

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.

Key issues

- Abortion is legal in Northern Ireland in some circumstances.
- The majority of women have to travel to England to secure an abortion.
- Women from Northern Ireland are not entitled to an NHS abortion in England.

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

In 1998 the Department of Health, Social Services and Public Safety (DHSSPS) published the first ever official statistics on abortions performed in Northern Ireland. As Table 1 shows, since 1999 there has not been a significant difference in the number of women having medical abortions in Northern Ireland.

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

	2003/04	2002/03	2001/02	2000/01	1999/00
Spontaneous abortion	1,270	1,271	1,443	1,383	1,348
Medical abortion	67	76	71	83	71
Other abortion	1	2	3	8	8
Total	1,338	1,349	1,517	1,474	1,427

Source: Hospital Inpatient 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, eg 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.

Legal developments

In May 2001 **fpa** in Northern Ireland took the historic step of initiating legal action against the DHSSPS. **fpa** asked the courts to advise the DHSSPS that it was failing in its statutory duty to ensure that all women had equal access to reproductive healthcare services. In a landmark ruling on 13 June 2001, **fpa** 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 21-22 March 2002. On 7 July 2003 Mr Justice Brian Kerr presented his judgment. Whilst he found that the DHSSPS was not failing in its statutory duty to issue guidelines, he thought it would be prudent to do so. However, Mr Justice Kerr clearly stated that abortion is legal in Northern Ireland in certain circumstances. They are:

- The continuance of the pregnancy threatens the life of the mother, or would adversely affect her mental or physical health;
- The adverse effect on her mental or physical health must be a "real and serious" one, and must also be "permanent or long term";
- In most cases the risk of the adverse effect occurring would need to be a probability, but a possibility might be regarded as sufficient if the imminent death of the mother was the potential adverse effect;
- It will always be a question of fact and degree whether the perceived effect of a non-termination is sufficiently grave to warrant terminating the pregnancy in a particular case.

On 28 July 2003, papers were lodged by **fpa** at Belfast High Court with regard to appealing the outcome of the judicial review. The appeal was heard on 24-26 July 2004. On 4 October 2004 Belfast High Court of Appeal ruled that the DHSSPS had failed to perform its duties under Article 4 of the Health and Personal Social Services of Northern Ireland Order 1972, to secure provision of integrated health and personal social services to women seeking lawful termination of pregnancy in Northern Ireland. In 2005 in response to the court's ruling, the DHSSPS instigated a formal investigation into the provision of termination services in Northern Ireland.

The absence of clear guidelines with regard to the application of the legal principles stated above means that the ambiguity, which historically has surrounded the availability and accessibility of abortion in Northern Ireland, remains. In essence the provision of abortion is still often determined by the moral views of individual doctors or by unwillingness to test the law. In the past this ambiguity has resulted in the following negative consequences.

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, eg one doctor indicated that an abortion would be offered if rape was involved but not for detected foetal disability. In contrast, another would not perform an abortion in the case of rape but would do so for foetal disability.

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 Northern Ireland.

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

Figure 1: Abortion provision in England for women from Northern Ireland

1,280 women from Northern Ireland travelled to England for an abortion in 2004.

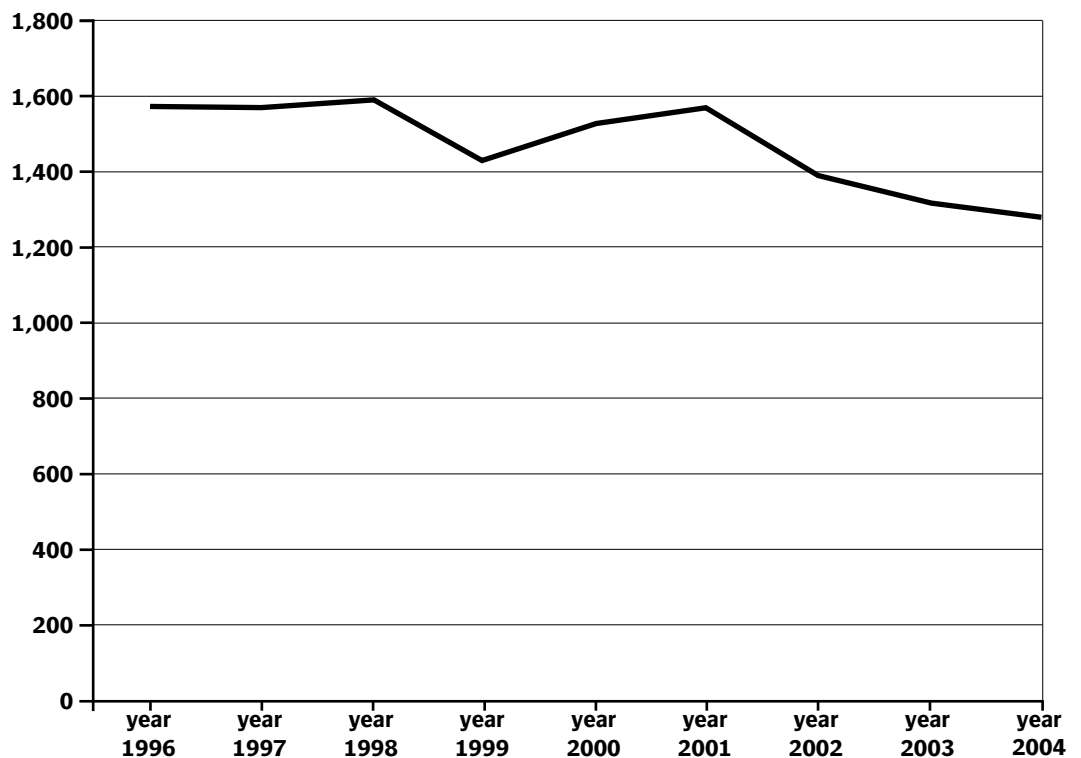


Table 2: Abortions performed in England to Northern Ireland residents 1996-2004 by gestation

Week of pregnancy	1996	1997	1998	1999	2000	2001	2002	2003	2004
Under 9 weeks	486	460	464	465	563	619	829	751	737
9-12 weeks	800	810	817	693	725	735	368	382	362
13-19 weeks	252	266	277	249	214	192	176	172	163
20+ weeks	35	26	23	23	26	31	18	13	18
Total	1,573	1,562	1,581	1,430	1,528	1,577	1,391	1,318	1,280

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.

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. It is significant to note that more women are terminating their pregnancy in the first nine weeks of pregnancy (57% in 2004 compared to 31% in 1996). This trend began in 2001 the year when the judicial review process was initiated. It is probably valid to assume that health professionals and women were more aware of fpa's counselling service as a result of the widespread publicity surrounding the legal proceedings.

fpa in Northern Ireland provides an unplanned pregnancy counselling, information and support service. It is non-directive, non-judgemental and provides detailed information on all options. In 2004, 667 counselling sessions were provided. Following counselling, 416 women (62.3%) chose to terminate their pregnancy.

Table 2a: Abortions performed in England to Northern Ireland residents, 2004 by age

Age	2003	2004
Under 16	26	17
16-17	84	79
18-19	141	129
20-24	390	332
25-29	263	257
30-34	202	238
35-39	157	157
40 & over	55	71
Total	1,318	1,280

Source: Office for National Statistics

Figures presented in Tables 3-7 relate to those 416 women, and not all women, travelling to England.

Table 3: Marital status of women travelling to England from Northern Ireland for an abortion, 2004

Marital status	Number
Single	241
Separated	13
Married	47
Divorced	10
With partner	104
Widowed	1
Total	416

Table 4: Age of women travelling to England from Northern Ireland for an abortion, 2004

Age	Number
Under 16	-
16-19	76
20-24	107
25-29	81
30-34	60
35-39	52
40+	27
Total	416

Securing an abortion in England costs around £500 (if the woman is under 14 weeks pregnant) rising to around £1,200 if the pregnancy is further advanced. 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) 2004*

Stage of pregnancy	Number
8 weeks and under	375
9-12 weeks	214
13-15 weeks	34
16-19 weeks	18
20 weeks and over	9
Unknown	17
Total	667

**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, as clinic appointments are always early morning, 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 for an abortion from fpa in Northern Ireland, supported by a male partner, 2004

Male involvement	Number
Yes	250
No	166
Total	416

Table 7: Women travelling to England for an abortion from fpa in Northern Ireland, alone or accompanied, 2004

Travel	Number
Accompanied	326
Alone	90
Total	416

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 Practitioners and found that 11% had experience of patients suffering from the consequences of amateur abortion.²

Public and professional attitudes towards abortion in Northern Ireland

Public attitudes

Three surveys carried out by Ulster Marketing Surveys Limited 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.³ A representative sample of the population aged between 16 and 45 was asked in what circumstances they thought abortion should be allowed.

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 disability – 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 previous section 'Legal developments'.

General Practitioners

Francome's survey covering 123 GPs in Northern Ireland was carried out in October and November 1994.² 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 politicians 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 20 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 stated:

"...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 of this factsheet, 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

1. Francome C. Gynaecologists and abortion in Northern Ireland. *Journal of Biosocial Science* 1994; 26: 389-94.
2. Francome C. Birth control and GPs in Northern Ireland. 1994 (unpublished).
3. Birth Control Trust. Birth control and abortion. 1992/93/94 (unpublished).
4. Rossiter A, Sexton M. The other Irish journey. Marie Stopes International: London, 2001.
5. fpa. The abortion law in Northern Ireland: human rights and reproductive choice. Belfast, 1995.

Other Northern Ireland factsheets:

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

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