



House of Commons
Women and Equalities
Committee

**Abortion law in
Northern Ireland:
Government response
to the Committee's
Eighth Report of
Session 2017–19**

**Tenth Special Report of Session
2017–19**

*Ordered by the House of Commons
to be printed 24 July 2019*

Women and Equalities Committee

The Women and Equalities Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Government Equalities Office (GEO).

Current membership

[Mrs Maria Miller MP](#) (*Conservative, Basingstoke*) (Chair)

[Tonia Antoniazzi MP](#) (*Labour, Gower*)

[Sarah Champion MP](#) (*Labour, Rotherham*)

[Angela Crawley MP](#) (*Scottish National Party, Lanark and Hamilton East*)

[Philip Davies MP](#) (*Conservative, Shipley*)

[Vicky Ford MP](#) (*Conservative, Chelmsford*)

[Eddie Hughes MP](#) (*Conservative, Walsall North*)

[Stephanie Peacock MP](#) (*Labour, Barnsley East*)

[Jess Phillips MP](#) (*Labour, Birmingham, Yardley*)

[Tulip Siddiq MP](#) (*Labour, Hampstead and Kilburn*)

[Anna Soubry MP](#) (*Change UK - The Independent Group, Broxtowe*)

[Rosie Duffield MP](#) (*Labour, Canterbury*)

[Kirstene Hair MP](#) (*Conservative, Angus*)

[Jared O'Mara MP](#) (*Independent, Sheffield, Hallam*)

[Teresa Pearce MP](#) (*Labour, Erith and Thamesmead*)

[Mr Gavin Shuker MP](#) (*Independent, Luton South*) were members of the Committee during this inquiry.

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 152. These are available on the internet via www.parliament.uk.

Publication

© Parliamentary Copyright House of Commons 2019. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/copyright.

Committee reports are published on the Committee's website at www.parliament.uk/womenandequalities and in print by Order of the House.

Committee staff

The current staff of the Committee are Jyoti Chandola (Clerk), Radhika Handa and Luanne Middleton (Second Clerks), Holly Dustin, Tansy Hutchinson, Maz Keating and Shai Jacobs (Committee Specialists), Ellie Goodchild (Senior Committee Assistant), Mandy Sullivan (Committee Assistant), and Liz Parratt and Simon Horswell (Media Officers).

Contacts

All correspondence should be addressed to the Clerk of the Women and Equalities Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6123; the Committee's email address is womeqcom@parliament.uk.

You can follow the Committee on Twitter using [@Commonswomequ](https://twitter.com/Commonswomequ).

Tenth Special Report

The Women and Equalities Committee published its Eighth Report of Session 2017–19, *Abortion law in Northern Ireland* (HC 1584), on 25 April 2019. The Government response was received on 19 July 2019 and is appended to this report.

Appendix: Government Response

I would like to extend my thanks to you and the rest of the Women and Equalities Committee for all your work on the report, *Abortion law in Northern Ireland*. The Government's response is at Annex A.

I welcomed the opportunity to appear before the Committee to give evidence on 27 February 2019, together with the Minister for Women and Equalities, the Rt Hon Penny Mordaunt MP.

The Government recognises the sensitivities of these issues and the strongly held views on all sides of the debate across Northern Ireland, as well as the importance of ensuring women's safety and well-being. Many of these views were expressed in the range of evidence submitted to the Committee during the course of its inquiry.

The Government's absolute priority is to re-establish devolved government in Northern Ireland at the earliest opportunity. As I announced on Friday 26 April 2019, the Government established a new process of political talks, involving all the main political parties in Northern Ireland. The process is underway and it is my hope that the talks are a success and we can re-establish the democratic institutions of the Belfast Agreement at the earliest opportunity.

The people of Northern Ireland need their elected representatives back in Government as a matter of urgency.

It is only right that the people they elected are working hard to represent their views and take the important decisions on the issues that matter most to the public, especially on abortion law.

The Committee will be aware that, following a House of Commons vote on an amendment by Stella Creasy MP, the Northern Ireland (Executive Formation) Bill 2019, if it receives Royal Assent and comes into force, places a duty on the UK Government, unless an Executive is restored before 21 October 2019, to implement the recommendations on abortion in Northern Ireland made in March 2018 by the UN Committee on the Elimination of all forms of Discrimination Against Women. These recommendations include the decriminalisation of abortion, providing for abortion on specified expanded grounds under a medical system of regulation, and an interim moratorium on abortion-related prosecutions. The regulations will have to come into effect on or before 31 March 2020 via made affirmative procedure.

UK GOVERNMENT RESPONSE TO ABORTION LAW IN NORTHERN IRELAND

The Women and Equalities Committee announced an inquiry into Northern Ireland’s abortion law on 20 September 2018.

The Committee published its eighth report of its 2017–2019 session, *Abortion law in Northern Ireland*, on 25 April 2019. This paper presents the UK Government’s response to the Committee’s conclusions and recommendations in that report.

Introduction

The UK Government welcomes the Women and Equalities Select Committee inquiry into this issue and the considered recommendations it has produced. The UK Government has carefully considered the Committee’s report and the issues it raises.

The UK Government recognises the sensitivities of these issues, and the widely held views by individuals, civil society, and the wider community on all sides of the debate in Northern Ireland, and across the rest of the UK. The UK Government also recognises the importance of ensuring women’s safety and well-being.

Under the Northern Ireland devolution settlement (enacted through the Northern Ireland Act 1998), 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.

While Westminster retains power to legislate, that is subject to the Sewel Convention; and during the current period in the absence of devolved government, whilst the Secretary of State for Northern Ireland has sought to legislate in respect of devolved matters this has only been taken forward where necessary to maintain the delivery of public services and good governance.

It remains the UK Government’s preference that questions of reform or legislative changes to the law or policy in these areas are matters that remain properly within the competence of the Northern Ireland Assembly and Executive.

The UK Government’s absolute priority is to see devolved government restored in Northern Ireland at the earliest opportunity. As the Secretary of State for Northern Ireland, the Rt Hon. Karen Bradley MP, announced on Friday 26 April 2019, the UK Government agreed, together with the Irish Government, to establish a new process of political talks, involving all the main political parties in Northern Ireland in accordance with the three stranded approach of the Belfast Agreement.

The aim of these political talks, which commenced on 7 May 2019, is to quickly re-establish the full operation the democratic institutions of the Belfast Agreement so that they can effectively serve all of the people of Northern Ireland for the future. The political talks process has made good progress so far, and has now moved into phase two, and will continue to intensify with the hope of a resolution and restored government in due course.

In November 2018 the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 (NIEFEF Act) was passed. This Act extended the period provided in the Northern

Ireland Act 1998 in which Executive Ministers can be appointed and a restored government in Northern Ireland can be formed following an election, initially until 26 March 2019, and recently extended by the Secretary of State in regulations until 25 August 2019.¹ Section 3 of the Act also provides the necessary clarity that a senior officer of a Northern Ireland department is not prevented from exercising functions of the department in the absence of Ministers where they are satisfied it is in the public interest to do so and having regard to guidance published by the Secretary of State, so as to ensure the continued delivery of vital public services.

The Secretary of State for Northern Ireland is also required to issue guidance under section 4 of the NIEFEF Act. Section 4 provides that:

4 Equal rights for people of Northern Ireland

- 1) In the absence of Northern Ireland Ministers to address the matters identified by recent, current and future court proceedings in relation to the human rights of the people of Northern Ireland, the Secretary of State must issue guidance to senior officers of all Northern Ireland departments which will specify how to exercise their functions in relation to—
 - a) the incompatibility of the human rights of the people of Northern Ireland with the continued enforcement of sections 58 and 59 of the Offences against the Person Act 1861 with the Human Rights Act 1998, and
 - b) the incompatibility of the human rights of the people of Northern Ireland with the continued enforcement of section 13(e) of the Matrimonial Causes (Northern Ireland) Order 1978, where they pertain to the provision and management of public services in Northern Ireland.
- 2) The Secretary of State shall report guidance under this section on a quarterly basis to the House of Commons and set out her plans to address the impact of the absence of Northern Ireland Ministers on human rights obligations within three months of the day on which this Act is passed.

The Secretary of State for Northern Ireland has made two Written Ministerial Statements to date, in accordance with the NIEFEF Act, on 29 January 2019 and 1 May 2019 to provide an update on these issues.

The UK Government hopes that these issues will be carefully considered by an incoming Executive and functioning Assembly in Northern Ireland before the commencement of the Northern Ireland (Executive Formation) Bill 2019 (NIEF), if it receives Royal Assent and comes into force, which will put a duty, in the absence of a restored Executive, on the UK Government to implement the recommendations of the UN CEDAW Committee of March 2018 by 31 March 2020. These recommendations include the decriminalisation of abortion, providing for abortion on specified grounds under a medical system of regulation, and an interim moratorium on abortion-related prosecutions.

¹ Northern Ireland (Extension of Period for Executive Formation) Regulations 2019 (S.I. 2019, 616).

The UK Government has engaged with the Northern Ireland Civil Service (NICS) in preparing its response to this report. The UK Government's formal response to the Committee's recommendations and conclusions is set out below. The Committee's findings are in bold and the UK Government responses are in plain text.

Responses to findings and recommendations

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.

The UK Government remains committed to its obligations under international law, including the Convention on the Elimination of Discrimination Against Women (CEDAW). In February, the UK delegation to the CEDAW Committee's periodic review had a positive dialogue with the Committee.

The UK Government responded to the CEDAW Committee at the time the report of the CEDAW inquiry was published in 2018.

In our response the UK Government explained that the Northern Ireland devolution settlement gives legislative control over certain matters (known as 'transferred matters') to the Northern Ireland Assembly. Issues on which the Northern Ireland Assembly has full legislative powers include health and social services (including for abortion law), equal opportunities and justice and policing (the latter was devolved in 2010).

The UK Government committed that a substantive response to the findings and recommendations contained in the CEDAW report will be provided once political structures are in place to authorise and approve the response.

Since then, the House of Commons passed an amendment to the then NIEF Bill placing a duty on the UK Government to make regulations to implement CEDAW's recommendations unless the NI Executive is restored by 21 October 2019, to come into effect by 31 March 2020 via made affirmative procedure. The Government will work carefully over the period between now and 21 October 2019 to take all possible necessary steps to ensure we are ready to move forward towards implementing regulations by 31 March 2020 if the Executive has not been restored.

Political talks are currently underway in Northern Ireland which we hope will result in the restoration of devolved government in Northern Ireland.

The UK Government will also work with colleagues in the NICS to respond by 21 September 2019 to the CEDAW committee's request for a report on steps taken by the UK to implement the inquiry's recommendations.

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.

The UK Government is committed to facilitating the ongoing work of the Northern Ireland Human Rights Commission, as an institution established under the Belfast Agreement. The UK Government recognises that the Commission’s independent and effective mandate is needed for it to be able to operate most effectively as the national human rights institution for Northern Ireland.

The UK Government has committed to introduce legislation to address the Commission’s ‘own motion’ standing under the Human Rights Act 1998, via its powers under the Northern Ireland Act 1998, at the earliest opportunity before the end of 2019. This will ensure it has the legal mandate to bring cases in its own name before the UK domestic courts.

The UK Government is working to find the appropriate legislative vehicle to deliver on this commitment and continues to engage with the Commission on this matter. The UK Government will update the Committee in due course.

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.

The Government has already explained the Government’s view on which it relied when the scheme was set up in 2017. This was summarised in the letter dated 14 March 2019 from Rt Hon Penny Mordaunt MP, Minister for Women and Equalities to the Committee Chair, Rt Hon Maria Miller MP, and included the relevant correspondence between Amnesty International and the DPP for Northern Ireland. The Director of Public Prosecutions (DPP) for Northern Ireland set out that in his view:

- there was no risk of criminal prosecution for NHS medical professionals referring women directly to NHS hospitals and clinics in the rest of the UK
- the issue of criminal liability did not arise in the context of NHS staff advising or informing patients of the availability of abortion services in England and Wales, and
- there is no offence in Northern Ireland of “advocating or promoting” the termination of a pregnancy in another jurisdiction.

Jackie Doyle-Price MP, Parliamentary Under Secretary of State (Mental Health, Inequalities and Suicide Prevention), also wrote to the Committee Chair, on 28 March 2019, highlighting that we designed the abortion scheme to ensure that doctors and other health professionals in Northern Ireland do not have a formal role in the operation of the scheme. Instead, women self-refer through the Central Booking Service which operates as part of the scheme. Doctors and other health professionals in Northern Ireland may provide information about the scheme and services in other parts of the UK, just as they may have done before the scheme was set up, but this is not a “referral” as set out in the GMC’s ethical guidance for doctors on delegation and referral.

On this basis, the Government is fully satisfied that the scheme continues to operate lawfully. We are aware that there are other views on this issue, as reflected in evidence to your inquiry, and this includes within the Northern Ireland Civil Service.

However, the DPP for Northern Ireland is the only independent body who may pronounce authoritatively on any criminal liability medical professionals may face arising from referrals to the scheme. We are not aware that there has been any change in the law of Northern Ireland in this context since the DPP for Northern Ireland communicated his view to Amnesty International nearly two years ago nor have the comments been publicly retracted. Unless the NI Executive is restored before 21 October, the UK Government will have a statutory duty under the NIEF Act 2019 to implement the CEDAW recommendations on abortion in Northern Ireland, which include providing for an interim moratorium on abortion-related prosecutions, decriminalisation and establishing a medical rather than criminal regulatory system for abortion. If the Executive is restored within that timeframe, we will work with relevant parties to clarify the position so that the Northern Ireland Civil Service can consider the second part of the Committee's recommendation

It is worth noting that the Government has no powers to direct the Department of Health for Northern Ireland. However, under section 4 of the NIEFEF Act, the guidance issued by the Secretary of State for Northern Ireland in December 2019 invites the Department of Health for Northern Ireland to consider whether in light of any relevant emerging legal judgments or other developments, as appropriate, its Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland should be reviewed. The UK Government duty to implement CEDAW, unless the Executive is restored by 21 October, will clearly require the Department to update its Guidance to take account of the legal developments and the implementation of a medical regulatory system for abortion.

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.

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.

The Northern Ireland Abortion Scheme (NIAS) arrangements will continue to apply if an Executive is restored by 21 October and, even if it isn't, during the development and setting up of abortion services in Northern Ireland under the UK Government's duty in the NIEF Act 2019.

The UK Government firmly supports information being available to all women undergoing termination of pregnancy about their options in relation to pregnancy remains, and has put in place measures to facilitate this. All providers funded through the NIAS have policies in place on this issue. These policies must be in line with the [Guidance](#) issued by the Human Tissue Authority in March 2015 aimed at professionals who work with women who have experienced a pregnancy loss or termination of pregnancy. The guidance sets out what is expected and how women should be involved in decision making about the sensitive handling of pregnancy remains. In particular that the loss or termination of a pregnancy, whatever the circumstances, is an exceptionally sensitive and emotional time for a woman. Policies and procedures need to acknowledge and make provision for

information about the rights to bring home the remains of the foetus or unborn child. Sometimes women may not wish to engage in discussions about pregnancy remains at the time of treatment, but they may change their minds later or ask about what arrangements were made.

If a woman chooses to return to Northern Ireland with foetal remains, UK Government funding is available to facilitate this, and is written into the grant agreements in place with the current providers under the NIAS. Arrangements can be made by providers with individual airlines and ferry companies who are experienced in the transport of human remains. It is our understanding that this is the established way of managing transport of remains and the UK Border Force do not have a lead role here. Funding is also available for funeral services in England which, to date, have been requested on one occasion.

In relation to criminal proceedings, providers all have in place safeguarding guidelines and policies which include liaising with police forces, nationally and internationally. Women should not be required to return foetal remains themselves for criminal purposes. In these circumstances arrangements should be made by providers.

We will work with service providers to ensure that they are following their policies and guidelines and that they are informing users of the options available to them.

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.

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.

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

The UK Government's policy and approach when we established the NIAS was that the arrangements for providing abortions to women in Northern Ireland should be broadly equivalent to those currently in place in England. The Government particularly recognised that travel costs can be an issue for many women on low incomes. This is why women in receipt of benefits or on a low income can have their travel booked and paid for in advance and, where necessary, hotel accommodation paid for. Between April 2018 and March 2019, the first full year of operation for the scheme, 61% of women who came to England for an abortion had their travel, and where required accommodation, paid for through the UK Government NIAS.

The Government recognises the issues and concerns raised by the Committee in its report, and the challenges experienced by some women in being able to travel to access services in England. The NIAS arrangements will continue to apply if an Executive is restored by 21 October and, even if it isn't, during the development and setting up of abortion services in Northern Ireland under the UK Government's duty in the NIEF Act 2019. The Government is committed to continuing to work closely with stakeholders and professional bodies on these issues to ensure women know how to access services through the Central Booking

Service (CBS). The CBS is also able to work with individual women to find solutions to their issues where possible. The Government will host a roundtable meeting with stakeholders to hear more about the issues affecting marginalised groups and how we might provide more support. We will ensure that a wide range of representatives are present, including those representing the particular groups that the Committee have mentioned.

To further assess the impact of the scheme, analysts in the UK Government Department of Health and Social Care have already undertaken some mapping to assess the post code areas where women are travelling from within Northern Ireland, to compare rates of abortions in particular areas across different years to see whether access has changed or changes over time. This may help the Government to understand whether some areas are under-represented, with particular attention to geographic areas associated with above average deprivation. However, the results will have to be treated with caution as to whether we would have identified a real gap in access or whether there is less demand for abortion services in that area. The Government will share this work at the intended stakeholder meeting referred to above to gain stakeholder and professional insight into these issues and consider what further action should be taken and by whom.

We are also committed to raising awareness of the NIAS across Northern Ireland, which might include the better use of online information.

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.

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.

The Attorney General for Northern Ireland is the chief legal adviser to the Northern Ireland Executive, and is independent both of the Northern Ireland Executive and the UK Government. The Attorney General for Northern Ireland has received the Report of the Committee and a response by the Attorney to the Report recommendations directed to him is under consideration.

The Committee will wish to note that the CEDAW recommendations set out grounds on which abortion should be available, including rape and incest, as well as the need for an interim moratorium on abortion-related prosecutions and wider decriminalisation. Under the NIEF Act 2019, the UK Government will have a duty to implement these recommendations by 31 March 2020 if an Executive has not been restored by 21 October 2019.

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.

The UK Government has consistently said it will keep its position on this issue under review, including in light of any legal judgments, as appropriate. As the Secretary of State for Northern Ireland has previously noted, any declaration of incompatibility would be highly persuasive and any judgment and its implications would need to be carefully considered.

The Committee will wish to note that the CEDAW recommendations set out expanded grounds on which abortion should be available, including severe foetal abnormality and that this is a broader category than fatal foetal abnormality. Under the NIEF Act 2019, the UK Government will have a duty to implement these recommendations if an Executive has not been restored by 21 October 2019.

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.

The Northern Ireland Department of Health will work with the Regulation and Quality Improvement Authority (RQIA) in Northern Ireland to explore both the consistency and quality of service provision to women who are entitled to a termination of their pregnancy within the legal framework in Northern Ireland. The review will identify whether there are gaps in current provision, highlight any areas for improvement and, if relevant, contribute to the development of abortion services and a medical model of regulation, in line with the CEDAW recommendations. The RQIA works on a rolling 18 month review programme and the Northern Ireland Department of Health will work to scope the terms of reference for the review with the intention of starting as soon there is availability within the RQIA's programme and taking account of whether the potential duty on the UK Government to implement the CEDAW recommendations applies in practice.

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.

The UK Government is aware that in their evidence to the committee, the General Medical Council (GMC) committed to exploring raising patient awareness during their engagement with stakeholders in Northern Ireland. The GMC continues to provide a range of information and advice to patients across the UK on concerns they can raise with them, including how they handle those concerns and what action they can take. As part of this, the GMC have commissioned research on signposting when patients have a concern and they will take this forward with patient organisations to help ensure complaints are dealt with appropriately.

The GMC are now considering how best to build on this existing work and take forward the committee's recommendation. The GMC remain committed to supporting partners in Northern Ireland to take steps to provide as much clarity and reassurance for both doctors and patients as is possible within the current legal framework.