



House of Commons
Women and Equalities
Committee

**Abortion law in
Northern Ireland**

Eighth Report of Session 2017–19

*Report, together with formal minutes
relating to the report*

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Women and Equalities Committee

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Summary

Since January 2017, when the Northern Ireland Assembly ceased functioning, there has been an accumulation of significant developments relating to abortion in Northern Ireland. These include; a UN Committee finding ‘grave’ and ‘systematic’ breaches of women’s rights, the UK Supreme Court identifying a breach of human rights in relation to cases of fatal foetal abnormality or where the pregnancy has resulted from rape or incest, introduction of UK Government funding for women and girls to access free abortion services in England, evidence that significant numbers of abortion pills purchased online are being sent to Northern Ireland and a lack of follow-up to a report on fatal foetal abnormality commissioned by Northern Ireland ministers.

The absence of an Executive in Northern Ireland means that there is no devolved government to respond to these significant developments, no scrutiny bodies to make sure policies are working well, no scrutiny of the use of UK Government funds for women and girls seeking abortion in England and a failure to respond to international human rights obligations.

We have visited Northern Ireland twice and heard from a large number of witnesses, professionals, stakeholders and individuals impacted by the law in three different locations, as well as in Westminster.

International human rights obligations: The UK Supreme Court identified a breach of human rights in relation to cases of fatal foetal abnormality, rape and incest. It did not make a declaration of incompatibility because the Northern Ireland Human Rights Commission, which brought the case, did not have standing. Nevertheless, this is a strong statement by the highest court in the land. The UK Government must set out a timetable for rectifying the error in the Northern Ireland Human Rights Commission’s standing within the next six months so that an individual victim, such as a victim of rape or incest, does not have to take a case to court.

Guidance for healthcare professionals: There is uncertainty about the legality of doctors in Northern Ireland referring patients to the UK Government funded scheme providing free abortions in England and there can be a conflict between healthcare professionals’ duties to their patients, and the law and guidance on abortion in Northern Ireland. This is unacceptable. The Government Equalities Office should publish its legal advice on the scheme funding women and girls from Northern Ireland to access abortions in England, following which, the Department of Health for Northern Ireland should reissue guidance for healthcare professionals making it clear that referring patients to the funded scheme is not unlawful.

Information for women and girls about the remains of the foetus or unborn child: There is not enough information for women and girls who travel outside of Northern Ireland about their options to bring home the remains of the foetus or unborn child. There should be specific information for women and girls about their rights to bring home the remains of the foetus or unborn child and the Border Agency must develop clear protocols for ensuring that there is a pathway for families who are travelling across borders with foetal remains which provides them with dignity.

Marginalised women and girls: The UK Government's funding for abortion provision in England is not accessed equally by different groups of women and girls, including; those on low incomes, those too ill to travel, those who are being abused or coerced by their partner, those with insecure immigration status and without travel documentation or those not registered with a GP. In addition, women and girls who are pregnant as a result of rape or incest may face prosecution if they have not reported the offence to the police under Northern Ireland law.

The Government Equality Office should publish an equality impact assessment on the UK Government funded scheme and should work with community organisations supporting marginalised groups of women and girls to develop an information campaign to explain the provision. The GEO should work with the Home Office to develop pathways for migrant women to travel to England to access the free provision. The Attorney General for Northern Ireland should publish human rights guidance stating that it will rarely be in the public interest to prosecute survivors of rape and incest, and professionals treating them, who have not reported the offence to the police.

Fatal Foetal Abnormality: The Working Group on Fatal Fetal Abnormality published a report with clear recommendations, including a change in the law to permit abortion where there had been a diagnosis of FFA but there has been no follow-up on this. Nothing should stand in the way of a doctor's duty of care to their patient and, in the absence, of the Northern Ireland Executive, the UK Government must legislate as a matter of urgency to allow for access to abortion where there has been a diagnosis of fatal foetal abnormality.

1 Background

Why an inquiry?

1. Since January 2017, when the Northern Ireland Assembly ceased functioning, there has been an accumulation of significant developments relating to abortion in Northern Ireland. These include:

- a report in 2018 from the UN Committee on the Elimination of Discrimination Against Women finding ‘grave’ and ‘systematic’ breaches of women’s rights under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW);
- the UK Supreme Court in 2018 identifying a breach of human rights in relation to cases where there has been a diagnosis during a woman’s pregnancy of fatal foetal abnormality, or where the pregnancy was as a result of rape or incest. The case itself was dismissed as the Court found that the Northern Ireland Human Rights Commission did not have standing to bring the case in its own right;
- the UK Government’s announcement in 2017 of funding for women and girls from Northern Ireland to access free abortion services in England and an increase in the number travelling to seek abortion;
- evidence that significant numbers of abortion pills purchased online are being sent to Northern Ireland;¹ and
- a lack of follow-up to the report of the Working Group on Fatal Fetal Abnormality commissioned by the Northern Ireland Ministers for Health and Justice which found that unless there is a change in the law, medical professionals are unable to fulfil their duty of care to their patients.

2. The absence of an Executive in Northern Ireland means that there is no devolved government to respond to these significant developments; there are no scrutiny bodies to make sure that policies are working well; the use of UK Government funds for women and girls seeking abortion in England has not been scrutinised for efficacy; and there is a failure to respond to international human rights obligations. It is in this context that the Committee has undertaken an inquiry into matters relating to the health and lives of women and girls.

Terms of reference

3. The inquiry’s terms of reference are as follows:

- What are the views of the general public, women impacted by the law, and medical and legal professionals in Northern Ireland about the law and how views have changed over time?
- What are the experiences of women in Northern Ireland affected by the law on abortion?

¹ Dr Abigail Aiken ([ANI0017](#)), Alliance for Choice ([ANI0377](#)), Amnesty International UK and FPA ([ANI0008](#)), ARK ([ANI0343](#))

- What are the responsibilities of the UK Government under international obligations and how should these be reconciled with devolution?

About the inquiry

4. The inquiry into Abortion law in Northern Ireland was launched in September 2018 and closed for written submissions on 10 December 2018. We were keen to seek a wide range of views, in particular from those directly impacted by the law.

5. We visited Northern Ireland twice during the inquiry, in November 2018 and January 2019. We held oral evidence sessions in three different locations in Northern Ireland (in Antrim, Derry/Londonderry and Belfast), and held two further oral evidence sessions in Westminster. We also held a series of private meetings and roundtables with individual women, professionals, statutory bodies, campaigners, politicians and service providers. We are very grateful to all of those who gave their time to speak to us, in particular the women who gave testimony about their very personal experiences.

6. We received a large volume of just under 700 written submissions reflecting the views and experiences of individual women impacted by the law, members of the public, campaign groups, churches, medical and legal professional bodies as well as the UK Government, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland. In addition, the Committee has received 2,260 identical submissions from different people via the Right to Life website which have been published under the submission of Robert Eaton.² A wide range of views are expressed in the evidence received which we have not been able to cover fully in the report. Some of the arguments in support of the existing law include:

- Abortion law in Northern Ireland should be decided by the NI Assembly, not Westminster;³
- The law on abortion in Northern Ireland saves lives and protects against disability discrimination; an estimated 100,000 individuals are alive today who would otherwise not be if Northern Ireland had adopted the 1967 Abortion Act;⁴ and
- There is no basis in human rights law to overturn the devolution settlement; the CEDAW Committee report is not binding, and nor is the Supreme Court judgment.⁵

7. Other evidence we have received in support of a change to the law include the following views:

- Placing abortion within a criminal, rather than health, framework is a breach of women and girls' human rights and the law on abortion is not effective;⁶

2 Robert Eaton ([ANI0436](#))

3 Society for the Protection of Unborn Children ([ANI0689](#)), Norma McMurray ([ANI0128](#)), Dr Alan Mitchell ([ANI0395](#)), Evangelical Alliance NI ([ANI0307](#)), Iona Institute NI ([ANI0324](#))

4 [Q48](#), Life Northern Ireland (Life NI) ([ANI0267](#)), Pauline Wilson ([ANI0532](#))

5 CARE Northern Ireland ([ANI0190](#)), Precious Life ([ANI0366](#)), Catholic Union of Great Britain ([ANI0220](#)),

6 British Pregnancy Advisory Service ([ANI0265](#)), Dr Lynsey Mitchell ([ANI0347](#)), Dr Claire Lougarre ([ANI0024](#)), Humanists UK ([ANI0348](#)), Equality Commission for NI ([ANI0359](#))

- Healthcare professionals in Northern Ireland are not able to fulfil their duties towards their patients because of the law and environment in which they are working;⁷
- It has been a long time since there was a functioning Assembly and Executive in Northern Ireland, and the UK Government is responsible for compliance with the UK's international obligations and should act in the absence of devolved government;⁸ and
- Marginalised groups of women and girls are particularly impacted by the law.⁹

Use of terms

8. This report is on a sensitive subject about a very personal matter that has a profound impact on people's lives. We have tried to use terminology that is appropriate to the context. This means that, for example, we spell 'foetal' consistently, other than in relation to the Working Group on Fatal Fetal Abnormality where we have used the spelling that the Working Group uses in its report. We have mostly used the term 'foetus' except where witnesses or individuals themselves have used other terminology to describe their own situation, such as 'unborn child'.

7 Reproductive Health Law and Policy Advisory Group ([ANI0687](#)), Doctors for Choice UK ([ANI0308](#)), Royal College of Obstetricians and Gynaecologists (RCOG) ([ANI0391](#)), Royal College of Midwives ([ANI0349](#)), Amnesty International UK and FPA ([ANI0008](#))

8 Liberty ([ANI0075](#)), ARK ([ANI0343](#))

9 Dawn Purvis ([ANI0330](#)), Women's Aid Federation of England, Scottish Women's Aid and Welsh Women's Aid ([ANI0418](#)), Abortion Rights Campaign ([ANI0222](#)), Reclaim the Agenda ([ANI0405](#)), London Irish Abortion Rights Campaign ([ANI0270](#))

2 Development of law and policy on abortion in Northern Ireland

The current law

9. Abortion is a criminal offence in Northern Ireland under the Offences Against the Person Act 1861. Section 58 makes it a criminal offence to administer drugs or use instruments to procure an abortion and section 59 makes it a criminal offence to supply or procure drugs or any instrument for the purpose of procuring an abortion. Both offences carry a maximum sentence of life imprisonment:

s58 Administering drugs or using instruments to procure abortion

Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life.

s59 Procuring drugs etc to cause abortion

Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be kept in penal servitude.¹⁰

10. In England and Wales, abortion is also criminalised under the Offences Against the Person Act 1861 and in Scotland it is criminalised under common law. The Abortion Act 1967 (as amended by the Human Embryology and Fertilisation Act 1990) provides a framework for the circumstances in which abortion can be lawfully performed in England, Scotland and Wales. In Northern Ireland, there is no equivalent to the Abortion Act 1967 and therefore the Offences Against the Person Act remains the substantive law, developed by subsequent caselaw and statute. Abortion in Northern Ireland is therefore a criminal justice policy and the lead department is the Department of Justice (Northern Ireland). The Northern Ireland Office of the UK Government made a written submission to the inquiry in which it explains:

abortion is criminalised, and any intervention to a pregnant woman that is potentially harmful to the foetus must only be carried out with the intention of protecting the woman against physical or mental health issues that are ‘real and serious’ and ‘permanent or long term’.¹¹

10 [Offences Against the Person Act 1861](#)

11 [Northern Ireland Office \(ANI0411\)](#)

11. Department of Health (Northern Ireland) guidance for health and social care professionals sets out the law as follows:

In Northern Ireland termination of pregnancy is lawful if performed in good faith only for the purpose of preserving the life of the woman. The 'life' of the woman in this context has been interpreted by the courts as including her physical and mental health;

A termination of pregnancy can therefore be lawful only where the 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.'

In any other circumstance it would be unlawful to perform such a procedure.¹²

Chronology

1861 The Offences against the Person Act (OAPA) makes it a criminal offence in England, Wales and Northern Ireland for a pregnant woman to use drugs, instruments or any other means with the intent to procure a miscarriage; and for any other person to use drugs, instruments or any other means with the intent procure a miscarriage of a woman (s58).

It is also an offence to procure drugs, instruments or anything else with the knowledge that it is intended for use in procuring a miscarriage (s59).

1939 The R v. Bourne¹³ case, where a doctor performed an abortion on a 14 year old girl who had been raped by five men, established the principle that abortion would be lawful under the OAPA if a doctor is of the reasonable opinion that the probable consequence of the continuation of the pregnancy is to make a woman a 'physical or mental wreck' that will have 'real and serious' effects that would be 'permanent or long term'. This includes preserving the life of the mother.

1945 The Criminal Justice Act (Northern Ireland) introduces an offence of child destruction or causing the death of a child capable of being born alive before it has an existence independent of its mother unless the act was done in good faith for the purpose of preserving the mother's life.¹⁴

1967 The Abortion Act (amended by the Human Fertilisation and Embryology Act 1990) permits abortions in England, Scotland and Wales where:

(a) the pregnancy has not exceeded its twenty-fourth week 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; or

(b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

12 [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](#), March 2016

13 *R v Bourne* [1939] 1 K. B. 687

14 [Criminal Justice Act \(Northern Ireland\) 1945](#)

(c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) 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.¹⁵

1967 Section 5 of the Criminal Law Act (Northern Ireland) creates a legal obligation to report information about criminal offences to the police, unless there is a ‘reasonable excuse’.¹⁶

1998 The Northern Ireland Act established the Northern Ireland Assembly. Justice and policing were not devolved at this time.¹⁷

2000 Abortion was debated in the Northern Ireland Assembly which passed a motion stating its opposition to the extension of the Abortion Act 1967 to Northern Ireland.¹⁸

2010 Justice and policing were devolved to Northern Ireland under the Hillsborough Castle agreement.

February 2016 Northern Ireland Assembly rejected two motions to amend the Justice (No. 2) Bill to legalise abortion in cases where there had been a diagnosis of fatal foetal abnormality and where the pregnancy was as a result of a sexual crime.

February 2016 The Working Group on Fatal Fetal Abnormality was established. It reported to ministers in October 2016 but the report was not published until 2018.

2016 Guidance for health and social care professionals on termination of pregnancy in Northern Ireland was issued. This followed lengthy legal action initiated by the Family Planning Association NI (FPANI) and resulted from draft guidance published for consultation in 2013.¹⁹

June 2017 The UK Supreme Court rejected the appeal by A and B v The Secretary of State for Health²⁰ challenging the failure to provide NHS funding in England for abortions performed on women and girls from Northern Ireland. However, the Minister for Women and Equalities subsequently announced that month that funding would be provided primarily through the Government Equalities Office and in October 2017 she announced that women who faced financial hardship would be supported with travel costs.²¹

January 2017 the Northern Ireland Assembly and Executive ceased functioning.

15 [Abortion Act 1967](#)

16 [Criminal Law Act \(Northern Ireland\) 1967](#)

17 [Northern Ireland Act 1998](#)

18 Motion moved by Jim Wells MLA [“That this Assembly is opposed to the extension of the Abortion Act 1967 to Northern Ireland.”](#), Northern Ireland Assembly, 20 June 2000

19 [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](#), March 2016

20 *R (on the application of A and B) (Appellants) v Secretary of State for Health (Respondent)* [2017] UKSC 41

21 Equalities Written Statement HC Deb, 23 October 2017, [col 6WS](#)

March 2018 Report of the Committee on the Elimination of Discrimination Against Women was published finding that the UK was in grave and systematic violation of women's rights (application under the Optional Protocol by FPA, Alliance for Choice, NIWEP).

April 2018 Report of the Working Group on Fatal Fetal Abnormality was published by the Department of Health for Northern Ireland.

June 2018 UK Supreme Court case brought by the Northern Ireland Human Rights Commission was dismissed on the grounds that it did not have standing to bring the case in its own right. However, in obiter comment the majority of judges stated that the prohibition of abortion in the cases of fatal foetal abnormality and sexual crimes was incompatible with Article 8 of the European Convention on Human Rights (right to private and family life). No declaration of incompatibility was made due to the lack of standing of the Commission.²²

September 2018 JR76 judicial review of the prosecution of a mother for obtaining abortion pills for her 15-year-old daughter was heard in Belfast High Court. Judgment is pending.²³

January 2019 Sarah Ewart's case challenging the prohibition of abortion where there is a diagnosis of fatal foetal abnormality was heard in Belfast High Court. Judgment is pending.²⁴

What we know about the current situation

Women and girls accessing abortion in public hospitals in Northern Ireland

12. Official data shows that a very small number of women and girls have lawful abortions in public hospitals in Northern Ireland and that this decreased sharply from 51 in 2012/13 to 12 in 2017/18.

22 *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland)*, [2018] UKSC 27

23 We will not be considering this case as it is sub-judice.

24 We will not be considering this case as it is sub-judice.

Table 1: Medical abortions and terminations of pregnancy, 2007/08 to 2017/18²⁵

| Year | Medical abortion | Termination of pregnancy |
|----------|------------------|--------------------------|
| 2007/08 | 76 | 47 |
| 2008/09 | 71 | 44 |
| 2009/10 | 64 | 36 |
| 2010/11 | 73 | 43 |
| 2011/12 | 56 | 35 |
| 2012/13 | 75 | 51 |
| 2013/14* | 25 | 23 |
| 2014/15 | 22 | 16 |
| 2015/16 | 30 | 16 |
| 2016/17 | 20 | 13 |
| 2017/18 | 32 | 12 |

Source: HSC Trusts

*Break in series.

Figures for medical abortion prior to 1st April 2013 included readmissions with retained products of conception, following a missed miscarriage or a spontaneous abortion that had been treated in the first admission with an evacuation of the products of conception. These are no longer part of the definition of medical abortion.

It should be noted that from the 1st April 2013 retained products of conception in the same episode as the termination that required surgical treatment must be considered a complete termination of pregnancy.

Women and girls travelling to access abortion provision

13. Each year, a significant number of women and girls from Northern Ireland travel away from home to have a lawful abortion in another jurisdiction and we have received a lot of evidence from women setting out their experiences about this.²⁶ One woman, who gave oral evidence to the inquiry in Derry/Londonderry, said that she became pregnant when she was 25, living in poverty and was already a lone parent of a young son. She told the Committee; “We lived in a cold house. I wanted to go to university and I wanted to get a job at the end of it, to be able to provide a warm, safe home and better lifestyle for my child.” She said that she knew she needed an abortion but when she telephoned the clinic in England they told her she needed to know exactly how pregnant she was before she could book. She went to her local hospital, which she describes as “an absolutely horrendous experience”:

I told the male doctor why I was there and why I was hoping to have a scan. He made me quite aware of his views and that it was not a good idea and he couldn't help me. He attempted to scan me. It did not work. I ended up just phoning up the clinic and telling the lie that it had been confirmed that I was five weeks pregnant, because I had no other way out of that.²⁷

14. The witness told us that a friend gave her the money for the procedure, for the flights and for taxis and food in the airport on the way back. She said that she had to

25 [Northern Ireland Termination of Pregnancy Statistics 2017/18](#), Department of Health, January 2019

26 Alliance for Choice ([ANI0370](#)), [Oral evidence session Derry / Londonderry](#), Abortion Rights Campaign ([ANI0222](#)), Marie Stopes UK ([ANI0201](#)), Dr Diane Urquhart and Dr Lindsey Earner-Byrne ([ANI0199](#))

27 [Q128](#)

have a surgical abortion because she was five weeks pregnant and could not afford to stay overnight because she did not have childcare. This meant that she had to wait four weeks for the procedure. She told us about what this waiting period was like:

So I had to pretend that everything was okay for four weeks and I had to lie to my family and friends, because of the shame and because of the notions that we had, and to some extent still have, in Northern Ireland. It was awful. I was trying to look after myself, trying to carry on as normal, when nothing was normal and it needed to stop; I needed to be able to have my abortion and then move on with my life, look after my son, and go to university.²⁸

She went on to say; “What affected me most was not that I found myself pregnant when I could not be—that is a normal thing that happens to many women—what affected me was having to wait for four weeks and having to fly and having to be alone.”²⁹

15. We also took evidence in Belfast from Dawn Purvis, former CEO of the (now closed) Marie Stopes Clinic in Belfast, about a 12-year-old girl who had become pregnant as the result of rape and had to travel to England for an abortion because the law would not permit her to be treated in Northern Ireland. She was accompanied by the police who had to attend the surgical procedure to seize the ‘products of conception’ for evidence and then travelled back with her. Ms Purvis said; “That is inhumane treatment of a young child who did not have a passport, had never left the country and she had been removed from family, friends and everything else to go through that.”³⁰

UK Government funding for women and girls to access abortion in England

16. Prior to 2017, women and girls in Northern Ireland had to pay to access abortion services in England, however, following the Supreme Court dismissing an appeal challenging the lack of access to free abortions, the then Minister for Women and Equalities, Rt Hon. Justine Greening MP, announced a new scheme so that women and girls in Northern Ireland could access free abortions on the NHS in England. The UK Department of Health and Social Care says that statistics show that “There has been an increase in the number of women from Northern Ireland having an abortion in England and Wales since the funding announcement [in June 2017]” and that:

In 2017 there were 861 abortions for women from Northern Ireland. This is an increase from 2016 and is the highest level since 2012 (905). However, looking at the historical series, numbers of Northern Ireland residents having an abortion in England and Wales has generally declined since a peak of 1,855 in 1990.³¹

28 [Q128](#)

29 [Q128](#)

30 [Q304](#)

31 [Abortion Statistics, England and Wales: 2017 Summary information from the abortion notification forms returned to the Chief Medical Officers of England and Wales](#), Department of Health and Social Care, June 2018, revised December 2018

Women and girls in Northern Ireland purchasing abortion pills online

17. We have heard evidence about women and girls unlawfully purchasing abortion pills from online providers. Alliance for Choice says in its submission that at least 400 packages of safe but illegal abortion pills were sent to Northern Ireland in 2017 from one online provider.³²

18. The Royal College of Obstetricians and Gynaecologists told us that they were particularly concerned that the barriers to obtaining an abortion in Northern Ireland mean, “increasing numbers of women purchasing abortion pills online, taking them without any medical expertise and support, delaying seeking care if there are complications and putting themselves at risk of life in prison.”³³

Prosecutions

19. The CEDAW report states that since 2000 the Police have investigated over 30 cases of individuals suspected of procuring an abortion in Northern Ireland. It says that between 2006 and 2015, the PSNI (Police Service of Northern Ireland) made 11 arrests related to illegal abortion. Between 2011 and 2016, five people were questioned and arrested for possession of abortifacients; two were convicted. Amnesty International UK and the FPA say in their joint submission to the inquiry:

In April 2016 a woman was given a three month suspended sentence for self-inducing an abortion because she could not afford the cost of travel to England and the expense of a private procedure.

In January 2017, a man and a woman accepted formal cautions under the Offences Against the Person Act 1861 (1861 Act) for the same offences. Charges were withdrawn against the pair after a judge imposed a ban on identifying the woman due to the heightened risk of suicide resulting from any publicity surrounding the case.³⁴

20. However, witnesses at the oral evidence session in Antrim denied that in reality women would be jailed for taking abortion pills. Marion Woods of Both Lives Matter which advocates for the retention of the existing law on abortion told us that; “Women are scared because of the activism and the constant use of the phrase ‘criminalisation’. There is no woman in Northern Ireland sitting in jail right now because she accessed abortion or took abortion pills.”³⁵

21. We asked witnesses in the Ministerial and official oral evidence session in Westminster on 27 February when they thought it was in the public interest to prosecute a woman or girl for procuring an abortion. Maura McCallion from the office of the Attorney General for Northern Ireland told us that was a matter for the Director of Public Prosecutions to assess and the Secretary of State for Northern Ireland said it was not appropriate for her to

32 Alliance for Choice ([ANI0377](#))

33 Royal College of Obstetricians and Gynaecologists (RCOG) ([ANI0391](#))

34 Amnesty International UK and FPA ([ANI0008](#))

35 [Q114](#)

comment. Minister for Women and Equalities, Rt Hon. Penny Mordaunt MP, told us; “I would refer to the point I made earlier about this being a criminal framework as opposed to being about healthcare. That is a problem.”³⁶

3 Public and political opinion and religious beliefs

Petitions supporting the existing law on abortion

22. Many of the written submissions address public and political opinion and religious beliefs in relation to abortion law in Northern Ireland. Both Lives Matter, a campaign group supporting the existing law, reflects the views in many of the submissions and says; “Recent ComRes polling of NI adults shows that 64 per cent of people think that abortion should be decided by Northern Ireland’s elected representatives, rising to 66 per cent of women and 70 per cent of 18 to 34 year olds.”³⁷

23. John Austin was one of many individuals who submitted evidence to the Committee stating that there is no support for reform of the law in Northern Ireland. He stated:

Huge support for our pro-life laws has been proven through the overwhelming response to many pro-life campaigns in recent years. In November 2016, 300,000 pro-life petitions were presented to the Stormont Parliament Buildings. These petitions, presented on behalf of the pro-life majority in Northern Ireland, served as a powerful reminder to the Northern Ireland Assembly that unborn children must continue to be protected by our laws.³⁸

24. The petitions were referred to by a number of witnesses and in much of the written evidence supporting the current law. A written answer from the Justice Minister, Claire Sugden, in December 2016 provides further details about the petitions delivered to her:

What I received on 28 November consisted of 47 boxes containing multiple petitions dating from 2001/02 to 2014. In all there were nine separate campaigns identified by my officials, relating to subjects such as, in 2001/02, ensuring that the human rights of unborn children are protected in proposals from the Northern Ireland Human Rights Commission on a new Bill of Rights; plans by a ‘group of pro-abortion MPs’ to change the law on abortion in Northern Ireland in the Human Fertilisation and Embryology Bill, due for debate in the House of Commons in February/March 2008; and opposition, in 2012, to Marie Stopes International opening a clinic in Northern Ireland.

There was no petition relating to termination of pregnancy for fatal fetal abnormality and no petition dated after September 2014.

There were also addresses identified in the material provided which were not in Northern Ireland.³⁹

25. The Committee has received 2,260 identical submissions from different people via the Right to Life website which have been published under the submission of Robert Eaton.⁴⁰ A wide range of views were reflected in the evidence, including that:

37 Both Lives Matter ([ANI0202](#))

38 Mr John Austin ([ANI0141](#))

39 Northern Ireland Assembly, written question, [AQW 8583/16–21](#)

40 Robert Eaton ([ANI0436](#))

- Abortion law in Northern Ireland should be decided by the NI Assembly, not Westminster, and noting that none of the Committee members represent a seat in NI;
- The law on abortion in NI saves lives and that Both Lives Matter’s research found that an estimated 100,000 individuals are alive today who would otherwise not be if Northern Ireland had adopted the 1967 Abortion Act;
- The law protects individuals who are disabled from unjust discrimination;
- The Supreme Court judgment does not provide a basis for widespread access to abortion on any grounds to be brought to Northern Ireland; and
- The CEDAW Convention itself does not mention abortion and members of the Supreme Court have also highlighted that the views of bodies such as the CEDAW Committee are only of “marginal relevance”.⁴¹ There is “no basis in human rights law to overturn the devolution settlement.”⁴²

Social attitudes to abortion

Public opinion

26. Researchers and campaigners have told us that there is popular support for reform of the law on abortion, which is particularly strong in certain circumstances. ARK is a joint Ulster University and Queen’s University research centre. It runs the annual Economic and Social Research Council-funded Northern Ireland Life and Times (NILT) Survey, the equivalent to the British Social Attitudes survey. It carried out the most comprehensive survey of public attitudes on abortion to date in 2016 when it asked a representative sample of the Northern Ireland public about their views relating to abortion and abortion law.

27. 63 per cent of respondents said that “It is a woman’s right to choose whether or not to have an abortion”. 83 per cent of respondents thought that abortion should be legal where the life of a woman is at risk and 76 per cent where there is a serious threat to her mental or physical health. 19 per cent of people expressed the view that abortion should definitely or probably be illegal even if “a doctor says that there is more risk to the life of a pregnant woman if she continues with a pregnancy than if she were to have an abortion”.⁴³

28. In relation to cases where there has been a diagnosis of fatal foetal abnormality, 81 per cent of respondents to the survey said that abortion should definitely or probably be legal where the foetus has a serious abnormality and will not survive the birth and 73 per cent also feel this should be the case where the foetus has a serious abnormality and may not survive beyond the birth. With regard to rape and incest, ARK told us that 54 per cent think that abortion should definitely be legal if a woman has become pregnant because of rape or incest with a further 24 per cent saying it should probably be legal in such situations. 43 per cent of respondents supported abortion being legal because a woman does not want to have children, the same percentage said that abortion should definitely not be legal in this situation.⁴⁴

41 Christian Medical Fellowship ([ANI0126](#))

42 Both Lives Matter ([ANI0202](#))

43 ARK ([ANI0343](#))

44 ARK ([ANI0343](#))

29. The 2016 survey found strong public opposition to the criminalisation of women who have abortions with 70 per cent of respondents saying that a woman should never go to prison for having an abortion. 63 per cent of respondents disagreed that doctors should face criminal charges if they carry out an abortion and 70 per cent of respondents believed that abortion should be a matter for medical regulation and not criminal law.

30. There is some evidence about how attitudes have changed over time. ARK told us that in 1990, 71 per cent of respondents to the Northern Ireland Social Attitudes survey were in favour of the law allowing abortion where a woman had become pregnant as a result of a rape; in 2016, 78 per cent of NILT respondents said that the law should definitely/probably allow abortion in cases of rape or incest.⁴⁵

31. Amnesty International refers in its joint submission with the FPA to the findings of its own opinion polling in October 2018 which it says is the first major opinion poll since the Irish referendum relating to abortion. The polling looked at the attitudes of the public in Northern Ireland and Great Britain separately to gauge opinions about the law on abortion in Northern Ireland; “The results show 65% of adults in Northern Ireland agreeing that abortion should not be a crime[...]. 66% of the Northern Irish public think that Westminster should reform the law in the absence of a devolved government.”⁴⁶

32. We took evidence from Ministers and officials about public opinion on the law on abortion in Northern Ireland. The Secretary of State for Northern Ireland, Rt Hon. Karen Bradley MP, agreed that the latest polling indicates support for changing the law in certain circumstances, particularly fatal foetal abnormality, rape and incest. She noted that there is also evidence in opinion polling that there is not support for the law in other circumstances.⁴⁷

33. Maura McCallion set out the position of the Attorney General for Northern Ireland in her evidence. She referenced Lord Mance’s statement in the Supreme Court that a representative democracy “can accommodate a difference or a divergence between public opinion and what the elected legislature decides”, continuing that; “As a policy choice for the legislature, how it operates and what it does in terms of abortion law, the Attorney’s view is it is not required to do anything by the convention or by international obligations at the moment.”⁴⁸

Religious beliefs

34. Many of the written submissions we have received supporting the existing law refer to religious beliefs.⁴⁹ A member of the public said in his submission:

I am a Christian attending Moira Baptist Church, and believe that life begins at conception. I am proud that my country has so far resisted efforts to liberalise the abortion law here. It is estimated that around 100,000 people

45 ARK ([ANI0343](#))

46 Amnesty International UK and FPA ([ANI0008](#))

47 [Q439](#)

48 [Q441](#)

49 Mr William Baird ([ANI0095](#)), Mrs Elizabeth Steele ([ANI0107](#)), Newbuildings Independent Methodist Church ([ANI0136](#))

are alive today who would have been aborted if the Abortion Act 1967 had applied here. The Advertising Standards Agency accept that this figure is a credible and conservative estimate.

I believe Northern Ireland's law must be respected. The will of our elected representatives was last made clear in February 2016 when a clear majority of Northern Ireland's MLAs backed the sanctity of life in a series of votes at Stormont.⁵⁰

35. ARK told us that, as in Britain, people with a religious affiliation in Northern Ireland have changed their view about whether abortion should be lawful in certain circumstances and this is particularly notable among Catholics:

In 1990, only 28 per cent of Catholics compared to 75 per cent of Protestants and 78 per cent of those with no religion thought that the law should allow abortion where there is a strong chance of a serious defect in the baby. In 2016, 72 per cent of Catholics agreed that abortion definitely or probably should be legal where the foetus has a fatal abnormality and the baby will not survive beyond the birth.⁵¹

Political opinion

Table 2: Seats by party⁵²

| | 1998 | 2003 | 2007 | 2011 | 2016 | 2017* |
|------------------------|------|------|------|------|------|-------|
| DUP | 20 | 30 | 36 | 38 | 38 | 28 |
| UUP | 28 | 27 | 18 | 16 | 16 | 10 |
| SF | 18 | 24 | 28 | 29 | 28 | 27 |
| SDLP | 24 | 18 | 16 | 14 | 12 | 12 |
| APNI | 6 | 6 | 7 | 8 | 8 | 8 |
| UKUP | 5 | 1 | | | | |
| PUP | 2 | 1 | | | | |
| NIWC | 2 | | | | | |
| Green | | | 1 | 1 | 2 | 2 |
| TUV | | | | 1 | 1 | 1 |
| PBPA | | | | | 2 | 1 |
| Independent/ Others | 3 | 1 | 1 | 1 | 1 | 1 |
| Northern Ireland | 108 | 108 | 108 | 108 | 108 | 90 |

*There was a reduction in seats after the 2016 election.

Northern Ireland Assembly decisions

36. In 2016, the Northern Ireland Assembly voted against amendments to the Justice (No.2) Bill to provide for abortion in cases where there had been a diagnosis of fatal

50 Mr Gareth Davison ([ANI0053](#))

51 ARK ([ANI0343](#))

52 [Election Report: Northern Ireland Assembly Election, 2 March 2017](#), Northern Ireland Assembly Research and Information Service Research Paper, March 2017

foetal abnormality and where the pregnancy was as a result of a sexual crime.⁵³ Following this, the leader of the DUP asked the Health Minister to establish a group to make recommendations on how this issue could be addressed.⁵⁴ This is the last vote to have taken place in the Assembly before it ceased functioning in January 2017.

Political parties in Northern Ireland

37. We heard evidence that attitudes towards abortion among political parties in Northern Ireland may have changed substantially since the last time there was a vote on abortion in the Assembly in 2016. Amnesty International UK and the FPA refer in their joint submission to the statement in September 2018 signed by Sinn Féin, the SDLP, the Alliance Party, and the UUP which said: “We call on UK government to decriminalise abortion by repealing sections 58 and 59 of the 1861 Offences Against the Person Act and to ensure a human rights compliant framework governing access to abortion.”⁵⁵

38. We met with representatives of Northern Ireland’s political parties in November 2018 and January 2019 and have also received written submissions from political parties.

39. The DUP continues not to support changes to the law. Former Health Minister Jim Wells said in 2018 “The Assembly last dealt with this issue on February 10, 2016, and made a very, very clear decision—we do not want any change in the law in Northern Ireland. [...] No doubt if the Assembly was back it would make exactly the same decision.”⁵⁶

40. Sinn Féin said in its written submission that, under the Good Friday Agreement, the British Government has a responsibility to protect the rights of citizens. It wants to see sections 58 and 59 of the Offences Against the Persons Act 1861 repealed in order to decriminalise abortion. Sinn Féin says the next step must be local legislation to allow for human rights compliant access to healthcare and that their preference is for this to be done by “locally elected representatives in a local assembly” with a British and Irish Intergovernmental Conference being established to deal with it in the absence of an assembly.⁵⁷

41. The SDLP’s position on abortion is a pro-life one but is a matter of conscience for the party.⁵⁸ Abortion is also a matter of conscience for the Alliance Party and the Ulster Unionist Party (UUP). In April 2018 UUP Justice spokesperson Doug Beattie MLA welcomed the publication of the Working Group’s report on Fatal Fetal Abnormality and criticised that fact that there was no Executive in place to consider or implement its recommendations:

53 Voting on amendments to the Justice (No. 2) Bill, [Northern Ireland Assembly](#)

54 [Report of the Working Group on Fatal Fetal Abnormality](#), Department of Justice and Department of Health, 11 October 2016

55 Amnesty International UK and FPA ([ANI0008](#))

56 [Abortion: London will not risk law change in Northern Ireland, claims DUP’s Jim Wells](#), Belfast Telegraph, 1 June 2018, Belfast Telegraph website, accessed April 2019

57 Sinn Féin ([ANI0336](#))

58 [SDLP members support conscience vote on abortion matters](#), 19 May 2018, BBC website, accessed April 2019

Now that the report has at long last been published it makes for sobering but thought-provoking reading and we should all sit up and listen when a report such as this conclusively states that our health workers simply find the current situation to be professionally untenable.⁵⁹

42. The Green Party made a written submission in which it said that abortion should be decriminalised in Northern Ireland. It says; “The law that criminalises Northern Irish women was passed by the UK Parliament in 1861 it is out of date and seriously damaging to many women and girls. This is not a constitutional issue but a simple repeal of legislation.” It goes on to say that; “The current laws breach the rights of Northern Irish women this is not a question of health or home affairs law but of human rights which are reserved to Westminster.”⁶⁰ People Before Profit support reform of the law on abortion and Traditional Unionist Voice support the existing law.

59 [Beattie comments on the publication of the report on termination of pregnancies in fatal foetal abnormality cases](#), 25 April 2018, UUP website, accessed April 2019

60 Green Party Northern Ireland ([ANI0303](#))

4 Devolution in Northern Ireland

43. The devolution settlement for Northern Ireland is governed by the Belfast Agreement and the Northern Ireland Act 1998 which established the Northern Ireland Assembly. Human rights are strongly protected as an inherent part of the devolution settlement; the Northern Ireland Assembly and Northern Ireland Ministers are required to comply with the European Convention on Human Rights.⁶¹ The Assembly and the Executive ceased functioning in January 2017 and have not been re-established.

44. The Northern Ireland Office sets out in its written submission to the inquiry what the devolution settlement means for abortion law:

Under the Northern Ireland devolution settlement, the following areas, relevant to the provision of abortion services, are “transferred matters” and therefore devolved in Northern Ireland: health and social services; equal opportunities (including as provided for in equality law); and justice and policing. As a result, any questions of reform or legislative changes to the law or policy in these areas are matters that are within the competence of the Northern Ireland Assembly and Executive.

The UK Government and the Northern Ireland Executive have agreed a Memorandum of Understanding setting out the principles that underlie relations between them. In terms of legislation, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. It is the Government’s view that the convention should be adhered to in this context as the issue of abortion is a devolved matter and therefore, should rightly be a matter for the Northern Ireland Assembly to legislate on.⁶²

45. In her oral evidence, the Secretary of State for Northern Ireland, Karen Bradley MP, told us that the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 allows the Executive to reform and start working again at any time without any further legislation, and “Because of that, I as the Secretary of State, have no executive powers to direct the civil service and the officials in Northern Ireland.”⁶³ Guidance published under Section 4 of the 2018 Act includes a section on abortion which says that:

in light of any relevant emerging legal judgments or other developments, as appropriate, the Departments of Health and Justice should consider whether policy advice and options should be prepared to inform Northern Ireland Ministers on the issues arising. More generally, the Departments of Health and Justice should, in relation to health and criminal justice policy so far as they concern abortion law, continue to have regard to all of their legal obligations, including the Human Rights Act 1998 and sections 24 and 75 of the Northern Ireland Act 1998 in exercising any relevant functions.⁶⁴

61 [Belfast Agreement 1998](#), [Northern Ireland Act 1998](#)

62 Northern Ireland Office ([ANI0411](#))

63 [Q450](#)

64 [Guidance issued under section 4 of the Northern Ireland \(Executive Formation and Exercise of Functions\) Act 2018](#)

46. We have received evidence from those stating that the UK Government in Westminster does not have a role to play in relation to abortion law in Northern Ireland. Dawn McAvoy of Both Lives Matter told us:

This is a devolved issue and there is no requirement for Westminster to intervene on human rights grounds.[...] We do not have the policies in place to cater for abortion the way there is in GB.[...] It would be reckless and irresponsible to do anything while we have no Assembly.⁶⁵

47. Many submissions from members of the public support the view of Rev Marcus Hobson that: “For the Government to abandon devolution in this matter would create a democratic deficit, the majority in Westminster clearly don’t represent the majority in N. Ireland as expressed in recent elections and the vote in the N.I. Assembly in 2016.”⁶⁶

48. In contrast, many of those who wrote to us about their own experiences of seeking abortion in Northern Ireland expressed frustration about the impact of there being no functioning Assembly and called for the UK Government to act. One woman said, “Stormont has not functioned for over two years. We are being punished and neglected at every turn as a result of this. It simply is the responsibility of the UK government to step in to provide support in lots of areas, but especially in this case.”⁶⁷ We heard from researchers, campaigners and legal experts who supported this view.

49. Caoilfhionn Gallagher QC told us in her oral evidence that there was no constitutional impediment to Westminster reforming the law on abortion. She went on to say that:

the Secretary of State has the power to direct Northern Ireland Departments to take such action as may be required under international obligations. In the circumstances that we are now in, it seems, in the absence of a constitutional impediment to Westminster acting, and with no indication of the position of the power vacuum in Northern Ireland changing, the residual power Westminster has should now be activated and Westminster should take action.⁶⁸

50. The CEDAW Committee also addresses the issue of devolution in its report on abortion in Northern Ireland. It notes that, under international law, all acts of State organs are attributable to the State and that internal law cannot be used to justify its failure. Furthermore, under General Recommendation 28 of the CEDAW Convention itself, the delegation of government powers “does not negate the direct responsibility of the State party’s national or federal Government to fulfil its obligations to all women within its jurisdiction.”⁶⁹

51. We respect the principle of devolution and believe it is rightly the responsibility of the Northern Ireland Assembly to legislate on matters relating to abortion law. One of the consequences of devolution is that decisions may be taken which both differ from those taken in the rest of the United Kingdom and with which people in the rest of the United Kingdom may disagree. However, there are specific obligations for the

65 [Q97](#)

66 Rev Marcus Hobson ([ANI0236](#))

67 Alliance for Choice ([ANI0370](#))

68 [Q402](#)

69 General recommendation No. 28 on the core obligations of States parties under article 2 of the [Convention on the Elimination of All Forms of Discrimination against Women](#)

Northern Ireland Assembly not to pass Acts that are contrary to the UK's international obligations. Furthermore, devolution does not remove the UK Government's own responsibilities to comply with its international obligations and internal laws cannot be used to justify a failure to comply with human rights standards.

5 Responsibility under international human rights obligations

52. In relation to abortion in Northern Ireland, the Committee on the Elimination of Discrimination Against Women is among a number of UN treaty bodies which have made findings of human rights breaches. These bodies include the UN Human Rights Committee,⁷⁰ the Committee on Economic, Social and Cultural Rights⁷¹ and the Committee on the Rights of the Child.⁷²

Convention on the Elimination of all forms of Discrimination Against Women

53. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) is a global treaty on women's rights. It was adopted by the UN General Assembly in 1979 and has now been ratified by 189 out of 193 member states of the UN. The UK signed CEDAW in 1981 and ratified it in 1986. The CEDAW Convention is binding on the UK as a matter of International Law. The CEDAW Committee looks at how those binding rights are respected and applied in the domestic context. The UK has also signed up to the Optional Protocol which gives individual women and groups the right to complain directly to the body which monitors the treaty, the Committee on the Elimination of Discrimination Against Women, a body of 23 experts on women's human rights.

54. A number of CEDAW Articles are relevant to abortion, in particular Article 12 which requires State parties to eliminate discrimination against women in health care, including in relation to family planning.⁷³ General Recommendation 35 of the CEDAW Committee includes forced pregnancy and the criminalisation of abortion within the meaning of violence against women.⁷⁴ Access to abortion is addressed by the Committee on the Elimination of Discrimination Against Women which has made findings in relation to abortion in Northern Ireland in its recent examinations of the UK.⁷⁵

55. We have received evidence which states that the Convention does not mention abortion and there are therefore no compliance issues. Marion Woods of Life Northern Ireland said in her oral evidence; "How can we be outside the remit of the Convention? We are not. It never mentions abortion, only the Committee does, and they are unelected representatives and independent, none of which have come from the UK or Ireland."⁷⁶

56. In 2010, an application was made under the Optional Protocol to CEDAW by Alliance for Choice, Family Planning Association and Northern Ireland Women's European

70 Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, Human Rights Committee, August 2015

71 Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, Committee on Economic, Social and Cultural Rights, July 2016

72 Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, Committee on the Rights of the Child, June 2016

73 A number of CEDAW Articles are relevant to abortion eg Article 2 (discriminatory laws), Article 12 (discrimination in the field of health care), Article 16 (family planning and information).

74 [General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19](#), Committee on the Elimination of Discrimination Against Women, July 2017

75 For information on abortion worldwide see [The Legal Status of Abortion Worldwide](#), Statista website, accessed April 2019

76 [Q98](#)

Platform (NIWEP) alleging that the UK was in violation of women and girls' rights under the Convention owing to the restrictive access to abortion in Northern Ireland. This resulted in an inquiry by the CEDAW Committee and a report published in March 2018. The CEDAW Committee found:

(a) Grave violations of rights under the Convention considering that its criminal law compels women in cases of severe foetal impairment, including FFA, and victims of rape or incest to carry pregnancies to full term, thereby subjecting them to severe physical and mental anguish, constituting gender-based violence against women; and

(b) Systematic violations of rights under the Convention considering that the UK deliberately criminalises abortion and pursues a highly restrictive policy on accessing abortion, thereby compelling women to: carry pregnancies to full term; travel outside NI to undergo legal abortion; or self-administer abortifacients.⁷⁷

57. The CEDAW Committee made the following recommendations relating to the legal and institutional framework:

- Repeal sections 58 and 59 of the Offences against the Person Act, 1861 so that no criminal charges can be brought against women and girls, qualified health care professionals and others; and
- Adopt legislation to expand grounds to legalise abortion at least in the following cases: Threat to the pregnant woman's physical or mental health without conditionality of "long-term or permanent" effects; rape and incest; and 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.⁷⁸

58. The CEDAW Committee also recommended that the UK put a moratorium on the application of criminal laws and adopt evidence-based protocols for healthcare professionals, among a number of other recommendations on sexual and reproductive health rights and services.

59. The CEDAW Committee has recently published its Conclusions and Observations following its eighth periodic review of the UK's compliance with the Convention, in which it; "urges the State party [the UK] to implement, without further delay, the recommendations contained in the Committee's report following its inquiry under article 8 of the Optional Protocol to the Convention."⁷⁹

77 [Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of Discrimination Against Women, 2018](#)

78 [Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of Discrimination Against Women, 2018](#)

79 Concluding observations on the eight periodic report of United Kingdom of Great Britain and Northern Ireland, Committee on the Elimination of Discrimination Against Women, March, 2019

60. The Northern Ireland Office says in its written submission that, while the UK Government recognises that it remains responsible for compliance with its international obligations under international law, it is for the devolved administrations to ensure compliance in relation to devolved matters. It says:

This is enshrined in domestic law and the memorandum of understanding. The UK Government does not believe that the current situation in Northern Ireland should dislodge that principle, particularly in circumstances where the Government is working towards the restoration of devolved government in Northern Ireland. The UK Government will keep this position under review in light of its international and domestic obligations, and in light of any relevant emerging legal judgments, as appropriate.⁸⁰

61. Legal experts discussed the status of the CEDAW Committee's report in the oral evidence session on 27 February 2019. Roger Kiska of the Christian Legal Centre told us it was "fallacious" to suggest that nations that prohibited abortion would allow themselves to be bound by a UN Committee. He said, "The committee themselves are not lawyers. They are not judges. It is not a court. It is a periodic review. It is a non-binding document. The underpinning of this discussion is just misleading."⁸¹

62. However, Caoilfhionn Gallagher QC argued that it was wrong to see CEDAW as being non-binding international law and to treat domestic law as entirely separate because they interact: "Its findings are not binding but it is, very importantly, taken into account by the European Court of Human Rights in Strasbourg and by our courts domestically. As a matter of domestic law, CEDAW is relevant when you are looking at [European] convention rights."⁸²

63. The UK Government says that it will provide a substantive response to the CEDAW Committee's findings and recommendations once the Northern Ireland Assembly is re-established to authorise and approve the response.⁸³

64. The UN Committee on the Elimination of Discrimination Against Women covered a wide range of issues in its report including law, access to services, education and sexual and reproductive rights. The UN Committee found that there were 'grave' violations in relation to cases of severe foetal impairment, including FFA, and rape or incest, and 'systematic' violations in the criminalisation of abortion and highly restrictive access which compels women to a) carry pregnancies to full term; b) travel outside of Northern Ireland to undergo legal abortions or c) self-administer with abortion pills.

65. *The UK Government needs to set out a clear framework and timeline to address the breaches of women's rights in Northern Ireland under the CEDAW Convention that have been identified by the UN Committee on the Elimination of Discrimination Against Women if there is no government in Northern Ireland to take this action.*

80 Northern Ireland Office ([ANI0411](#))

81 [Q410](#)

82 [Q415](#)

83 [Opening Statement to CEDAW Committee](#), February 2019

European Convention on Human Rights

66. The European Convention on Human Rights is a human rights treaty among the members of the Council of Europe, including the UK. In 1998, the UK incorporated the Convention into domestic law in the Human Rights Act.

67. In June 2018, the UK Supreme Court ruled on a case brought by the Northern Ireland Human Rights Commission (NIHRC). This was a challenge to the Northern Ireland Department of Justice and the Attorney General for Northern Ireland that abortion law in Northern Ireland is incompatible with the Convention under Article 3 (the prohibition of torture and of inhuman or degrading treatment), Article 8 (the right of everyone to respect for their private and family life) and Article 14 (the prohibition of discrimination) in relation to cases of: (a) serious malformation of the foetus, (b) pregnancy as a result of rape, and/or (c) pregnancy as a result of incest. The case was dismissed on procedural grounds raised by the Attorney General for Northern Ireland on the basis that the NIHRC did not have standing to bring a case in its own name (without an actual or perceived victim).

68. The Supreme Court did not make a declaration of incompatibility given that the case was dismissed on procedural grounds. Nonetheless, the majority of the Supreme Court expressed their opinion on the substance and took the view that the current law is incompatible with the right to respect for private and family life provided for under Article 8 of the European Convention on Human Rights. Lord Kerr said that, by a majority of five to two: “The court has expressed the clear view that the law of Northern Ireland on abortion is incompatible with article 8 of the Convention in relation to cases of fatal foetal abnormality and by a majority of four to three that it is also incompatible with that article in cases of rape and incest.” He added that while this was not a binding decision, “it must nevertheless be worthy of close consideration” by those who decide the law. Lady Hale, President of the Supreme Court, described the current legal position as; “untenable and intrinsically disproportionate in excluding from any possibility of abortion pregnancies involving fatal foetal abnormality or due to rape or incest”.⁸⁴

69. Giving evidence about the implications of the Supreme Court judgment, Les Allamby, Chair of the Northern Ireland Human Rights Commission, told us that “the water is more muddy than it would have been if there had been a declaration of incompatibility”. He went on to say:

It is most unusual for the Supreme Court, having decided you do not have standing, to then offer their views. Those views are advisory in legal terms, in my view, but they are significantly authoritative. It is the Supreme Court.⁸⁵

70. Giving evidence about what should happen now in the absence of the Northern Ireland Assembly, Mr Allamby said it was for the Secretary of State to deal with the breach of human rights. He said that the Secretary of State could issue guidance and that, whilst

84 [In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review \(Northern Ireland\) Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 \(Abortion\) \(Northern Ireland\), \[2018\] UKSC 27](#)

85 [Q399](#)

even a declaration of incompatibility would not compel her to act, generally speaking the UK Government abides by declarations of incompatibility, although it is still a matter for Parliament.⁸⁶

71. On the other hand, Roger Kiska of the Christian Legal Centre, in line with many submissions we have received from members of the public and others, said that Article 8 “confers no right to abortion.”⁸⁷

72. The UK Government set out its approach to the human rights breaches identified by the Supreme Court. Secretary of State for Northern Ireland, Karen Bradley, told us that her focus was on getting the Northern Ireland Assembly and Executive restored and that that was the most appropriate way to deal with the matter.⁸⁸ When we asked the Secretary of State at what point would the Government consider that a continued absence of the Assembly and Executive required the UK Government to act to address human rights breaches against women and girls in Northern Ireland, she said, “if there was a ruling in the European courts, that would be binding. A declaration of incompatibility [in the Supreme Court] would be highly persuasive.”⁸⁹

73. Penny Mordaunt, Minister for Women and Equalities told us:

You have just heard this morning that when things like that have happened, when you have had a declaration, the UK Government have acted. It is a good question as to why we need something like that to happen. We have evidence of women’s lives being put in danger. If you have a situation where a 12-year-old girl who has been raped has to be accompanied by the Northern Ireland police to Liverpool in order to gather DNA evidence, there is something wrong.⁹⁰

Remedying the breach of human rights in cases of rape or incest

74. We have heard evidence about how the breaches of human rights identified by the Supreme Court can be remedied in practice, particularly in the situation where a woman or girl’s pregnancy was as a result of rape or incest. This issue arose during the debates around abortion in the Republic of Ireland where the Joint Oireachtas Committee on the Eighth Amendment to the Constitution considered the difficulty in proving that the pregnancy was as a result of rape and the need to avoid retraumatising victims by requiring them to report the offence, in a context in which sexual offences are significantly under-reported for a range of reasons.⁹¹ Ms Gallagher argued that the route taken by the Joint Oireachtas Committee is an appropriate one; “That is to recognise that it is instead more appropriate to deal with the issue by permitting termination of pregnancy without a restriction as to reason, even if the core of the reason for many of you may be focused on those hard cases.”⁹²

86 [Q401](#)

87 [Q410](#)

88 [Q450](#)

89 [Q490](#)

90 [Q440](#)

91 [Report of the Joint Committee on the Eighth Amendment of the Constitution](#), Houses of the Oireachtas, December 2017

92 [Q422](#)

75. Les Allamby of the Northern Ireland Human Rights Commission agreed that it would be extremely difficult to remedy the breach by permitting abortion where the pregnancy was as a result of a sexual crime, but not impossible and noted that 25 member states of the Council of Europe have legislated in some way for termination and have done it in different ways for sexual crimes. Mr Allamby went on to note the additional difficulty in Northern Ireland because section 5 of the Criminal Law Act 1967 requires crimes to be reported to the police. He pointed to the Attorney General's human rights guidance for prosecutors on section 5 in relation to rape disclosures in the context of social security claims which says that "the public interest points away from prosecuting the victims of rape or those to whom victims make disclosures of rape."⁹³ Mr Allamby also pointed to the Gillen Review which recommended repealing section 5, other than in cases concerning children or vulnerable adults.⁹⁴

76. In the Republic of Ireland, the new law on abortion permits abortion without restriction up to a period of 12 weeks, following which it is permitted in restricted circumstances. Les Allamby noted that, "There is nothing to stop Northern Ireland going beyond human rights requirements. For us, the question is that they are not meeting their human rights requirements at the moment."⁹⁵

77. The European Convention on Human Rights (ECHR) provides a right to privacy and family life under Article 8. This has been incorporated into domestic law in the Human Rights Act 1998 and the UK Supreme Court identified that there had been a breach of women's Article 8 rights in relation to cases of fatal foetal abnormality, rape and incest. The Court stated that the Northern Ireland Human Rights Commission which had brought the case did not have standing so it did not make a declaration of incompatibility. Nevertheless, this is a strong statement by the highest court in the land that it has identified that the current prohibition of abortion in Northern Ireland breaches an individual's ECHR human rights in these cases.

Northern Ireland Human Rights Commission

78. The Northern Ireland Human Rights Commission was established in the Northern Ireland Act 1998. The Commission advises the UK Government, the Northern Ireland Executive and Assembly and key agencies on legislation and compliance with human rights frameworks in Northern Ireland.

79. The Northern Ireland Human Rights Commission challenged the law on abortion in Northern Ireland in specific circumstances as a breach of human rights. When the UK Supreme Court considered the case, it dismissed the case on the basis that the Commission did not have standing in its own right to bring it. Lady Hale said in her judgment:

On the procedural issue, a majority - Lord Mance, Lord Reed, Lady Black and Lord Lloyd-Jones - hold that the NIHRC does not have standing to bring these proceedings and accordingly that this court has no jurisdiction to make a declaration of incompatibility to reflect the majority view on

93 [Human Rights Guidance for the Public Prosecution Service: The application of section 5 of the Criminal Law Act \(Northern Ireland\) 1967 to rape victims and those to whom they make disclosures in connection with a claim for social security, child tax credit or anonymous registration on the electoral roll](#), Attorney General for Northern Ireland, April 2018

94 [Qq423-429](#)

95 [Q423](#)

the compatibility issues. A minority - Lord Kerr, Lord Wilson and I - hold that the NIHRC does have standing and would have made a declaration of incompatibility.

80. The Northern Ireland Human Rights Commission told us that, prior to the Supreme Court ruling, the Commission believed that it had standing to take a case.⁹⁶ NIHRC said that it uses its powers sparingly and generally would prefer to take forward a case involving specific individuals but:

the idea of asking a woman who has been a victim of a sex crime and is pregnant, or has a fatal foetal abnormality at maybe an advanced stage, to bring a case to the court, on top of everything else she is dealing with, is frankly not practical, which is why we decided to bring the case in our own name.⁹⁷

81. Giving evidence about the Northern Ireland Human Rights Commission's standing to take a case,⁹⁸ the Secretary of State for Northern Ireland, Karen Bradley told us that; "We have now discovered there was an error in the explanatory memorandum in 1998 when the Northern Ireland Act was enacted." The Secretary of State told us that the Government has committed to rectifying this; "We will rectify it at the earliest legislative opportunity. It does require primary legislation, unfortunately, but we will ensure that that is appropriately rectified because, like you, I do not want to have to be the case. I would much rather it was a case brought by a human rights commission."⁹⁹

82. It is a serious error that the Northern Ireland Human Rights Commission does not have legal standing to take human rights cases to court, without the need for a victim to take the case. The situation of a woman or girl who became pregnant as a result of rape or incest having to pursue a court case highlights precisely why it should not depend on an individual victim to take a case to court. This issue of the Northern Ireland Human Rights Commission's standing needs rectifying urgently so that victims do not have to take a case.

83. *The UK Government must rectify the error in the Northern Ireland Human Rights Commission's standing as a matter of urgency. We welcome the Secretary of State for Northern Ireland's commitment to rectifying this matter but the Government's response to this report must set out the timeline for doing so within the next six months.*

96 [Q400](#)

97 [Q400](#)

98 [Letter from Rt Hon Karen Bradley MP, Secretary of State for Northern Ireland, regarding the Northern Ireland Human Rights Commission's legal cases](#), dated 13 November 2018

99 [Q481](#)

6 Information for healthcare professionals and women and girls

Guidance for health and social care professionals on termination of pregnancy in Northern Ireland

84. We have heard evidence about guidance for healthcare professionals on abortion. The Department of Health (NI) has responsibility for this guidance but had not published any prior to 2007 when the first draft guidance was published, issued and then withdrawn. The Family Planning Association for NI (FPA NI) initiated a series of legal cases on the issue of guidance.

Draft guidance published for consultation in 2013

85. In 2013, draft guidance was published for consultation. We have heard evidence about the impact it had on the environment in which women and girls in Northern Ireland are seeking an abortion. Dawn Purvis, former CEO of the Belfast Marie Stopes clinic (now closed) told us that the draft 2013 guidelines were written in such a way that they created a “chill factor” amongst clinicians. This is despite the fact that the draft guidance was “never issued and it should not have been acted upon”, according to Alasdair MacInnes, of the Family and Children’s Policy Directorate in the Department of Health (NI).¹⁰⁰

86. Furthermore we have been told by the Royal College of Obstetricians and Gynaecologists about a “circular sent to all Obstetricians and Gynaecologists by the Attorney General in early 2013, advising them to ensure that they were practicing within the law and that failing to do so put them at risk of prosecution and imprisonment.”¹⁰¹ The Royal College described what happened after this:

Following this, some health trusts sought legal advice with respect to the “mental health of the mother”, the legal opinion being given that the woman had to have a psychiatric illness in order to proceed lawfully. There now existed differing legal interpretations of the law and a lack of clarity as to what was meant by “an adverse effect on the mental health of the mother”, with doctors feeling that the bar was now set too high. The law had not changed, but healthcare professionals were concerned as to how to proceed in such cases.¹⁰²

Yet this has been denied by Maura McCallion of the office of the Attorney General for Northern Ireland. Ms McCallion told us, “We have no record of [the Attorney General] writing a letter to clinicians.”¹⁰³ Ms McCallion went on to say that the Attorney General “would not be writing to clinicians. He would advise Ministers and work with the Department. He does not write to clinicians.”¹⁰⁴

100 [Q229](#)

101 Royal College of Obstetricians and Gynaecologists (RCOG) ([ANI0391](#))

102 Royal College of Obstetricians and Gynaecologists (RCOG) ([ANI0391](#))

103 [Q475](#)

104 [Q478](#)

87. There will continue to be confusion amongst professionals unless issues like this can be resolved and communications to professionals provide clarity.

Finalised guidance published in 2016

88. The current guidance for health and social care professionals on termination of pregnancy in Northern Ireland was published in March 2016.¹⁰⁵ In the introduction it says:

This guidance recognises that women must be made aware of the options and choices available to them under the law in Northern Ireland. Support and advice must respect the personal views of the woman and enable her to make her own informed choices.

Regardless of where a termination of pregnancy has been carried out, where necessary, support must be provided for individuals through aftercare services including counselling and other psychological support services. It is the responsibility of Health and Social Care Trusts to provide access to aftercare support for all women where it has been assessed to be required.

As in all areas of health and social care practice, professionals are obliged to comply with the law, and the guidance clearly sets out the maximum penalties which may be imposed in the event of conviction for offences related to termination of pregnancy or associated acts.¹⁰⁶

89. Later, the guidance discusses in more detail situations where women and girls may be seeking lawful abortion in other jurisdictions in circumstances where it would be unlawful in Northern Ireland:

In such 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.¹⁰⁷

90. The guidance goes on to state:

The courts in Northern Ireland have never considered the issue of whether it would be lawful to ‘advocate or promote’ in Northern Ireland the termination of a pregnancy in another jurisdiction (in circumstances where it would not be lawful if carried out in Northern Ireland but would be lawful if carried out in that other jurisdiction).¹⁰⁸

91. It is surprising that the guidance says this, given that the objective of guidance is to give clarity. Furthermore, it introduces wording of ‘advocate or promote’ which is unclear and further obscures an issue that already lacks clarity for professionals.

105 [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](#), March 2016

106 [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](#), March 2016

107 [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](#), March 2016

108 [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](#), March 2016

92. In relation to healthcare professionals' obligations to report unlawful abortions to the police, the finalised guidance states that; "Health and social care professionals must balance the need for confidentiality of patients with the obligation to report unlawful terminations of pregnancy to the police and the need to protect others from risk of serious harm."¹⁰⁹ Dr Michael McBride, Chief Medical Officer for Northern Ireland, told the Committee in oral evidence in Belfast on 25 January that the 2016 guidance provided "much more balanced advice to clinicians on those albeit limited circumstances where the termination of pregnancy in Northern Ireland was lawful."¹¹⁰

93. However, the Royal College of Midwives told us in their written submission that "the continued absence of clear guidance regarding the law on abortion in Northern Ireland (NI) or how it is to be applied in practice means that healthcare staff in NI are currently working in an atmosphere of fear, erring on the side of caution in every circumstance."¹¹¹ Likewise, the Royal College of Obstetricians and Gynaecologists told us that, "the current situation is unacceptable and leaves doctors, nurses and midwives working in a precarious legal vacuum in this core part of women's sexual and reproductive healthcare."¹¹² We note that official statistics show that only 12 abortions were performed in public hospitals in Northern Ireland in 2017–18.

Doctors' duty of care to their patients

94. Witnesses giving oral evidence in Antrim on 24 January told us that they felt the law strikes the right balance. One woman told us; "the law on abortion in Northern Ireland strikes the difficult but delicate balance between the life of the unborn and the life of the mother."¹¹³

95. However, we have been concerned to hear evidence from medical professionals and official bodies that the law and guidance on abortion conflicts with doctors' duty of care towards their patients. The General Medical Council (GMC) is the regulator for doctors in the UK. It gave evidence to us in a session in Westminster on 12 February. When asked whether there is a problem with the law or whether there is a problem with the way the law is being interpreted, Dr Colin Melville, Medical Director and Director of Education and Standards at the GMC, told us:

I think the answer is both/and, as I would understand it. [...] there is uncertainty about some of the interpretation of the law because it has not been tested. There is also a question about how the law could be changed to be more appropriate for use in Northern Ireland. [...] The law as it stands is an issue and the document that referred to the report on fatal foetal abnormalities is one example where they show that there is a concern about what the actual law states.¹¹⁴

109 [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](#), March 2016

110 [Q229](#)

111 Royal College of Midwives ([ANI0349](#)), Dr Deirdre Duffy ([ANI0155](#))

112 Royal College of Obstetricians and Gynaecologists (RCOG) ([ANI0391](#))

113 [Q44](#)

114 [Q390](#)

96. We heard similar concerns from others submitting evidence.¹¹⁵ The Royal College of Obstetricians and Gynaecologists told us that the current legal situation means healthcare professionals in Northern Ireland “struggle to provide support for women requesting an abortion or safely manage any post-abortion complications.”¹¹⁶

Doctors’ duty of confidentiality to their patients

97. The GMC also discussed a tension created by section 5 of the Criminal Law Act 1967 (Northern Ireland) under which there is a legal obligation to report criminal offences to the police. The 2016 guidance says in this respect:

the health and social care professional need not give that information if they have a reasonable excuse for not doing so; the discharge of their professional duties in relation to patient confidentiality may amount to such a reasonable excuse. Professionals should be clear, however, that patient confidentiality is not a bar to reporting offences to the police.¹¹⁷

98. Professor Melville told us there is a challenge for doctors in how the duty of confidentiality operates when abortion in Northern Ireland is a crime, except in certain circumstances, and being complicit is also a crime. Referring to guidance for doctors on confidentiality,¹¹⁸ Professor Melville said:

The professional is conflicted in their duty of confidentiality to the patient on the one hand, and in the potential that their actions or inactions may be interpreted in law as contrary to what their duty of confidentiality requires. [...] The conflict lies in the difference between what the guidance sets out as their duty and what the law prescribes as requiring them to report.¹¹⁹

Information provided to women and girls by healthcare professionals

99. The evidence we have received suggests that there is confusion about what information healthcare professionals can provide to women seeking lawful abortions in other jurisdictions, including in England where women and girls from Northern Ireland can now access free abortions on the NHS. Dawn Purvis told us that there is a “fear” among many clinicians and healthcare professionals that if they have leaflets from organisations such as the FPA or Marie Stopes on British Pregnancy Advisory Service they may be breaking the law or be reported.¹²⁰

100. One woman told us about her own experiences:

no one could ever tell me I could still have a termination in England, I didn’t know this. The doctors here seem to be afraid to even give you any kind of information in case it gets linked back to them, that they had helped you have a termination.¹²¹

115 Dr Deirdre Duffy (ANI0155)

116 Royal College of Obstetricians and Gynaecologists (RCOG) (ANI0391)

117 [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](#), March 2016

118 [Confidentiality: good practice in handling patient information](#), General Medical Council, 2017

119 [Q340](#)

120 [Q304](#)

121 [Q121](#)

This witness told us that she had to use the internet to search for a private clinic in England but when she called them was told it was too late because the procedure had to be carried out before 24 weeks. She said, “I didn’t know that I could have had a termination. In fact, I didn’t find that out until six months after my daughter was stillborn. I was 24 weeks on that day, or 23 weeks and six days, and [Name] was stillborn at 34 weeks and five days.”¹²² The witness described the impact this process had on her:

So I had almost 15 weeks in this pure hell. It was just torture. Every day I wondered, “Is this going to be the day?” and I would wake up and you know the first few seconds in the morning, before you are actually really awake, and you don’t remember, and then it hits you and it just feels like this horrible weight on your chest and you think, “God, I have to do this again.”¹²³

101. Dr Paul Coulter of the Christian Medical Fellowship¹²⁴ told us that information for doctors should be provided by the Department of Health or an agency of it.¹²⁵ However, in relation to doctors signposting patients to the Family Planning Association which is funded by the Department of Health, the Chief Medical Officer said that, “There is absolutely no impediment. The guidance made this crystal clear in March 2016 and I am surprised that there are still any concerns in that respect.”¹²⁶

102. Dr McBride made the distinction between a doctor providing information to patients about lawful abortions in other jurisdictions and referring to those abortion services. He said; “it is not clear whether health professionals can formally refer into those services and whether it would be lawful to do so or whether it would be complicit with an act that is unlawful in this jurisdiction but is lawful in the other jurisdictions.”¹²⁷ Professor Melville of the GMC went further saying that “referral itself, under the current 1861 law, would [...] be considered a crime”¹²⁸ and Maura McCallion told us: “It is down to the law of aiding and abetting. [...] if there are harmful consequences in Northern Ireland then assisting could still be an offence.”¹²⁹

103. We asked the Secretary of State for Northern Ireland, the Minister for Women and Equalities and the Attorney General for Northern Ireland’s office whether they thought women understood the situations in which abortion was permitted and that they could travel to other jurisdictions. The Minister for Women and Equalities, Penny Mordaunt, told us that the cases she had heard of would indicate that “awareness is not great.” She said that:

Services that are providing information to people are limited about the ongoing discussions they can have with people because they are concerned

122 [Q122](#)

123 [Q123](#)

124 Christian Medical Fellowship represents over 5,000 doctors, 800 medical students and 400 nurses across the UK, including over 250 in Northern Ireland ([ANI0126](#))

125 [Qq306–313](#)

126 [Q287](#)

127 [Q287](#)

128 [Q390](#)

129 [Q463](#)

about retaining phone records, telephone numbers and so forth. It would certainly appear that healthcare professionals and others are nervous about what advice they can give. The situation is not ideal.¹³⁰

104. However, Maura McCallion from the office of the Attorney General for Northern Ireland said information about the availability of services outside of Northern Ireland can be given to women and they can be told they can travel. She said; “There seems to be a bit of discussion about when that information becomes assistance. That is where the law is not clear. It is a grey area and the guidance flags that up. That seems to be what the Department of Health are getting advice on at the moment.”¹³¹

Information about UK Government funding for women and girls to access free abortion in England

105. The UK Government funding for women and girls in Northern Ireland to access free abortions on the NHS in England has now been in place since June 2017 but there has been no guidance on this for doctors in Northern Ireland.¹³² The Northern Ireland Human Rights Commission told us that it had been told by the Department of Health in September 2018 that legal advice was being sought on whether it could give an information leaflet to GPs on the Westminster scheme. Mr Allamby, Chair of the Commission, said that this was an unsatisfactory circumstance and noted that: “Either this advice is taking an enormous length of time to get to them or they are not acting on whatever the advice is. [...] there is an inertia within the Department of Health in Northern Ireland that borders on paralysis about offering straightforward information.”¹³³ Secretary of State for Northern Ireland, Karen Bradley, told us that; “In terms of the guidance legislation, the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, the section 4 guidance is clear that the Department of Health can update its guidance.”¹³⁴

106. Since giving oral evidence, the Minister for Women and Equalities has provided us with further written evidence about the legality of medical professionals in Northern Ireland referring patients to the scheme providing free abortions on the NHS in England.¹³⁵ The Minister told us that the scheme was designed to be as accessible as possible, without the need for a referral from a medical professional in Northern Ireland. She stated that:

We were satisfied that this would not preclude such a professional providing information in relation to such services on the basis of assurances given to the UK Government by the Department of Justice in Northern Ireland, which in turn, relied on the public assurances given by the Director of Public Prosecutions for Northern Ireland (DPP) in 2013 in a radio interview [...]

The Minister provided us with correspondence between the DPP and Amnesty UK regarding this point.

107. The Minister goes on to say that some women in Northern Ireland have not only not been informed about the services available to them in England, but it is likely that “social

130 [Q461](#)

131 [Q461](#)

132 [Q427](#)

133 [Q427](#)

134 [Q464](#)

135 Appendix – [Letter from the Minister for Women and Equalities](#), 14 March 2019

and cultural caution about abortion rights in Northern Ireland” mean they have not been advised about circumstances in Northern Ireland where abortion provision would be lawful. The Minister says she is keen to see appropriate actions to address the ‘chilling effect’ that is so evident from our inquiry. She told us that it would be in the public interest for the DPP to put his 2017 assurances on a more formal and transparent footing and that this would constitute a ‘development’ to trigger revision and recirculation of the guidance for healthcare professionals for the purposes of guidance issued by Secretary of State for Northern Ireland under section 4 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018. The Minister also said that, “Working with the Department of Health and Social Care here in Westminster, we could consider how best to raise awareness of the travel scheme. There may, for example, be more we could do to enable relevant information to feature online.”¹³⁶

108. There can be a conflict between doctors’ duty of care to their patients and the law, for example where a doctor might consider that referring a patient to lawful abortion services in another jurisdiction is medically the best course of action but believes that the law does not allow him or her to do so.

109. There can also be a conflict between doctors’ duty of confidentiality to their patients and the law because of section 5 of the Criminal Law Act 1967 (Northern Ireland) which creates an obligation to report a criminal offence.

110. The UK Government introduced funding for women and girls in Northern Ireland to access abortion provision in England in 2017. Doctors have still not been provided with information from the Department of Health NI about advising patients about the scheme and patients are not getting the information they need.

111. Despite the requirement for ministers to ensure that any new policy is lawful, the Chief Medical Officer told us that he thinks there are questions about the legality of doctors in Northern Ireland making referrals to this scheme.

112. The Government Equalities Office should immediately publish to us, as the body that scrutinises its spending, advice on the legality of making referrals to the funded scheme, following which the Department of Health for Northern Ireland should reissue guidance for healthcare professionals on abortion to make it clear that referring patients to the funded scheme is not unlawful.

Information for parents about the remains of a foetus or unborn child

113. We have heard about the often tragic situations where women and girls need to make decisions about the remains of the foetus or unborn child but are not provided with the information they need, particularly where they have travelled outside of Northern Ireland to access an abortion. The remains may be wanted so that the parents can give the foetus or unborn child a funeral or for the purposes of medical testing where there has been a foetal abnormality. In the case of victims and survivors of rape and incest, the remains may be required as evidence in any criminal proceedings.

114. Chair of the Northern Ireland Human Rights Commission, Les Allamby, told us that he was very mindful of the practical difficulties that women face and that this had an

impact on professionals in Northern Ireland. In particular he referred to the experience of Dr Caroline Gannon, former head of paediatric pathology in Northern Ireland.¹³⁷ Dr Gannon is reported as having resigned in 2016 over interventions by the Attorney General for Northern Ireland on abortion laws surrounding fatal foetal abnormality and that “the final straw was having to advise a couple to use a picnic cooler bag to return their baby’s remains to NI following an abortion in England.” Dr Gannon is reported as saying that, “I just felt I was acting unethically by taking part in this system where parents are denied a voice in what happens to their baby.”¹³⁸

115. Women and girls who travel outside of Northern Ireland to access an abortion do not have enough information about their options for bringing the remains of the foetus or unborn child home for personal reasons, medical purposes or as evidence in the event of any criminal proceedings.

116. There should be specific information provided to women and girls about their rights to bring home the remains of the foetus or unborn child for personal reasons or for medical purposes or in the event of criminal proceedings.

117. The Border Agency must develop clear protocols for ensuring that there is a clear pathway for families who are travelling across borders with foetal remains which provides them with dignity.

137 [Q427](#)

138 [Doctor quits over NI attorney general’s abortion interventions](#), 14 September 2016, BBC website, accessed April 2019

7 Marginalised women and girls

118. All women and girls from Northern Ireland can now access free abortion provision in England funded by the UK Government and the British Pregnancy Advisory Service is funded to manage a central booking service to this provision.¹³⁹ Women and girls on low income can apply for means tested accommodation and travel costs to access free abortion provision in England but they may still lose pay and childcare costs. We have been greatly concerned to hear evidence about the impact of the law on abortion in Northern Ireland on marginalised groups of women and girls and that their access to the UK Government funded scheme for provision in England is not equitable.¹⁴⁰

119. We received evidence from women and girls who were too ill to travel and would not be able to access this provision.¹⁴¹ Researchers and support agencies told us that women who are being abused or coerced by their partner may not be able to explain their lengthy absence or risk violence or abuse if they do. Abortion Support Network provides information for vulnerable women and girls in Northern Ireland to travel to access abortion in England or elsewhere. It told us service users include; “Clients in abusive relationships whose partners hide or destroy [...] all photo ID to prevent them from travelling to obtain abortion care”.¹⁴² Goretti Horgan made the contrast in her oral evidence between the small number of abortions performed lawfully in Northern Ireland in recent statistics (12), compared with approximately 900 women who travelled to access an abortion during the same period. She said; “While those women were able to travel and avail themselves of the free access, and that is a welcome form of remedy for some, we have to remember the position of women unable to travel, and that includes women in particularly vulnerable situations, such as domestic violence, women who do not have confirmed immigration status, or women who simply have other children and do not have childcare and therefore cannot travel.”¹⁴³

120. We have also received evidence from the Women’s Resource and Development Agency that women who are subject to immigration control may face additional barriers if they need to travel to access abortion services. This includes travelling outside of the UK, as well as within the UK (e.g. for undocumented migrant women and girls), and include financial barriers, reporting requirements to the Home Office and the need to be registered with a GP, and additional language barriers of accessing quality accurate information.¹⁴⁴

121. Women and girls who are pregnant as a result of rape or incest, and professionals who become aware of this, may face prosecution under Section 5 of the Criminal Law Act 1967 (Northern Ireland) if they have not reported the offence to the police.

122. Discussing the inequitable access for different groups of women and girls to the funded scheme and whether the Government Equalities Office (GEO) can communicate directly with women and professionals in Northern Ireland, the Minister for Women and Equalities said:

139 [Central booking system for NI women seeking an abortion in England](#), March 2018

140 Abortion Support Network ([ANI0369](#))

141 Alliance for Choice ([ANI0370](#)), Amnesty International UK and FPA ([ANI0008](#))

142 Abortion Support Network ([ANI0369](#))

143 [Q159](#)

144 Women’s Resource and Development Agency ([ANI0403](#))

the advice that I have been given on this is that I do not have the authority to do that. We can, through central communications, through the GEO, raise the awareness of a service. In terms of issuing guidance and giving confidence to healthcare professionals, or indeed tackling the issues that exist around those advisory and support services being able to offer the kinds of services they would like to be able to but feel that they cannot, because they do not wish to retain people's information or other things, I do not have the authority to change that.¹⁴⁵

123. The UK Government's funding for abortion provision in England has been welcomed by many but it is not accessed equally by different groups of women and girls:

- **women and girls on low incomes can apply for means tested accommodation and travel costs, but they may still lose pay and have to cover childcare costs;**
- **women and girls who are too ill to travel by plane or ferry will not be able to access this provision;**
- **women and girls who are being abused or coerced by their partner may not be able to explain their lengthy absence or risk violence or abuse if they do; and**
- **women with insecure immigration status and without travel documentation or those who are not registered with a GP cannot access the scheme.**

124. Women and girls who are pregnant as a result of rape or incest, and professionals who become aware of this, may face prosecution under Section 5 of the Criminal Law Act 1967 (Northern Ireland) if they have not reported the offence to the police.

125. The Government Equalities Office should carry out an impact assessment, or publish any that have been carried out, to ascertain whether the policy of funding abortion provision in England can be accessed equitably by different groups of women and girls in Northern Ireland.

126. The Government Equalities Office should work with community organisations supporting migrant women and girls, victims of violence and other marginalised groups to develop an information campaign to explain the funding of abortion provision, in particular to marginalised groups of women and girls.¹⁴⁶

127. The Government Equalities Office should work with the Home Office to develop pathways for migrant women to travel to England to access the scheme.

128. The Attorney General for Northern Ireland should issue human rights guidance on Section 5 of the Criminal Law Act 1967 (Northern Ireland) similar to the guidance on social security to state that it will rarely be in the public interest to prosecute survivors of rape and incest, and professionals treating them, who have not reported the offence to the police.

145 [Q512](#)

146 Government Equalities Office has a commitment to supporting isolated and marginalised women, see for example [Mordaunt launches fund to help isolated and marginalised women return to work](#), February 2019

8 Fatal foetal abnormality

The Working Group on Fatal Fetal Abnormality

129. We have heard evidence about the law in Northern Ireland prohibiting abortion in cases where there has been a diagnosis of fatal foetal abnormality. The Working Group on Fatal Fetal Abnormality said in its report that “Fatal fetal abnormality is an acceptable description of a diagnosis made, usually around 20 weeks gestation, of a fetal abnormality which will result in death in utero, at birth or shortly after birth” and that “Modern diagnostic resources allow for very accurate information to be provided to women regarding the condition of the fetus and its viability.”¹⁴⁷

130. We took evidence from a woman in Antrim who told us that she had an early diagnosis of fatal foetal abnormality and if the law had been different, “you could very easily just go through with the abortion of a child with severe abnormalities.” She said this would be the case for vulnerable women who do not have the support that she had. However, at a later scan, the diagnosis changed and she now has a healthy daughter. She said; “I just hope that the law continues the way it is here in Northern Ireland because, like I said, women are very vulnerable and having this option, if it was different, for some women it would be easy to think about it.”¹⁴⁸

131. One woman told us in a private session in Derry/Londonderry that at the 12-week scan she was told that there was a suspected diagnosis of anencephaly. Her consultant was on annual leave so she had to wait for a “horrendous” week.¹⁴⁹ This witness went on to say that she knew that it was not an option to continue with the pregnancy, in part due to the impact on her other child; “the idea of having to continue, knowing that my little girl had already started talking about the baby in mummy’s tummy, to have to then put her through another six months of pregnancy and then try to explain to a two-year-old what it means, that the baby in mummy’s tummy is not going to be her little brother or sister.”¹⁵⁰

132. This woman told us that she had a family history of very severe mental health issues and; “the idea of having to get up every day and go to work, as I am the main earner in my family, knowing what the implications for that were if I was not able to go to work every day” was another concern. Whilst waiting for the diagnosis to be confirmed, she had to make 27 separate phone calls to different hospitals and to BPAS, which has a specific phone line. She said:

Eventually, through an article in The Irish Times [...] I discovered [...] somewhere that I could go to be cared for, through an article on a Google search, because people here were not able to tell me, even though one of the conversations I had had with my team at [the Hospital] was they were almost expecting me to be grateful that they were able to even have a conversation about termination because previously they would not even have been able to have a conversation. For them, it had been a change. They were able to

147 [Report of the Working Group on Fatal Fetal Abnormality](#), Department of Justice and Department of Health, 11 October 2016

148 [Q30](#)

149 [Q124](#)

150 [Q125](#)

even talk about it, but for me, in that situation, to be expected to be grateful to be able to have a conversation when they were not able to help me is just cruel.¹⁵¹

133. During the passage of the Justice (No.2) Bill through the Northern Ireland Assembly in 2016 amendments to legalise abortion in cases of fatal foetal abnormality and where the pregnancy was the result of a sexual crime were rejected. Following this, the Ministers for Health and Justice agreed to establish the Working Group on Fatal Fetal Abnormality to consider “healthcare and the law in cases of fatal fetal abnormality (FFA)”.¹⁵² Membership of the group included; the Chief Medical Officer (chair), the Chief Nursing Officer, the Chief Social Services Officer, the Department of Health, the Departmental Solicitor’s Office and the Department of Justice.

134. The report of the Working Group was presented to Ministers in October 2016 but not published until April 2018. It concluded that:

- some improvements can be made to the care and support of women with a fatal fetal abnormality diagnosis through the proposals to improve the standard of care under the existing legal framework;
- there is a substantial body of evidence to underwrite the need for legislative change in relation to termination of pregnancy for fatal fetal abnormality;
- health professionals have identified a number of scenarios where they consider their duty of care to patients is being compromised; and
- there are women who face risks to their physical health, mental health including acute trauma and distress and possible financial hardship, because they cannot access the health service they require in this jurisdiction.¹⁵³

135. 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.¹⁵⁴

Shortly after the report was finalised the Northern Ireland Assembly ceased functioning.

151 [Q127](#)

152 [Report of the Working Group on Fatal Fetal Abnormality](#), Department of Justice and Department of Health, 11 October 2016

153 [Report of the Working Group on Fatal Fetal Abnormality](#), Department of Justice and Department of Health, 11 October 2016

154 [Report of the Working Group on Fatal Fetal Abnormality](#), Department of Justice and Department of Health, 11 October 2016

136. In his oral evidence, the Chief Medical Officer for Northern Ireland, Dr Michael McBride, told us that he has a professional responsibility to advise Ministers in relation to the circumstances that doctors find themselves in in Northern Ireland, and:

the fact that they do not feel that they can fulfil their duty of care or provide adequate care to meet the health needs of women with a diagnosis of fatal foetal abnormality who have decided that they cannot continue with a pregnancy. It is a very difficult set of circumstances that health professionals are being put in and I think it is the responsibility of those who legislate in any jurisdiction to ensure that that situation is addressed.¹⁵⁵

137. Despite the clear recommendations of the Working Group, policy has not changed in two years since there was last a Minister in post. The Head of Criminal Policy in the Department of Justice (NI), Amanda Patterson, told us; “The position remains that we have to stay with that policy. We were a part of the interdepartmental group that looked at fatal foetal abnormality. The policy at that point was a recommendation that the law should be changed, but nothing has happened since then.”¹⁵⁶

138. Since the Working Group reported, the Committee on the Elimination of Discrimination Against Women found that the UK is responsible for ‘grave violations’ of rights because the criminal law “compels women in cases of severe foetal impairment, including FFA, [and victims of rape and incest] to carry pregnancies to full term, thereby subjecting them to severe physical and mental anguish, constituting gender-based violence against women.”¹⁵⁷

139. The Supreme Court found there to be a violation of rights under Article 8 of the European Convention on Human Rights in cases of fatal foetal abnormality. Lady Hale in her judgment said:

there can be no community interest in obliging the woman to carry the pregnancy to term if she does not wish to do so. There is no viable life to protect. [...] Travelling to Great Britain is even more difficult in such cases, as the problem is often detected comparatively late in the pregnancy, at 18 to 20 weeks, which leaves very little time to make the arrangements and there may be no counselling offered on what the options are. If the woman does manage to travel, not only will she have all the trauma and expense associated with that, but also serious problems in arranging the repatriation of the foetal remains.¹⁵⁸

140. The Minister for Women and Equalities in the UK Government, Penny Mordaunt, told us of her concern about the experience of Denise Phelan who had been refused an abortion in Northern Ireland following a diagnosis of fatal foetal abnormality. The Minister told us that:

155 [Q232](#)

156 [Q219](#)

157 [Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of Discrimination Against Women, 2018](#)

158 [In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review \(Northern Ireland\) Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 \(Abortion\) \(Northern Ireland\), \[2018\] UKSC 27](#)

the law as it stands may have made provision—it could have made provision—potentially for her, but because of a combination of the chilling effect, because she then became too ill to travel and was not offered those services in Northern Ireland, she was faced with a situation where her baby died. She was then left with a period of five days before she was able to access the termination, during which time that foetus decomposed inside her, putting her own life in danger. It is absolutely clear that, even where you have the law allowing for the services that an individual needs, that is not happening and women’s lives are being put at risk.¹⁵⁹

141. In relation to the Working Group’s recommendations, Maura McCallion of the Attorney General for Northern Ireland’s office told us in her evidence that the Attorney General has a concern about legislating for access to abortion in cases of fatal foetal abnormality on the basis of disability.¹⁶⁰ She noted that the UN Committee on the Rights of Persons with Disabilities recommends not providing for selective abortion in relation to FFA. In its Concluding Observations on the UK’s compliance with the Convention on the Rights of Persons with Disabilities in 2017, the Committee, which oversees the Convention, said that it was concerned about “perceptions in society that stigmatize persons with disabilities as living a life of less value than that of others and about the termination of pregnancy at any stage on the basis of fetal impairment.” It recommended to the UK that it:

amend its abortion law accordingly. Women’s rights to reproductive and sexual autonomy should be respected without legalizing selective abortion on the ground of fetal deficiency.¹⁶¹

142. There has been no follow-up on the clear recommendations of the Working Group on Fatal Foetal Abnormality which was commissioned by two Northern Ireland Ministers in 2016. The Working Group’s recommendations included a change in the law to permit abortion when there has been a diagnosis of fatal foetal abnormality and it set out a range of legal mechanisms for achieving this.

143. The Chief Medical Officer for Northern Ireland, who chaired the Working Group, told us that doctors said they were not able to fulfil their duty of care towards their patients in the cases of pregnancies where there had been a diagnosis of fatal foetal anomaly. We accept the view of the Chief Medical Officer for Northern Ireland that guidance cannot remedy this and a change in the law is required.

144. The CEDAW Committee and the Supreme Court identified breaches of human rights obligations in cases where there has been a diagnosis of fatal foetal abnormality.

145. It is our view that nothing should stand in the way of a doctor’s duty of care to their patient and the conflict identified by the Working Group on Fatal Foetal Abnormality must be addressed. The Northern Ireland Executive should act to implement the recommendations of the Working Group which was commissioned by Northern Ireland Ministers, including legislating to permit abortion in these circumstances. In the absence

159 [Q447](#)

160 [Q469](#)

161 [Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, Committee on the Rights of Persons with Disabilities, October 2017](#)

of the Northern Ireland Executive, the UK Government must legislate as a matter of urgency to allow for access to abortion where there has been a diagnosis of fatal foetal abnormality.

9 Postcode lottery of provision

146. We have heard that women and girls face a ‘postcode lottery’ when accessing lawful abortion provision in public hospitals in Northern Ireland. Dawn Purvis told us that; “There is a real inconsistency across healthcare professionals and I would say GPs in particular. With obstetricians and gynaecologists, it is based on who you know and not what you know. The pathway is not clear.”¹⁶²

147. We have also been told that this inconsistency extends to the provision of information about lawful abortion provision in other jurisdictions. One woman told us that she was initially told by her consultant that she would be able to access a legal abortion in Northern Ireland. When she was sent to a registrar at a different hospital in a different trust the next day, having spent the whole night discussing it with her husband:

the registrar [...] looked at me and she said, “That’s just not going to happen.” I said, “But the consultant we saw yesterday said she would sign off on it”. [...] To come to that decision, it is not a relief; it is what is the least worst option here, so that is what we had decided, but she said to me, “That is just not going to happen,” so flippantly.¹⁶³

148. Dr Fiona Bloomer of Ulster University told us that the work she has done with health professional bodies has shown a “chilling effect of the law and how that impacts on their practice, and also the unevenness of how polices are rolled out and how that impacts on them as professionals, and makes them very reluctant to even mention abortion.”¹⁶⁴

Lack of aftercare

149. The Royal College of Midwives (RCM) told us in the oral evidence session in Belfast on 25 January that their members are very unsure about how to react when women who may have travelled to have an abortion present at a maternity unit bleeding. Karen Murray of the RCM told us; “If a woman presents and she is bleeding, they are very uncertain about asking questions because they are uncertain about the answers they are going to get and how they would deal with those situations.”¹⁶⁵ Ms Murray said there needs to be a pathway following a termination outside of Northern Ireland that allows her to return with a package of care.¹⁶⁶

150. We also heard evidence that women who access abortion pills online fear prosecution and so are reluctant to seek medical care if needed. Grainne Teggart of Amnesty UK said in her view; “not only is the law not working, but it is extremely harmful to women who need this form of healthcare.”¹⁶⁷ Dr Goretti Horgan of ARK agreed saying; “Even the very limited law that there is, is not working [...] that means that women either travel or they risk prosecution. Also, as our research is discovering, they are even risking not going to the hospital when they think maybe they ought to go to the hospital if they use the pills.”¹⁶⁸

162 [Q302](#)

163 [Q121](#)

164 [Q159](#)

165 [Q302](#)

166 [Q303](#)

167 [Q159](#)

168 [Q159](#)

Inconsistency in the provision of services

151. The Chief Medical Officer for Northern Ireland outlined the regulatory framework for abortion in Northern Ireland in which health trusts are regulated by the Department of Health (NI). He said that there is a statutory duty on trusts to ensure that the services under their duty of quality are consistent. He went on to say that; “If those inconsistencies or differences were drawn to our attention, we would consider the most appropriate action to take.”¹⁶⁹

152. We took evidence from the General Medical Council (GMC), the regulator for doctors in the UK which sets the standards that doctors need to follow and decides whether doctors are qualified to practice. Despite concerns about a lower standard of care for women and girls seeking abortion provision in Northern Ireland, the GMC told us that their database going back to 2006 showed that there had been no complaints in relation to this in Northern Ireland.¹⁷⁰

153. The GMC told us that it contributed to the development of the 2016 guidance and that it is a source of “authoritative national guidance.” The GMC also said that there was a case for doing more to raise awareness of this guidance as a helpful resource. It said that GMC Liaison Advisers in Northern Ireland will make reference to the 2016 guidance in all relevant ‘GMC guidance workshops’ with doctors and its Northern Ireland team will explore patient awareness of the guidance during regular catch-ups with the Patient and Client Council.¹⁷¹

154. Giving oral evidence to the inquiry, Minister for Women and Equalities, Penny Mordaunt, said that there is a question for the UK Government when faced with this kind of situation. She said:

If there were a situation where you had, in a devolved nation, a hospital failing or some other kind of poor care being provided to an individual, there would be systems, healthcare oversight, investigatory powers and all of that, which would kick in. This is exacerbated because it is not regulated as a healthcare issue—it is regulated as a criminal issue—so those things do not kick in.¹⁷²

155. Women and girls in Northern Ireland face a postcode lottery of provision when it comes to access to abortion even within the narrow scope of the existing law. This disparity of provision between hospital trusts, and even within the same hospital, is driven, in part, by the draft 2013 guidance consultation and the 2016 issued guidance. Women and girls on low incomes outside of Belfast are likely to be particularly disadvantaged.

156. Where women and girls in Northern Ireland purchase abortion pills online and subsequently present at hospital bleeding, medical professionals may not always seek full information from them for fear of prosecution. The GMC says that there can be a conflict between doctors’ duty of confidentiality and the law.

169 [Q271](#)

170 [Qq362–367](#)

171 General Medical Council ([ANI0688](#))

172 [Q440](#)

157. The Attorney General for Northern Ireland should issue human rights guidance on Section 5 of the Criminal Law Act and doctors' duty of confidentiality to their patients.

158. In the absence of a separate regulatory body overseeing the provision of abortion services, the Department of Health acting as a regulatory body should have a duty to regularly review consistency of services between trusts, training of the profession and facilities so that all women and girls have the same access to treatment within the law.

159. The GMC should run a campaign to raise awareness about the complaints system where doctors' standards fall below an expected level in order to increase public confidence in doctors.

10 Our conclusions and recommendations

160. Our inquiry has focused on specific issues relating to human rights and the international obligations of the UK Government in relation to women and girls in Northern Ireland. The wider issue of the law on abortion needs to be considered as part of a wider debate on the law in other parts of the UK which is beyond the remit of this Committee. We make the following conclusions and recommendations:

Devolution in Northern Ireland

1. We respect the principle of devolution and believe it is rightly the responsibility of the Northern Ireland Assembly to legislate on matters relating to abortion law. One of the consequences of devolution is that decisions may be taken which both differ from those taken in the rest of the United Kingdom and with which people in the rest of the United Kingdom may disagree. However, there are specific obligations for the Northern Ireland Assembly not to pass Acts that are contrary to the UK's international obligations. Furthermore, devolution does not remove the UK Government's own responsibilities to comply with its international obligations and internal laws cannot be used to justify a failure to comply with human rights standards. (Paragraph 51)

Responsibility under international human rights obligations

2. The UN Committee on the Elimination of Discrimination Against Women covered a wide range of issues in its report including law, access to services, education and sexual and reproductive rights. The UN Committee found that there were 'grave' violations in relation to cases of severe foetal impairment, including FFA, and rape or incest, and 'systematic' violations in the criminalisation of abortion and highly restrictive access which compels women to a) carry pregnancies to full term; b) travel outside of Northern Ireland to undergo legal abortions or c) self-administer with abortion pills. (Paragraph 64)
3. *The UK Government needs to set out a clear framework and timeline to address the breaches of women's rights in Northern Ireland under the CEDAW Convention that have been identified by the UN Committee on the Elimination of Discrimination Against Women if there is no government in Northern Ireland to take this action.* (Paragraph 65)
4. The European Convention on Human Rights (ECHR) provides a right to privacy and family life under Article 8. This has been incorporated into domestic law in the Human Rights Act 1998 and the UK Supreme Court identified that there had been a breach of women's Article 8 rights in relation to cases of fatal foetal abnormality, rape and incest. The Court stated that the Northern Ireland Human Rights Commission which had brought the case did not have standing so it did not make a declaration of incompatibility. Nevertheless, this is a strong statement by the highest court in the land that it has identified that the current prohibition of abortion in Northern Ireland breaches an individual's ECHR human rights in these cases. (Paragraph 77)

5. It is a serious error that the Northern Ireland Human Rights Commission does not have legal standing to take human rights cases to court, without the need for a victim to take the case. The situation of a woman or girl who became pregnant as a result of rape or incest having to pursue a court case highlights precisely why it should not depend on an individual victim to take a case to court. This issue of the Northern Ireland Human Rights Commission's standing needs rectifying urgently so that victims do not have to take a case. (Paragraph 82)
6. *The UK Government must rectify the error in the Northern Ireland Human Rights Commission's standing as a matter of urgency. We welcome the Secretary of State for Northern Ireland's commitment to rectifying this matter but the Government's response to this report must set out the timeline for doing so within the next six months.* (Paragraph 83)

Information for healthcare professionals and women and girls

7. There can be a conflict between doctors' duty of care to their patients and the law, for example where a doctor might consider that referring a patient to lawful abortion services in another jurisdiction is medically the best course of action but believes that the law does not allow him or her to do so. (Paragraph 108)
8. There can also be a conflict between doctors' duty of confidentiality to their patients and the law because of section 5 of the Criminal Law Act 1967 (Northern Ireland) which creates an obligation to report a criminal offence. (Paragraph 109)
9. The UK Government introduced funding for women and girls in Northern Ireland to access abortion provision in England in 2017. Doctors have still not been provided with information from the Department of Health NI about advising patients about the scheme and patients are not getting the information they need. (Paragraph 110)
10. Despite the requirement for ministers to ensure that any new policy is lawful, the Chief Medical Officer told us that he thinks there are questions about the legality of doctors in Northern Ireland making referrals to this scheme. (Paragraph 111)
11. *The Government Equalities Office should immediately publish to us, as the body that scrutinises its spending, advice on the legality of making referrals to the funded scheme, following which the Department of Health for Northern Ireland should reissue guidance for healthcare professionals on abortion to make it clear that referring patients to the funded scheme is not unlawful.* (Paragraph 112)
12. Women and girls who travel outside of Northern Ireland to access an abortion do not have enough information about their options for bringing the remains of the foetus or unborn child home for personal reasons, medical purposes or as evidence in the event of any criminal proceedings. (Paragraph 115)
13. *There should be specific information provided to women and girls about their rights to bring home the remains of the foetus or unborn child for personal reasons or for medical purposes or in the event of criminal proceedings.* (Paragraph 116)

14. *The Border Agency must develop clear protocols for ensuring that there is a clear pathway for families who are travelling across borders with foetal remains which provides them with dignity.* (Paragraph 117)

Marginalised women and girls

15. The UK Government's funding for abortion provision in England has been welcomed by many but it is not accessed equally by different groups of women and girls:
- women and girls on low incomes can apply for means tested accommodation and travel costs, but they may still lose pay and have to cover childcare costs;
 - women and girls who are too ill to travel by plane or ferry will not be able to access this provision;
 - women and girls who are being abused or coerced by their partner may not be able to explain their lengthy absence or risk violence or abuse if they do; and
 - women with insecure immigration status and without travel documentation or those who are not registered with a GP cannot access the scheme. (Paragraph 123)
16. Women and girls who are pregnant as a result of rape or incest, and professionals who become aware of this, may face prosecution under Section 5 of the Criminal Law Act 1967 (Northern Ireland) if they have not reported the offence to the police. (Paragraph 124)
17. *The Government Equalities Office should carry out an impact assessment, or publish any that have been carried out, to ascertain whether the policy of funding abortion provision in England can be accessed equitably by different groups of women and girls in Northern Ireland.* (Paragraph 125)
18. *The Government Equalities Office should work with community organisations supporting migrant women and girls, victims of violence and other marginalised groups to develop an information campaign to explain the funding of abortion provision, in particular to marginalised groups of women and girls.* (Paragraph 126)
19. *The Government Equalities Office should work with the Home Office to develop pathways for migrant women to travel to England to access the scheme.* (Paragraph 127)
20. *The Attorney General for Northern Ireland should issue human rights guidance on Section 5 of the Criminal Law Act 1967 (Northern Ireland) similar to the guidance on social security to state that it will rarely be in the public interest to prosecute survivors of rape and incest, and professionals treating them, who have not reported the offence to the police.* (Paragraph 128)

Fatal foetal abnormality

21. There has been no follow-up on the clear recommendations of the Working Group on Fatal Fetal Abnormality which was commissioned by two Northern Ireland

Ministers in 2016. The Working Group's recommendations included a change in the law to permit abortion when there has been a diagnosis of fatal foetal abnormality and it set out a range of legal mechanisms for achieving this. (Paragraph 142)

22. The Chief Medical Officer for Northern Ireland, who chaired the Working Group, told us that doctors said they were not able to fulfil their duty of care towards their patients in the cases of pregnancies where there had been a diagnosis of fatal foetal anomaly. We accept the view of the Chief Medical Officer for Northern Ireland that guidance cannot remedy this and a change in the law is required. (Paragraph 143)
23. The CEDAW Committee and the Supreme Court identified breaches of human rights obligations in cases where there has been a diagnosis of fatal foetal abnormality. (Paragraph 144)
24. *It is our view that nothing should stand in the way of a doctor's duty of care to their patient and the conflict identified by the Working Group on Fatal Fetal Abnormality must be addressed. The Northern Ireland Executive should act to implement the recommendations of the Working Group which was commissioned by Northern Ireland Ministers, including legislating to permit abortion in these circumstances. In the absence of the Northern Ireland Executive, the UK Government must legislate as a matter of urgency to allow for access to abortion where there has been a diagnosis of fatal foetal abnormality.* (Paragraph 145)

Postcode lottery of provision

25. Women and girls in Northern Ireland face a postcode lottery of provision when it comes to access to abortion even within the narrow scope of the existing law. This disparity of provision between hospital trusts, and even within the same hospital, is driven, in part, by the draft 2013 guidance consultation and the 2016 issued guidance. Women and girls on low incomes outside of Belfast are likely to be particularly disadvantaged. (Paragraph 155)
26. Where women and girls in Northern Ireland purchase abortion pills online and subsequently present at hospital bleeding, medical professionals may not always seek full information from them for fear of prosecution. The GMC says that there can be a conflict between doctors' duty of confidentiality and the law. (Paragraph 156)
27. *The Attorney General for Northern Ireland should issue human rights guidance on Section 5 of the Criminal Law Act and doctors' duty of confidentiality to their patients.* (Paragraph 157)
28. *In the absence of a separate regulatory body overseeing the provision of abortion services, the Department of Health acting as a regulatory body should have a duty to regularly review consistency of services between trusts, training of the profession and facilities so that all women and girls have the same access to treatment within the law.* (Paragraph 158)
29. *The GMC should run a campaign to raise awareness about the complaints system where doctors' standards fall below an expected level in order to increase public confidence in doctors.* (Paragraph 159)

Appendix

Letter to the Rt Hon Maria Miller MP, Chair of the Committee, dated 14 March 2019

Dear Maria,

Thank you for your letter of 7 March, asking about the legality of medical professionals in Northern Ireland referring patients to the scheme that provides funding for abortion services in England for women travelling from Northern Ireland.

You will recall that the UK Government's decision to set up the scheme in 2017 was taken after the Supreme Court's judgement on the A&B case. This made clear that the UK Government had legal powers to fund abortion services in England for women from Northern Ireland.

As you know, in June 2017 the UK Government decided to make use of those powers and, further, to make provision for travel costs in cases of financial hardship to enable women who would not otherwise have afforded it to access the funded services in England. The scheme was designed to be as accessible as possible, so women could make use of the services without the need for any kind of referral from medical professionals in Northern Ireland. We were satisfied that this would not preclude such a professional providing information in relation to such services on the basis of assurances given to the UK Government by the Department of Justice in Northern Ireland, which in turn, relied on the public assurances given by the Director of Public Prosecutions for Northern Ireland (DPP) in 2013 in a radio interview (the Nolan Show, 17 October 2013):

"It is difficult to see circumstances at all in which anyone who gives advice or assistance to someone going to England to do something which is perfectly lawful there falling foul of the criminal law in this jurisdiction. I know of no criminal offence which would be committed in those circumstances".

These assurances were reiterated in 2017, with the DPP specifically stating in correspondence that he did *"not see an issue of criminal liability arising in the context of NHS staff advising or informing patients of the availability of abortion services in England and Wales. The question of 'advocating or promoting' the take-up of this service is a matter of DHSS policy and not a matter for the criminal law as there is no such offence in the law of Northern Ireland"*. I attach copies of the relevant correspondence.

However, I am clear that evidence to your inquiry from multiple sources paints a different picture as to the perception of potential criminal liability in this area – this includes evidence from the Chief Medical Officer of Northern Ireland (CMO NI), bodies representing medical professionals and, most crucially, testimony by women directly affected.

Some women have not only not been informed about the services available to them in England, it also seems likely that social and cultural caution about abortion rights in Northern Ireland have led to them not being advised about the potential services available to them within Northern Ireland where there are risks to the mother's own life and well-being.

I am keen to see appropriate actions take place to address the ‘chilling effect’ that is so evident from the testimony your Committee has received. In particular:

Given the widespread perception of the risk of criminal liability potentially arising for medical professionals providing information on the scheme to women in Northern Ireland, it would clearly be in the public interest for the DPP to put his 2017 assurances on a more formal and transparent footing. Ultimately, the DPP is the independent body that would take any decisions about potential prosecutions. The DPP giving more prominence to its position on this issue is probably the single most useful action that can be taken with immediate effect and that has a chance of cutting through the uncertainties and doubts in an authoritative way. It is interesting that, back in the 2013 interview, the DPP said *“It could be that my views are reflected in the Minister’s guidance or it may be considered necessary for us to put out a separate document”*. I would suggest that a separate document or statement from the DPP has indeed become necessary.

I am mindful that it took several years for the NI Department of Health, Social Services and Public Safety guidance to be finalised in 2016, due to legal challenges along the way – a delay which meant that the more hard line 2013 draft continued to hold sway, creating the culture of caution that we are still seeing the consequences of. I note, however, that guidance issued by Secretary of State for Northern Ireland, Karen Bradley under section 4 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 states, at para 8.1, that “in light of any relevant emerging legal judgments or other developments, as appropriate, the Department of Health should consider whether its Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland should be reviewed”. I would think that action by the NI DPP to reiterate his 2017 assurance would certainly qualify as a ‘development’ that should trigger the revision and recirculation of this crucial guidance.

Working with the Department of Health and Social Care here in Westminster, we could consider how best to raise awareness of the travel scheme. There may, for example, be more we could do to enable relevant information to feature online.

I am very grateful to you and the Committee for the important work you are doing in this area. I hope that these immediate and sensible steps will be taken.

I am copying this letter to Matthew Hancock and Karen Bradley.

Rt Hon Penny Mordaunt MP
Minister for Women and Equalities

Letter to Barra McGrory QC, Director of Public Prosecutions, dated 23 August 2017

Dear Mr McGrory,

Further to my previous correspondence and your letter of 15th August 2017, I write seeking your response and clarification to the following. The recent decision of the Rt Hon Justine Greening MP, Minister for Equalities in the UK Equalities Office to provide free abortions for Northern Irish women in England and Wales highlights the need, and raises the likelihood, that women in Northern Ireland will require and ask Northern

Ireland NHS medical professionals to refer them directly to NHS hospitals and clinics in the rest of the UK. In those circumstances, is it your view that there would be any risk of criminal prosecution for NHS employees in Northern Ireland taking this step? Amnesty International is of the view that no criminal liability would attach to this. Do you agree?

In addition, Amnesty International is of the view that the 2016 Guidance on Termination of Pregnancy issued by the Department of Health, Social Services and Public Safety is now out of date and requires updating to reflect the new circumstances created by the UK Government Equalities Office? Is it your view that this should be reviewed as a consequence of the recent UK policy change?

The final sentence in paragraph 5.13 of the 2016 DHSSPS guidance states “The courts in Northern Ireland have never considered the issue of whether it would be lawful to ‘advocate or promote’ in Northern Ireland the termination of a pregnancy in another jurisdiction (in circumstances where it would not be lawful if carried out in Northern Ireland but would be lawful if carried out in that other jurisdiction).” Is it your view that a woman requesting and / or an NHS medical professional referring a woman in Northern Ireland to another part of the UK for an abortion, would fall short of ‘advocating and promoting’?

Grainne Teggart
Campaign Manager
Amnesty International UK, Northern Ireland Office

Letter to Grainne Teggart, Campaign Manager, Amnesty International, Northern Ireland Office, dated 25 August 2017

Dear Ms Teggart

Thank you for your letter of 23rd August.

While every case must be considered individually having regard to its own facts and circumstances, I can see no risk of criminal prosecution for NHS employees arising from the circumstances you have described in the first paragraph of your letter.

I also do not see the issue of criminal liability arising in the context of NHS staff advising or informing patients of the availability of abortion services in England and Wales.

The question of “advocating or promoting” the take up of this service is a matter of DHSS policy and not a matter for the criminal law as there is no such offence in the law of Northern Ireland.

I trust this clarifies the situation.

Barra McGrory
Director of Public Prosecutions

Formal minutes

Wednesday 3 April 2019

Members present:

Mrs Maria Miller, in the Chair

| | |
|------------------|---------------|
| Tonia Antoniazzi | Vicky Ford |
| Sarah Champion | Eddie Hughes |
| Philip Davies | Jess Phillips |

Draft Report (*Abortion law in Northern Ireland*), proposed by the Chair, brought up and read.

Draft Report (*Abortion law in Northern Ireland*), proposed by Eddie Hughes, brought up and read, as follows:

The Devolution Settlement

1. Abortion is a devolved issue in Northern Ireland. Westminster has not sought to make decisions on abortion in the province since it came into existence in 1921.
2. No member of our Committee represents a Northern Ireland constituency and any suggestion that Westminster should act to change the law on abortion in circumstances of fatal foetal abnormality, has implications for the devolution agreement.
3. We make four points on the nature of devolution in Northern Ireland.

The Northern Ireland Assembly

4. Firstly, it is vital that we uphold and respect the devolution settlement.
5. It is indeed regrettable that the Assembly has not been functioning since January 2017. However, for understandable reasons, the Government has up to this point been reticent to introduce Direct Rule in Northern Ireland. The focus of the Government over the past two years has been the restoration of devolved government. As the Northern Ireland Office put it in their submission to our Committee:

The absolute priority of the Government, and indeed the Secretary of State for Northern Ireland, remains the restoration of devolved government in Northern Ireland. In part, so that the people of Northern Ireland, and locally elected representatives, can decide what is right, for Northern Ireland, and have the opportunity to fully discuss and debate sensitive devolved issues, such as abortion.¹⁷³

6. This Committee should not undermine devolution in Northern Ireland given the important contribution devolution has made to peace in Northern Ireland. The position

of the Government not to intervene has been repeatedly asserted by the Secretary of State for Northern Ireland who made the following comment in June last year on the floor of the House:

Abortion has been a devolved matter in Northern Ireland since it was created in 1921, and it would not be appropriate for Westminster to seek to impose its will, or to be the arbiter of an issue that has long been devolved to the people of Northern Ireland. The Government believe that the question of any future reform in Northern Ireland must be debated and decided by the people of Northern Ireland and their locally elected, and therefore accountable, politicians.¹⁷⁴

7. The submission of the Northern Ireland Office makes it clear that abortion is a devolved matter, stating that:

Under the Northern Ireland devolution settlement, the following areas, relevant to the provision of abortion services, are “transferred matters” and therefore devolved in Northern Ireland: health and social services; equal opportunities (including as provided for in equality law); and justice and policing. As a result, any questions of reform or legislative changes to the law or policy in these areas are matters that are within the competence of the Northern Ireland Assembly and Executive.¹⁷⁵

8. Secondly, the Committee acknowledges that Northern Ireland has held the most recent democratic votes on the issue of whether to reform the law on abortion of any jurisdiction in the UK having debated a detailed series of proposals. In February 2016, the Assembly voted not to change the law.¹⁷⁶ We must respect the decision made at that time by the elected representatives of Northern Ireland.

The views of the public

9. Thirdly, in fulfilling the scope of this inquiry, it seems imperative, that as a Committee of elected representatives, we take into account the large volume of responses we have received from members of the public and organisations who want to maintain the current law as it stands. Indeed, a substantial majority of the published inquiry responses are in favour of maintaining the current law: at the time of writing, this is approximately 85% of submissions.¹⁷⁷

10. Furthermore, a considerable number of submissions made to our Committee referred to a claim made by the campaign organisation Both Lives Matter that the law on abortion in Northern Ireland has led to 100,000 people being alive today in Northern Ireland who would otherwise not be if the 1967 Abortion Act had been introduced. Notably, no submissions made by organisations or individuals calling for a change in the law on abortion in Northern Ireland sought to substantively challenge this evidence.

174 House of Commons Official Report, [5 June 2018](#); Vol. 642, c. 220

175 Northern Ireland Office ([ANIO411](#)), para 9

176 This is different from the 23 October 2018 vote in the House of Commons, which was not on legislation that could have the effect of changing the law. It was instead simply agreeing that legislation should be brought before the House. In Northern Ireland specific measures were debated and had the Assembly supported them the law in the province would have changed. These proposals, however, were rejected by a simple majority.

177 Note that not all responses have been published at the time of writing.

11. Following a complaint made about whether this figure could be substantiated, it was investigated by the Advertising Standards Agency who made 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.”¹⁷⁸

12. If we accept the finding of the ASA that this is a reasonable estimate of the number of individuals alive today as a result of Northern Ireland not accepting extension of the 1967 Act to their jurisdiction, it is perhaps understandable why there is such strength of feeling on this issue in Northern Ireland, and offers us an explanation why so many submissions to our Committee advocated for the laws on abortion to remain unchanged.

13. We should also give credence to the views expressed by the people of Northern Ireland. In a poll conducted by ComRes in October 2018, 64% of people (and 66% of women) said they do not want Westminster to interfere in this matter, rather they believe that this is an issue that should be settled in Northern Ireland.¹⁷⁹ This was referenced by the Secretary of State for Northern Ireland on the floor of the House in March 2019.¹⁸⁰

Human rights and the devolution settlement

14. Finally, it has also been asserted by some that human rights matters are not devolved to the Northern Ireland Executive. The situation is more complex. Whilst the UK Government is responsible in international law for its international obligations, the devolved administrations are responsible for ensuring compliance with devolved matters.¹⁸¹ 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. This is also outlined in the same submission from the Northern Ireland Office, which states:

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.¹⁸²

15. It cannot be asserted that the UK Government is failing to meet its obligations under any international treaty, since this is a devolved competency. Any recommendation that the UK Government legislate to change the law in Northern Ireland due to their responsibility under international obligations is a significant infringement upon these devolved powers. It also misinterprets the nature of these obligations, which are outlined later in this report (see paragraphs 21 to 36 below).

16. Furthermore, the UK Government cannot make any decision to change the law based on assertions that the political landscape has “significantly changed” since the Assembly

178 <https://www.asa.org.uk/rulings/both-lives-matter-a17-370344.html>

179 Northern Ireland Abortion Poll, Comres, 21st October 2018

180 House of Commons Official Report, [6 March 2019](#), Vol 655, c 949

181 Northern Ireland Office ([ANIO411](#)), para 26

182 Northern Ireland Office ([ANIO411](#)), para 17

considered abortion in 2016.¹⁸³ The non-binding opinion of the CEDAW Committee and the commentary of the Supreme Court in June 2018 do not offer us any definitive indications that a vote would be significantly different were the Assembly reformed in the immediate future. The views of the Assembly elected in March 2017 on this question cannot be assumed.

17. Our Committee cannot recommend any change to the law on abortion in Northern Ireland as it would undermine the devolution settlement, nor is it mandated that the UK Government act on the basis of international obligations.

Human Rights Jurisprudence

18. Aside from the fact that observation of human rights matters is a devolved competency, there is currently no legal imperative for the Northern Ireland Assembly to change the law on abortion arising from current jurisprudence.

19. Firstly, it is crucial to underline that there was no declaration of incompatibility made by the Supreme Court in the Northern Ireland Human Rights Committee (NIHRC) case in June 2018.^{184,185} As there was no standing found for the NIHRC to bring the case, the subsequent substantive judgement issued by the Supreme Court Justices following this finding was entirely non-binding. However, both the NIHRC and other oral and written submissions refer to this case as though it possessed the same binding precedent as if there had indeed been a declaration.¹⁸⁶ Since there was not, the judgment does not provide a sufficient basis on legal grounds for the Committee to recommend a change in the law. It can be definitively stated that if this question reaches the United Kingdom Supreme Court again a different panel of judges would hear the case and they may come to a different conclusion.

20. Secondly, it must also be asserted that, even if a declaration had been made by the Supreme Court, there would still be no imperative for the Government to change the law in that event. The Human Rights Act 1998 states in s.4(6):

A declaration under this section (“a declaration of incompatibility”)

- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
- (b) is not binding on the parties to the proceedings in which it is made.

We cannot and should not make recommendations to change the law without a declaration of incompatibility, and we should also have regard for the options available to the Northern Ireland Assembly under the Human Rights Act 1998 to amend the law as they see fit.

21. Thirdly, we cannot assume how the UK Government would have responded to such a declaration in the absence of the Assembly, had it been made. Although, as the Secretary of State for Northern Ireland commented to our Committee, a future declaration would

183 [Q407](#)

184 [2018] [UKSC 27](#)

185 [Q217](#)

186 See, for example: [Q399](#), [Q401](#), [Q402](#), [Q408](#), [Q415](#); Written submission from the Northern Ireland Human Rights Commission ([ANI0010](#)); Written submission from Humanists UK ([ANI0348](#)); Written submission from Alliance for Choice ([ANI0377](#))

be “highly persuasive”,¹⁸⁷ the question still stands as to whether the Government would have legislated to rectify that incompatibility when that action is the responsibility of the Assembly.

22. Fourthly, abortion is also a matter that is plainly within the margin of appreciation afforded to States within the ECHR. This was confirmed by Lady Hale in the NIHRC case, who outlined that there was a “do nothing” option for Parliament to take in the event of a declaration of incompatibility, and that, in such an instance, “the democratic will, as expressed through the elected representatives of the people, rules the day”.¹⁸⁸ It falls to the elected representatives, the Northern Ireland Assembly, to amend the law as they see fit if such a declaration is made. If it is the democratic will of the people of Northern Ireland to elect representatives that voted as recently as 2016 not to change the law, then we must respect that will, until such a time as the Assembly votes differently.

23. Fifthly, our Committee is aware of a case currently undergoing judicial review with regard to the law on abortion for fatal foetal abnormality where the person bringing the case has standing to do so. It is therefore premature to recommend a review of the law regarding fatal foetal abnormality in primary legislation when abortion under this ground is already undergoing consideration by the judiciary, who possess the authority under the Human Rights Act 1998 to assess its compatibility with the ECHR.

24. It would be more appropriate for the Committee to await the outcome of such a judgment, by which time the Assembly may be reformed and in a position to change the law if they see fit to do so. This is also the Government’s view. The submission from the Northern Ireland Office states that “it would be a matter for the restored devolved government in Northern Ireland to carefully consider the Supreme Court’s comments in the above matter and any other relevant emerging legal judgments or developments, as appropriate”.¹⁸⁹

25. There are no immediate human rights judgments that require action by the Government in the absence of the Northern Ireland Assembly.

The CEDAW Committee

26. Some witnesses have placed much emphasis on the report by the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW).¹⁹⁰ However, the CEDAW report and its recommendations to the UK do not have a binding effect¹⁹¹ or incur any legal imperative on the UK to act in response to its findings.¹⁹²

187 [Q470](#)

188 [2018] UKSC 27, 39

189 Northern Ireland Office ([ANIO411](#)), Para 21

190 See, for example: [Q402 and Q408](#); Northern Ireland Human Rights Commission ([ANI0010](#)); Written submission from the Northern Ireland Human Rights Commission ([ANI0684](#))

191 [Q411](#)

192 According to Professor Hill, 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, Legal Opinion, Hill QC, Op Cit, para 4

27. Whilst we do not doubt the expertise of CEDAW, we received evidence from a legal opinion by Professor Mark Hill QC regarding the CEDAW report,¹⁹³ which was presented to the Committee in a written submission.¹⁹⁴ According to Professor Hill, CEDAW's:

Invitation to the Home Secretary to treat the content of the Committee's report as authoritative and determinative of the complex issues involved in the specific case of Northern Ireland is flawed. The report is based upon a misapprehension as to the status of the Committee and its competence to make declaratory determinations, still less juridical rulings regarding CEDAW whilst States parties are obliged to follow.¹⁹⁵

28. There are several reasons why our response to the CEDAW Committee's recommendations should be far more measured.

29. Firstly, whilst the CEDAW Committee is entitled to hold a position on violations of the Convention, its views are "not binding interpretations of the law, nor do they contribute to customary international law when approaching the interpretation of these rights."¹⁹⁶ It has no jurisdiction to read abortion in to the text of CEDAW; that is a power reserved for the International Court of Justice.¹⁹⁷

30. Secondly, aside from the issues with CEDAW's standing, its interpretation of the text is based on an assumption of a right to abortion. When the UK Government signed CEDAW, they were not signing anything which confers a right to abortion, or indeed even mentions abortion, within its text.¹⁹⁸ The International Court of Justice has not interpreted CEDAW in any way which departs from its plain wording, and it has not read in abortion into the text. Yet the CEDAW Committee says, based on its expertise in interpreting the Convention, that it "recommends 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]".¹⁹⁹

31. The lack of the right to abortion in any international treaties was confirmed in *R (A and B) v Secretary of State for Health* per Lord Wilson, with whom Lord Reed and Lord Hughes agreed:

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.²⁰⁰

193 [CEDAW/C/OP.8/GBR/1](#), Op Cit

194 See Appendix to Written Submission from CARE Northern Ireland ([ANI0190](#)) which contains the Legal Opinion of Professor Mark Hill QC regarding the CEDAW report

195 Legal Opinion, Hill QC, Op Cit, para 3

196 Legal Opinion, Hill QC, Op Cit, para 5

197 Legal Opinion, Hill QC, Op Cit, para 4

198 "There is nothing in the text of CEDAW which requires a state party to allow abortion on specified grounds and/or decriminalise abortion generally. The absence of such a provision in the formal text gives a clear indication that no such obligation exists." Legal Opinion, Hill QC, Op Cit, para 7

199 [CEDAW/C/OP.8/GBR/1](#), Op Cit, para 58

200 [2017] 1 WLR 2492 [35]

32. Thirdly, CEDAW incorrectly interprets the definition of ‘health care’ as including termination of pregnancy. It is only family planning that is brought within this definition and other international agreements have not included abortion in their definition of family planning. Professor Hill QC points out the following:

When the Programme of Action of the International Conference on Population and Development referred to family planning, a significant number of reservations were made which noted that the concept of family planning did not include abortion. The Programme of Action declared that:

Governments should take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning. [7.24]

Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances where abortion is not against the law, such abortion should be safe [8.25].²⁰¹

33. Thus, the suggestion in the CEDAW report that States should have considered abortion to be ‘related to family planning’ under Article 12 of the CEDAW text is an overreach.²⁰² As no mention is made of abortion in the context of family planning in Article 12, CEDAW cannot infer that State parties intended abortion to be treated as healthcare. The fact that States signed up to the CEDAW Treaty who explicitly restrict abortion within their jurisdictions emphasises this fact.²⁰³

34. The CEDAW Committee advocates abortion law should be decriminalised in all situations.²⁰⁴ Our Committee has considered the matter of the law in Northern Ireland within the debate about wider reform to abortion law in England and Wales. However, there is no international legal obligation that provides a right to abortion whether through the civil or criminal law. Our Committee therefore notes that the view expressed by the CEDAW Committee is advisory—and in this case without the backing of international law that they are supposed to work within—so to suggest that the Government establish a framework to address the recommendations of the CEDAW report places a disproportionate and misguided degree of authority on its substantive findings and the limited jurisdiction of this unelected UN Committee.

The Duty of Care of Medical Professionals

35. We have heard three other reasons frequently cited in support of a change in the law. Firstly, that the recommendations of the Working Group on Fatal Fetal Abnormality, which reported in Northern Ireland Ministers in 2016 (but was only made publically available in 2018), have not yet been implemented. The recommendations included a change to the law on abortion in cases where a pregnancy involved an FFA diagnosis.²⁰⁵ Secondly, because of evidence put to our Committee that there is a conflict between what

201 Legal Opinion, Professor Mark Hill QC, 16 March 2018, para 13

202 Legal Opinion, Hill QC, Op Cit, para 12

203 Legal Opinion, Professor Mark Hill QC, 16 March 2018, para 15

204 [CEDAW/C/OP.8/GBR/1](#), Op Cit, paragraphs 5, 56 and 58

205 [Report of the Working Group on Fatal Fetal Abnormality](#), Healthcare and the Law on Termination of Pregnancy for Fatal Fetal Abnormality. Proposals to the Minister of Health and the Minister of Justice, 11 October 2016

medical professionals feel is their “duty of care” towards women with a diagnosis of fatal foetal abnormality and the existing law. Thirdly, concerns that the current law is putting lives at risk.

The duty of care where a woman has a diagnosis of a fatal foetal abnormality

36. The Committee has already set out why the devolution settlement and upholding the principals of devolution should be of great importance. This Working Group on Fatal Fetal Abnormality was commissioned by Ministers in a devolved legislature to make recommendations on what was recognised to be a controversial subject.

37. It is surely up to that legislature to implement the recommendations of the Working Group, as they see fit, after the Report has been the subject of scrutiny and debate within the Northern Ireland Assembly. This process has not been able to happen and there has been no opportunity for the people and wider medical profession of Northern Ireland to input their views into this process locally through their democratically elected representatives.

Review of the Working Group Report

38. Given there has not been an opportunity for a wider debate on the recommendations of the Working Group report, there are a number of points for consideration.

39. Firstly, the Working Group Report states that the evidence from medical professionals is that they feel their duty of care towards women in cases of fatal foetal abnormality is in conflict with the law, which offers them little clarity regarding the situations they can offer a woman a termination. This point was repeated by the Chief Medical Officer of Northern Ireland on the basis of the findings of the Working Group.²⁰⁶ These findings are of concern. However, there is no indication in this report as to who the medical professionals who took part in the Working Group were bar that they were members of relevant professional bodies,²⁰⁷ nor was any indication given regarding the numbers of professionals practicing in Northern Ireland who feel they cannot carry out their duty of care effectively; nor whether any alternative views were given or sought. If the Report had been debated by the Northern Ireland Assembly, it is likely that this information would have come to light, which would be important before acting on any of its findings.

40. Secondly, while concerns about care are reported, it is worth noting that there have been no complaints made to the GMC by patients experiencing a pregnancy with an FFA diagnosis, about the conduct of doctors in Northern Ireland.²⁰⁸

41. Thirdly, the elements of the Report that highlight proposals (yet to be implemented) for improved practical care for women—equal treatment under the Maternity Strategy with other expectant women and the creation of a Regional Centre—have not been as intensively scrutinised during this inquiry as arguments for changing the law. These proposals could make a practical difference to the care of women facing a pregnancy with

206 [Q230](#)

207 [Working Group Report](#), Op Cit, Annex C

208 [Q362](#) and para 31 GMC Written Evidence, ([ANI0688](#))

an FFA diagnosis and it would be premature to recommend that a key aspect of devolution is contradicted - with all the attendant constitutional implications - before these changes are made and the impact of them is measured.

42. The Working Group Report notes regarding the lack of equal treatment for women who receive a diagnosis of an FFA:

It is clear that the health service standards set out in the Department of Health's Maternity Strategy are not being applied to women who receive a diagnosis of fatal fetal abnormality. These women therefore experience a particularly stark inequality, compared to other expectant women, in relation to communication, locally accessible care, appropriate advice and support at a time when they are at their most vulnerable.²⁰⁹

43. The Working Group Report also noted that the Public Health Agency had already proposed a regional team to improve care for women and their families with a diagnosis of a:

The PHA has proposed to the Department of Health the establishment of regional team to help women and their families deal with a diagnosis of fatal fetal abnormality. Obstetric and midwifery care will be provided by the local Trust team, as with any pregnant woman. The new team will aim to provide direct advice and support, signpost and co-ordinate the woman's journey through the various Health and Social Care services, complementing the local obstetric and midwifery care team, and if the woman avails of termination services outside the jurisdiction, aim to re-establish her care with local systems when she returns.²¹⁰

44. Sadly, the Chief Medical Officer reported that neither of these initiatives have been pursued because of the lack of funding and Ministerial approval.

The Public Health Agency has developed proposals about how we might better co-ordinate that care. We have no steer and have had no steer from Ministers, because the Executive collapsed, and there were clear recommendations within section 5 of the FFA working group as to whether Ministers were minded to support that. That was a priority, that it should be funded to provide the level of care that one would reasonably expect and to reduce the very fundamental issues about variability in the levels of advice and support provided.²¹¹

45. It was envisaged that the regional team would provide "regionally consistent care, support and information",²¹² which would address one of the concerns presented to our Committee about inconsistent treatment of women between Trusts.²¹³ A regional centre would allow "a degree of specialism to be developed, resulting in increased awareness of best practice in the care and support of women where a diagnosis of a fatal fetal abnormality has been made."²¹⁴ The regional team would be able to discuss with women

209 [Working Group Report](#), Op Cit, para 5.4

210 [Working Group Report](#), Op Cit, para 5.8.

211 [Q238](#), See also [Q274](#) and [Q276](#)

212 [Working Group Report](#), Op Cit, para 5.9.

213 [Q238](#)

214 [Working Group Report](#), Op Cit, para 5.9

the implications of a diagnosis and what it might mean to them, since some conditions have a range of potential outcomes for both parents and children. The team could advise women on the care available to them, including the option raised by some witnesses of access to high quality palliative care services before and after birth.²¹⁵ The services are outlined in the Department of Health strategy document, which states in Objective 1 that:

Parents and children will be provided with information on their child's condition and the care and support options available to them in a clear, open and timely manner to ensure they are fully involved in decision-making. In the case of a pre-birth diagnosis, information and advice on perinatal hospice and palliative care, and support for parents, are to be provided.²¹⁶

46. Fourthly, the Report suggests that a change in the law should be made because there is evidence that there are medical risks of carrying a child with an FFA to term, which could impact future pregnancies.²¹⁷ Most of the cases under consideration are diagnosed at a late stage of pregnancy. There has not been the opportunity to explore in depth in our Committee debates the medical risks (physical or mental) of terminations at such a late stage of pregnancy either for the health of the women or future pregnancies, even though evidence suggests they exist.²¹⁸ Nor has there been any opportunity to explore whether women have found it beneficial to continue with the pregnancy, even though their child may only have lived a matter of hours.²¹⁹ A duty of care should involve making women aware of the risks of a termination as well as the risks of continuing with the pregnancy, as per the 2013 Supreme Court judgment in the Montgomery case.²²⁰

47. In a context where Westminster has not interfered with abortion law in Northern Ireland since 1921; where the law is part of the devolution settlement which should not be contradicted by a return to direct rule practices and where the current abortion law is thought by some to result in 100,000 people being alive today who would otherwise not have been born; the lack of full scrutiny of the duty of care arguments has led us to conclude that it is premature to recommend that Westminster intervenes to change the law on FFA. The Committee does, however, have a number of recommendations for action.

215 [Q55](#), [Q88](#) and [Q89](#)

216 Page 5, '[Providing High Quality Palliative Care for Our Children: A Strategy for Children's Palliative and End-of-Life Care 2016–26](#)', Department of Health Northern Ireland.

217 [Working Group Report](#), Op Cit, paras 4.5–4.11

218 "Women should be informed that induced abortion is associated with a small increase in the risk of subsequent preterm birth, which increases with the number of abortions. However, there is insufficient evidence to imply causality." [The care of women requesting induced abortion: Evidence-based clinical guideline number 7](#). RCOG 2011, para 5.12 and page 44.

219 For instance, see Cope H, et al, [Pregnancy continuation and organizational religious activity following prenatal diagnosis of a lethal fetal defect are associated with improved psychological outcome](#). *Prenatal Diagnosis*, 2015, 35(8): 33–44. The article concludes, "There appears to be a psychological benefit to women to continue the pregnancy following a lethal fetal diagnosis. Following a lethal fetal diagnosis, the risks and benefits, including psychological effects, of termination and continuation of pregnancy should be discussed in detail with an effort to be as nondirective as possible."

220 [2015] [UKSC 11](#), 109 "An important consequence of this is that it is not possible to consider a particular medical procedure in isolation from its alternatives. Most decisions about medical care are not simple yes/no answers. There are choices to be made, arguments for and against each of the options to be considered, and sufficient information must be given so that this can be done."

48. *The 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.*

49. *The Department 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.*

50. *The Attorney General for Northern Ireland should provide guidance setting out the extent to which the current law provides a basis on and through which doctors can, and indeed must, provide a duty of care for pregnant women with a diagnosis of a fatal foetal abnormality under the current law, which respects the conscience of doctors in the province.*

The duty of care where a woman's life is at risk

51. There have been discussions on the “duty of care” of doctors to their patients. This issue has arisen in relation to how doctors support women who have a diagnosis of a fatal fetal abnormality, (see above paragraphs 44 to 53) and on several occasions in oral evidence sessions, there have been references to women's lives being put at risk in Northern Ireland under the current legal framework²²¹ and it was repeated by witnesses.²²²

52. If it is indeed the case that women's lives are being put at risk in Northern Ireland, it is important to note that in these instances medical professionals are misapplying the law. The Guidance on Termination of Pregnancy in Northern Ireland, published by the Department of Health, Social Services and Public Safety in 2016, is clear that the law construes an obligation on health and social care professionals to prioritise the life of the mother:

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’.²²³

53. This was confirmed by Dr McBride in his oral evidence to our Committee:

We have to be clear that where there is a risk to the life of a woman that is covered within the extant legislation in Northern Ireland and health professionals can act in those circumstances. The guidance is very clear: if there is a risk to the life of a woman, that takes priority over any other consideration. Doctors and other health professionals have an obligation and a duty of care to act in the best interests of women in those circumstances

221 [Q235](#), [Q346](#), [Q440](#), [Q442](#), [Q443](#)

222 Written submission from the Royal College of Obstetricians and Gynaecologists ([ANI0391](#)); [Q447](#); [Q159](#)

223 [Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland](#), Department of Health, Social Services and Public Safety, March 2016, p. 8

or if there is a serious risk of adverse impact on physical or mental health, that risk is likely to be long term or serious. Where there is a risk to life, there is no impediment to act.²²⁴

54. It was also confirmed by the representative of the Office of the Attorney General for Northern Ireland:

If a woman's life is at risk or her health is at risk of severe or serious and long-term impact, then abortion is available to her in Northern Ireland... Our law does allow for people to have abortion when their life is at risk. It should not be that someone's life is at risk because an abortion is not being offered to them.²²⁵

55. Both the Guidance and the law are clear that a woman's life should never be placed at risk. Indeed, in failing to perform a termination on a woman whose life is at risk, a medical professional would be vulnerable to prosecution. The Guidance confirms this:

At all times, health and social care professionals have a duty of care to their patients and failure to act, may lead to prosecution.²²⁶

56. It is vital that medical professionals are cognisant of existing jurisprudence interpreting the legal duty conferred on them in situations where termination of pregnancy may be performed.

57. *The Committee strongly recommends that the Department of Health urgently address the need for greater awareness of the duty of care under both the law and guidance to provide an abortion if a mother's life is at risk.*

Conclusions and Recommendations

1. This inquiry has looked at the legal and practical concerns around abortion in Northern Ireland.

Devolution

2. Our Committee cannot recommend any change to the law on abortion in Northern Ireland as it would undermine the devolution settlement, nor is it mandated that the UK Government act on the basis of international obligations. (Paragraph 17)

Human Rights Jurisprudence and the CEDAW Committee

3. There are no immediate human rights judgments that require action by the Government in the absence of the Northern Ireland Assembly. (Paragraph 25)

4. The CEDAW Committee advocates abortion law should be decriminalised in all situations and our Committee has considered the matter of the law in Northern Ireland within the debate about wider reform to abortion law in England and Wales. However, there is no international legal obligation that provides a right to abortion whether through

224 [Q235](#)

225 [Q442](#)

226 [Guidance 2016](#), Op Cit, p. 13

the civil or criminal law. Our Committee therefore notes that the view expressed by the CEDAW Committee is advisory—and in this case without the backing of international law that they are supposed to work within—so for our Committee to suggest that the Government establish a framework to address the recommendations of the CEDAW report places a disproportionate and misguided degree of authority on its substantive findings and the limited jurisdiction of this unelected UN Committee. (Paragraph 34)

Duty of Care

5. The duty of care for medical professionals caring for women who have a diagnosis of a fatal fetal abnormality could be improved by action from the Northern Ireland Executive in line with the recommendations of the Working Group Report on Fatal Fetal Abnormality. (Paragraph 45)

6. *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. (Paragraph 48)*

7. *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. (Paragraph 49)*

8. *The Attorney General of Northern Ireland should provide guidance setting out the extent to which the current law provides a basis on and through which doctors can, and indeed must, provide a duty of care for pregnant women with a diagnosis of a fatal foetal abnormality under the current law, which respects the conscience of doctors in the province. (Paragraph 50)*

9. *The Northern Ireland Department of Health should urgently address the need for greater awareness of the duty of care under both the law and guidance to provide an abortion if a mother's life is at risk. (Paragraph 57)*

Motion made, and Question proposed, That the Chair's draft Report be read a second time, paragraph by paragraph.—(*The Chair.*)

Amendment proposed, to leave out "Chair's draft Report" and insert "draft Report proposed by Eddie Hughes".—(*Eddie Hughes.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Eddie Hughes

Philip Davies

Noes, 4

Tonia Antoniazzi

Sarah Champion

Vicky Ford

Jess Phillips

Question accordingly negatived.

Main Question put and agreed to.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 160 read and agreed to.

Summary and Appendix agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Wednesday 24 April 2019

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Thursday 24 January 2019

Question number

Witness A, Witness B, and Witness C

[Q1–42](#)

Thursday 24 January 2019

Dawn McAvoy, Co-founder, Both Lives Matter, **Sarah Haire**, Stanton Healthcare, and **Marion Woods**, Life Northern Ireland

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Witness A, Witness B, Witness C, and Witness D

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Dr Goretti Horgan, Deputy Director, ARK, **Dr Fiona Bloomer**, Reproductive Health Law and Policy Advisory Group, **Emma Campbell**, Co-chair, Alliance for Choice, and **Grainne Teggart**, Campaign Manager for Northern Ireland, Amnesty International UK

[Q158–215](#)

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Amanda Patterson, Head of Criminal Policy Branch, Department of Justice Northern Ireland, **Dr Michael McBride**, Chief Medical Officer, Department of Health Northern Ireland and **Alasdair MacInnes**, Family and Children's Policy Directorate, Department of Health Northern Ireland

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Dawn Purvis, former Chief Executive, Marie Stopes Belfast, **Karen Murray**, Director for Northern Ireland, Royal College of Midwives, and **Dr Paul Coulter**, Christian Medical Fellowship

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Tuesday 12 February 2019

Professor Colin Melville, Medical Director and Director of Education and Standards, General Medical Council, and **Sharon Burton**, Head of Policy, Standards and Ethics, General Medical Council

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Caoilfhionn Gallagher QC; Roger Kiska, Christian Legal Centre, and **Les Allamby**, Chief Commissioner, Northern Ireland Human Rights Commission [Q398–437](#)

Rt Hon Karen Bradley MP, Secretary of State for Northern Ireland, **Rt Hon Penny Mordaunt MP**, Minister for Women and Equalities, and **Maura McCallion**, Division Head, Office of the Attorney General for Northern Ireland [Q438–517](#)

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