

FAMILY PLANNING ASSOCIATION FOR NORTHERN IRELAND
FACTSHEET

This factsheet looks at abortion practice and provision in Northern Ireland and outlines the legal background, professional and public attitudes to the issue, and the consequences for the women of Northern Ireland.

History of abortion law in Northern Ireland

The 1861 Offences against the Person Act
 This Act, which provides the foundation for Northern Ireland's abortion laws, became law on 1 November 1861. It classifies abortion as a felony and makes it a criminal offence to have an unlawful abortion or to perform one. The 1861 Offences against the Person Act still remains in force throughout the whole of the UK. It is widely accepted by legal experts that the use of the term "unlawful" in respect of abortion implies that some abortions could be lawful.

The 1929 Infant Life (Preservation) Act
 The 1861 Act was modified in Great Britain by the 1929 Infant Life (Preservation) Act, subsequently enacted in Northern Ireland in 1945 as the Criminal Justice (Northern Ireland) Act. This Act allows the abortion of a "child capable of being born alive" only in the case where the mother's life would otherwise be put at risk.

Because of the reference to "a child capable of being born alive", it was generally assumed that this Act focused on abortion after the 28th week of pregnancy. Confusion therefore arose as to whether it was legal or illegal to perform a similar abortion in the first 27 weeks of pregnancy.

The 'Bourne Judgement' of 1938
 In England in 1938, Dr Alex Bourne performed an abortion on a 14 year old, who had been raped. He deliberately challenged the law in order to clarify the legal position and in the subsequent trial brought evidence that if the young woman had been forced to continue with the pregnancy, she would have become a mental and physical wreck.

Dr Bourne was acquitted and the judgement passed into English case law, thus extending the grounds for a lawful abortion to include risk to

the physical and mental wellbeing of the mother.

There were no further changes to the law until the 1967 Abortion Act was introduced in England, Wales and Scotland, but this Act does not extend to Northern Ireland.

Abortion practice in Northern Ireland

Any abortions carried out legally in Northern Ireland are categorised as therapeutic. In 1998 the Department of Health, Social Services and Public Safety published the first ever official statistics on abortions performed in Northern Ireland.

Table 1: Discharges from hospital where the primary diagnosis was abortion

	1999-00	2000-01
Spontaneous Abortion	1,348	1,383
Medical Abortion	71	83
Other/Unspecified Abortion	8	8
TOTAL	1,427	1,474

Source: Hospital Inpatients System

The terminology used in the above table is explained by the DHSSPS as follows:

- Spontaneous abortion** - the expulsion of the products of conception without deliberate interference.
- Medical abortion** - the interruption of pregnancy for legally acceptable, medically approved indications.
- Other/unspecified abortion** - includes cases where an abortion occurs as a result of medical or personal intervention, for example, where the person requires treatment for a life threatening condition and as a consequence an abortion occurs.

Significantly, there are no available statistics to indicate which women have access, why, and at what stage of pregnancy. It is generally accepted that abortion is available if:

- the woman has a serious medical or psychological problem, which would jeopardise her life or health if the pregnancy were to continue;



Published by *Sexual Health Information*, a partnership between the Family Planning Association for Northern Ireland and The Health Promotion Agency for Northern Ireland



- the woman has severe learning difficulties;
- abnormality of the foetus is detected.

The ambiguity of the law means that the availability and accessibility of abortion in Northern Ireland is determined by the moral views of individual doctors or by an unwillingness to test the law. In 1992, a survey of gynaecologists in Northern Ireland revealed that, although just under half said they had a conscientious objection to performing abortions, only two said they would not carry out an abortion at all.¹ In effect, 95% carried out abortions, although two said they would only do so if the foetus would clearly not survive. This research confirms the inconsistency in abortion practice. For example, one doctor indicated that an abortion would be offered if rape was involved but not for detected foetal handicap. In contrast, another would not perform an abortion in the case of rape but would do so for foetal handicap.

It is important to note that if a woman becomes pregnant as a result of rape, the 1981 Criminal Injuries (Northern Ireland) Order states that those who keep their babies will be paid £5,000 - effectively an award for damages that ignores the option of abortion. The following court cases clearly demonstrate the inconsistency of provision (albeit restrictive) of abortion in the province.

The 'K' case (October 1993)

'K' became pregnant at 14 years old. She lived in a children's home, was suspected of substance abuse and had physically and verbally abused staff. She was adamant that if she did not have an abortion she would kill herself and/or the baby. She had cut her wrists with broken glass, seemed to be starving herself and punched her stomach repeatedly in attempts to miscarry.

As K was a ward of court, it was for the courts to decide if she should have an abortion. K's mother had not seen her since she was five years old. She refused social workers' requests to meet with her pregnant daughter, but went to court to state her opposition to the abortion. Her father, who had maintained contact with his daughter, indicated that the abortion should proceed.

The judge concluded that abortion would be in the best interests of K, but no doctor could be found in Northern Ireland to carry out the abortion. Although those consulted had no conscientious objection, they were wary of the girl's mother initiating legal proceedings given the uncertainty of the law. At the time of the court hearing K had been admitted to hospital with appendicitis. On discharge she had to travel to England to obtain a private abortion.

The 'A' case (January 1994)

In the case of 'A', a 24 year old with a low IQ, the judge, despite the absence of any real threat of suicide by A, ruled that an abortion should be made available. The doctors involved agreed to perform the operation.

The 'S' case (October 1995)

'S' was 17 years old and 12 weeks pregnant. She was described in court as being mentally handicapped. The case came before the court by application of the Western Health and Social Services Board, which had previously made the girl a ward of court. This is significant because S lived with her mother, whom the judge described as very caring and having the best interests of her daughter at heart. A gynaecologist and two psychiatrists (none of whom were identified by name) gave evidence that, if the pregnancy continued, S would suffer severely and a mental breakdown was a strong possibility. The judge ruled that termination was clearly in the girl's best interests. The abortion was subsequently carried out in Northern Ireland.

It is evident that abortion practice in Northern Ireland is confused, inconsistent and determined by moral views or an unwillingness to risk testing the law. The absence of clear, unambiguous legislation means that many Northern Ireland women have to travel to England to obtain a private abortion.

In May 2001 **fpaNI** took the historic step of initiating legal action against DHSSPS. **fpaNI** asked the Courts to advise the DHSSPS that it is failing in its statutory duty to ensure that all women have equal access to reproductive healthcare services. In a landmark ruling made on 13 June 2001, **fpaNI** won the right to the first Judicial Review of medical practices relating to abortion and the provision of abortion services in Northern Ireland. The Judicial Review took place in the High Court in Belfast on 21 and 22 March 2002, however at the time of publication the outcome is still not known.

Abortion provision in England for women from Northern Ireland

Table 2 shows that for the second consecutive year there has been a slight increase in the number of women travelling to England for an abortion.

Table 2: Abortions performed in England to Northern Ireland residents 1996-2001

Week of pregnancy	1996	1997	1998	1999	2000	2001
Under 9	486	460	464	465	563	619
9-12	800	810	817	693	725	735
13-19	252	266	277	249	214	192
20+	35	26	23	23	26	31
TOTAL	1,573	1,572	1,581	1,430	1,528	1,577

Source: Office for National Statistics

But these figures, based on clients' addresses, are an under-estimate. It is widely accepted that many women give false addresses for fear of detection. The figure is probably nearer 2,000 per year.

fpaNI provides an unplanned pregnancy counselling, information and support service. It is non-directive, non-judgemental and provides detailed information on all options. In 2001, 662 counselling sessions were provided. Following counselling 600 women chose to terminate their pregnancy. Figures presented in the following tables relate to those 600 women.

Table 3: Marital status of women travelling to England from Northern Ireland for an abortion, 2001

Marital Status	Number
Single	374
Separated	9
Married	72
Divorced	13
With partner	130
Unknown	2
TOTAL	600

Table 4: Age of women travelling to England from Northern Ireland for an abortion, 2001

Age	Number	% of total number attending fpa
Under 16	20	3
16-19	110	18
20-24	148	25
25-29	136	23
30-34	96	16
35-39	63	11
40+	27	4
TOTAL	600	100

Securing an abortion in England costs around £450 (if the woman is under 14 weeks' pregnant) rising to around £900 if the pregnancy is further advanced (see Table 5). This includes medical fees, and travel expenses. Women unable to afford abortions in England either continue the pregnancy or may risk unsafe amateur abortions. If accompanied by a friend, relative or partner the cost can increase by around £200 to cover travel and accommodation expenses.

Table 5: Stage of pregnancy in weeks (at time of counselling) 2001*

Stage of pregnancy	Number	% of total number attending fpa
8 weeks and under	305	46
9-12 weeks	288	44
13-15 weeks	54	8
16-19 weeks	15	2
20 weeks and over	0	0
TOTAL	662	100

*includes follow-up appointments, women continuing with pregnancy and women undecided.

Revised Department of Health guidelines issued in 1999 state that women in the earlier stages of pregnancy (under 16 weeks) are usually no longer required to stay overnight in the clinic after a termination, provided they are assessed by medical staff as suitable for discharge. This means that, in theory, women can travel from, and return to, Northern Ireland on the same day.

However, clinic appointments are always early morning, therefore it is not always possible to make suitable travel arrangements, so in many cases an overnight stay will still be needed the day prior to the procedure. If the woman is over

16 weeks pregnant she will be required to stay in the clinic overnight following the procedure.

As Tables 6 and 7 show many do not have the support of a male partner and are forced to make the journey alone for financial or personal reasons. Some women have never been out of Northern Ireland.

Table 6: Women travelling to England from Northern Ireland fpa for an abortion supported by a male partner, 2001

Male involvement	Number	% of total number attending fpa
Yes	380	63
No	220	37
TOTAL	600	100

Table 7: Women travelling to England from Northern Ireland fpa for an abortion alone or accompanied, 2001

Travel	Number	% of total number attending fpa
Accompanied	482	80
Alone	118	20
TOTAL	600	100

Some women turn to back-street abortionists and since 1967 there have been five known deaths in Northern Ireland due to illegal abortion. Dr Colin Francome carried out a survey with Northern Ireland's General Practitioners² and found that 11% of GPs surveyed had experience of patients suffering from the consequences of amateur abortion.

Public and professional attitudes towards abortion in Northern Ireland

Public attitudes

Three surveys carried out by Ulster Marketing Surveys Limited³ show that public opinion is broadly sympathetic to a liberalisation of the abortion law in Northern Ireland. The surveys were conducted in May 1992, February 1993 and August 1994, at 50 sampling points throughout Northern Ireland. A representative sample of the population aged between 16 and 45 was asked in what circumstances they thought abortion should be allowed.³

The latest survey showed a significant increase in the number of people who supported abortion at the request of the woman, from 25% in 1992 to 30% in 1994. The rise in the number of people supporting abortion in the case of extreme poverty was even greater, from 27% in 1992 to 36% in 1994.

Generally, respondents living in Greater Belfast are more likely to support the legalisation of abortion under all circumstances than those living elsewhere in Northern Ireland, particularly where a woman does not wish to have a child or additional children.

Similarly, Protestants are more likely to support legal abortion on all grounds than Catholics, especially in the case of severe handicap - 74% of Protestants as against 39% of Catholics. A majority of Catholics do, however, support abortion on the grounds of the physical or mental health of the woman (67%) and in cases of sexual assault (59%).

A 2000/2001 survey of women attending British abortion clinics carried out by Marie Stopes International found that 95% would have preferred to have had their abortion in Northern Ireland, 44% had to borrow money, 68% knew of other women who had also had abortions and 95% supported the extension of the 1967 Abortion Act to Northern Ireland. There was widespread mistrust of GPs and only 34% had consulted a GP about their abortion choice and those who did were often dissatisfied. Some women felt they qualified for an abortion in Northern Ireland but found their GPs were confused about their rights under the law.⁴

Professional attitudes

Gynaecologists

See the section 'Abortion Practice in Northern Ireland' above.

General Practitioners

Francome's² survey covering 123 GPs in Northern Ireland was carried out in October and November 1994. The doctors were randomly selected by a major medical organisation and the response rate was 64%.

The survey found that, on average, each doctor had received just over one request for an abortion during the previous six months. Overall, 43% of these doctors had had a request for an abortion in the previous three months. Seventy per cent of these doctors said that the decision as to whether or not to continue a pregnancy should be left to the woman in consultation with the doctor, while 16% disagreed with this.

The Politicians

The involvement of Northern Ireland's MPs in the abortion debate provides a unique insight. In February 1984, the Northern Ireland Assembly debated the motion:

"That this assembly opposes the extension of the Abortion Act 1967 or like legislation to Northern Ireland".

The debate included statements such as:

"We have to leave the question of deformity in the providence of Almighty God and, if a child is conceived in love, then I think that the parents ought to be willing to accept what God has ordained should be born to them... Even if a deformed child is born after rape it ought to be accepted as the will of God".

"Adolf Hitler had more charity in him than the abortionists because the abortionists would seek to put to death a child with no defects".

The single MP who opposed the motion, arguing that it was impossible for men really to understand how a woman would feel about an unwanted pregnancy, was referred to as a "Daniel" or a "Nebuchadnezzar".

In 1987, when the Alton Bill, which had no relevance to Northern Ireland, was being debated at Westminster, sponsors of the Bill included two Northern Ireland MPs - Seamus Mallon from the Social Democratic Labour Party and the Reverend Martin Smyth from the Ulster Unionist Party. At the second reading in January 1988, 15 of the 17 Northern Ireland MPs (all male) attended.

This and the controversy over the opening of a Brook Clinic in Belfast in 1992 shows that issues around sex dynamically unite politicians who, in other circumstances, would have strong party political differences. In 1990, during a debate on extending abortion rights to Northern Ireland, Virginia Bottomley, Secretary of State for Health, stated:

"[Abortion] is offensive to the overwhelming majority of those in the Province... all the soundings of opinion have made it very clear that there is no will in Northern Ireland for such change".

Her soundings could not have included the 54,000 women who have obtained private abortions in England since the introduction of the 1967 Abortion Act.

On the 20th June 2000 the members of the new Northern Ireland Assembly debated a motion similar to the 1984 one, and an amendment referring the issue of abortion to the Health Committee. In contrast to February 1984, representatives from major political parties voiced a much more understanding attitude towards the issue of abortion in Northern Ireland, or at the very least depicted an understanding of the reasons behind abortion. There were of course politicians present who voiced arguments similar in content to those of 1984 using emotive terms such as "slaughter" and "murder".

In June 1993, the Standing Advisory Commission on Human Rights (SACHR) issued a public consultation document on the issue of abortion. Written by Simon Lee, Professor of Law at the Queen's University of Belfast, it observed that: *"The law on abortion in Northern Ireland is so uncertain that it violates the standards of international human rights law. It could not withstand a challenge before the European Court of Human Rights at Strasbourg"*⁵

SACHR was an independent government body set up to ensure that Northern Ireland law measures up to international human rights obligations.

As SACHR suggests, the issue of abortion in Northern Ireland is governed by confusing legal ambiguities. The Commission subsequently made three recommendations:

1. The Government should bring forward options for a clearer law.
2. The Government should ensure that information on the practice of abortion is collated.
3. The issue of pecuniary advantage should be removed from the debate.

In May 1995, Sir Patrick Mayhew, Secretary of State for Northern Ireland, responded as follows:

Recommendation 1

"...I am writing to inform you that I have decided against proposing any changes to the law on abortion in Northern Ireland at present".

In February 1998, the Parliamentary Under-Secretary of State for Northern Ireland in reply to a parliamentary question states:

"...The Government have no plans to liberalise the law or to extend the Abortion Act 1967 to Northern Ireland."

Recommendation 2

"...work is proceeding on identifying and resolving some of the problems with the quality of abortion figures in Northern Ireland. Although more remains to be done, improvements have been made to the quality of the diagnosis and procedure codes used by hospitals, which would form the basis of any future abortion statistics".

As stated on page 1, statistics were published for the first time in 1998.

Recommendation 3

"Ministers are mindful of the concern which has been expressed about some of the difficult consequences of the present law for individuals and families and of the significant numbers of women from Northern Ireland, who travel to GB each year for abortions".

Northern Ireland women are still excluded from abortion services within NHS provision and therefore continue to be subjected to pecuniary disadvantage.

To date, abortion in Northern Ireland has been the subject of moral debate, often in the language of extremism and hysteria rather than informed political discussion. Throughout the last quarter of a century, legal and political systems around the world have, in varying degrees, examined the issues surrounding abortion and amended their laws accordingly. Northern Ireland stands alone in failing to do so.

References

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2. C. Francome, Reader in Medical Sociology, Middlesex University - "Birth Control and GPs in Northern Ireland" 1994 (unpublished).
3. Birth Control Trust - "Birth Control and Abortion" 1992/93/94 (unpublished)

4. The Other Irish Journey. Marie Stopes International, 2001.
5. The Abortion Law in Northern Ireland - Human rights and reproductive choice - **fpaNI** 1995

Other Northern Ireland factsheets are:

- Sex education in schools*
- Teenage pregnancy*
- Family planning services in Northern Ireland*
- The legal position regarding contraceptive advice and provision to young people*
- Sexually transmitted infections*

For further information contact **fpaNI** at:
 113 University Street
 Belfast BT7 1HP
 Tel: (028) 9032 5488 or
 2nd Floor
 Northern Counties Buildings
 Custom House Street
 Londonderry BT48 6AE
 Tel: (028) 7126 0016.
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Last updated May 2003.