, NIO Guidelines p6 [↑](#footnote-ref-140)
141. Evidence from Ruari Rowan, Family Planning Association and Breedagh Hughes, Northern Ireland Director, Royal College of Midwives [↑](#footnote-ref-141)
142. Evidence from Breedagh Hughes, Northern Ireland Director, Royal College of Midwives; Dawn McAvoy, Co-Founder of Both Lives Matter; and Dawn Purvis, Former Director Marie Stopes Clinic. [↑](#footnote-ref-142)
143. Evidence from Dr John Wyatt, Emeritus Professor of Neonatal Paediatrics, University College, London [↑](#footnote-ref-143)
144. Evidence from Dawn McAvoy, Co-Founder of Both Lives Matter [↑](#footnote-ref-144)