



Northern
Ireland
Office

**UK GOVERNMENT GUIDANCE FOR HEALTHCARE
PROFESSIONALS IN NORTHERN IRELAND ON
ABORTION LAW AND TERMINATIONS OF
PREGNANCY IN THE PERIOD 22 OCTOBER 2019 TO
31 MARCH 2020 IN RELATION TO THE NORTHERN
IRELAND (EXECUTIVE FORMATION ETC) ACT 2019**

October 2019

UK GOVERNMENT GUIDANCE FOR THE HEALTHCARE PROFESSION IN NORTHERN IRELAND

Introduction

This guidance aims to provide clarity on the law framing termination of pregnancy in Northern Ireland in light of the coming into force of certain provisions of the Northern Ireland (Executive Formation etc) Act 2019 ('the NIEF Act')¹. It is imperative that health and social care professionals understand these changes and their responsibilities under the law, if the duty comes into effect and the law changes. This guidance supersedes that provided by the Department of Health in Northern Ireland in 2016.²

The NIEF Act received Royal Assent on 24 July 2019. Section 9 of the NIEF Act, which deals with abortion law in Northern Ireland, comes into force on 22 October 2019, if the Northern Ireland Executive has not been restored by 21 October 2019. Section 9 has two main components: first, it provides for decriminalisation of abortion in relation to Sections 58 and 59 of the Offences Against the Person Act 1861, and a moratorium on abortion-related criminal prosecutions from 22 October 2019; second, it places the UK Government under a duty to bring forward regulations to introduce a new legal framework for abortion in Northern Ireland by 31 March 2020.

The Government has been clear in its preference that as abortion law is a devolved issue, reform should be taken forward in the appropriate place – a restored and functioning Northern Ireland Assembly. It remains the Government's hope that devolved institutions will be restored at the earliest opportunity. However, this guidance is being issued to health professionals to prepare for a situation in which the changes under the NIEF Act come into effect, and there is a change in Northern Ireland's abortion law from 22 October 2019.

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, and providing as much clarity for the healthcare profession as possible. This guidance is intended to be a factual statement of the position in law in terms of the responsibilities of healthcare professionals to their patients ahead of the

¹ The changes under the Northern Ireland (Executive Formation etc) Act 2019 will only come into effect if there is no restored Northern Ireland Executive on or before 21 October 2019.

² If the duty under section 9 of the Northern Ireland (Executive Formation etc) Act 2019 comes into effect.

statutory changes that may come into force on 22 October 2019. Further guidance will be issued ahead of the potential new regulations coming into effect by 31 March 2020.

This guidance is intended to guide health professionals on the application of the changes in law in this area, should they come into effect from 22 October 2019 until a new regulatory framework is in place. It discusses the management of services for women for whom termination of pregnancy may be, or may have been, an option.

The guidance covers:

- Current legal position (Annex A)
- Legal situation between 22 October 2019 and 31 March 2020³ ('the interim period')
- Provision of termination of pregnancy services during the interim period
- Conscientious objection during the interim period
- Abortion medication online during the interim period
- UN recommendations to be implemented by 31 March 2020.⁴

This guidance recognises that women must be made aware of the options and choices available to them under the law in Northern Ireland if it changes on 22 October 2019. Support and advice must respect the personal views of women and enable them to make their own informed choices.

New legal position from 22 October 2019 to 31 March 2020 ('the interim period')

If the Northern Ireland Executive has not reformed on or before 21 October 2019, section 9 of the NIEF Act comes into effect and has the following immediate implications:

- Sections 58 and 59 of the Offences Against the Person Act 1861 are repealed in Northern Ireland so that no criminal charges can be brought under that Act against women and girls who have an abortion or against qualified health care professionals or others who provide and assist in the abortion.
- A moratorium on criminal prosecutions will come into effect, meaning that no police investigation may be carried out, and no criminal proceedings may be

³ In the event that the Northern Ireland Executive is not restored on or before 21 October 2019.

⁴ In the event that the Northern Ireland Executive is not restored on or before 21 October 2019.

brought or continued, in respect of an offence under sections 58 and 59 of the Offences Against the Person Act (regardless of when an offence may have been committed).

However, other relevant laws relating to the termination of pregnancy will remain in place. In particular, section 25(1) of the Criminal Justice Act (Northern Ireland) 1945 will remain in place. This makes it a criminal offence for anyone to assist or wilfully act to 'destroy the life of a child then capable of being born alive', except where the purpose is to preserve the life of the mother 'in good faith'. This means that abortions "where the foetus is capable of being born alive" will continue to be unlawful. A summary of the current legal position is at Annex A.

Provision of termination of pregnancy services from 22 October 2019⁵ and during the interim period

There were 12 abortions performed in hospitals in Northern Ireland in 2017/18 under the existing law, as interpreted through the legal provisions of the 'Bourne' judgement. In 2018, 1,053 women travelled to England from Northern Ireland for an abortion procedure funded by the UK Government and other women may have chosen to travel to other countries including Scotland.

Given the urgent timescales we are working to, and in the absence of a legal abortion framework in which services could operate, there are no plans for additional services to be routinely available in Northern Ireland before 31 March 2020. For example, there is no expectation that general practitioners (GPs) will prescribe medication for early medical abortion. In England and Wales GPs do not provide abortion services. However, services will continue to be available under the existing common law provisions as set out above. Doctors remain under a duty to act where a woman's life or health is at risk.

The UK Government has therefore made the following arrangements to support women resident in Northern Ireland wishing to access services in England under the existing travel scheme:

⁵ If the decriminalisation and moratorium provisions of section 9 of the Northern Ireland (Executive Formation etc) Act 2019 come into effect in the event that the Northern Ireland Executive is not restored on or before 21 October 2019.

- Health professionals in Northern Ireland will be supplied with information about the funded services in England (summarised in Annex B) and, if approached by a woman considering a termination of pregnancy, they should provide her with the number for the Central Booking Service in England (**0333 234 2184**) or call the helpline on behalf of the woman. The CBS can arrange for advice, support and counselling to be made available for women who are uncertain or unsure of their decision. Those with a conscientious objection to abortion should direct women to where information about services is available including Gov.uk.
- From 22 October 2019,⁶ women should be informed that **all travel, and where needed accommodation, will be funded** and the current criteria in relation to low income or receipt of benefits will no longer be applied.

The scheme in England will remain in place after 31 March 2020 until we are confident that service provision in Northern Ireland is available to meet women's needs. The UK Government will be providing public information to ensure women are aware of the position in relation to services.

If a health professional does choose to offer an abortion service to women during the interim period, they should do so in line with their professional competence and guidance from their professional body. For example, as set out earlier, this may be in the circumstances in which a small number of procedures are currently performed under the current common law provisions. In addition, healthcare professionals may also choose to treat a woman where a fatal or serious fetal anomaly has been detected. Clinical guidance is available from the National Institute of Clinical Excellence (NICE) and the Royal College of Obstetricians and Gynaecologists (RCOG).

Conscientious Objection

Consideration is being given to providing for conscientious objection in the new legal framework from the end of March 2020. In England and Wales, the Courts have found that the scope of conscientious objection in relation to abortion is limited to participating in a 'hands-on' capacity in the course of medical treatment bringing about the termination of the pregnancy, and does not include the ancillary, administrative and managerial tasks that

⁶ In the event that the Northern Ireland Executive is not restored on or before 21 October 2019.

might be associated with that treatment. In the interim period, anyone who has a conscientious objection to abortion may want to raise this with their employer. If they see a patient considering a termination, they should follow guidance from their professional body.

Guidance from the General Medical Council (GMC), which applies to all medical professionals across the UK states the following in relation to conscientious objection:

- Paragraph 52 - You must explain to patients if you have a conscientious objection to a particular procedure. You must tell them about their right to see another doctor and make sure they have enough information to exercise that right. In providing this information you must not imply or express disapproval of the patient's lifestyle, choices or beliefs. If it is not practical for a patient to arrange to see another doctor, you must make sure that arrangements are made for another suitably qualified colleague to take over your role.
- Paragraph 54 - You must not express your personal beliefs (including political, religious and moral beliefs) to patients in ways that exploit their vulnerability or are likely to cause them distress.
- Paragraph 57 - The investigations or treatment you provide or arrange must be based on the assessment you and your patient make of their needs and priorities, and on your clinical judgement about the likely effectiveness of the treatment options. You must not refuse or delay treatment because you believe that a patient's actions or lifestyle have contributed to their condition.
- Paragraph 59 - You must not unfairly discriminate against patients or colleagues by allowing your personal views to affect your professional relationships or the treatment you provide or arrange.

Guidance on conscientious objection is also available from the Nursing and Midwifery Council.

Abortion medication online

It is recognised that during the interim period some women may continue to attempt to purchase medical abortion pills online. Under medicine legislation, abortion pills are prescription only medicines, the sale and supply of which is unlawful without a prescription. The medicines legislation is not affected by these changes.

Women who may require medical help following use of medical abortion pills bought on the internet will be able to seek medical assistance as needed within Northern Ireland. With the repeal of sections 58 and 59 of the Offences Against the Person Act 1861, there will be no offence to consider reporting. Health professionals will not be under any duty to report an offence.

Next Steps including UN CEDAW recommendations

If the Northern Ireland Executive has not been restored by 21 October 2019, the NIEF Act places a legal duty on the UK Government to implement all of the recommendations under paragraphs 85 and 86 in the 2018 United Nations' Committee on the Elimination of Discrimination against Women (CEDAW) report (Annex C), some of which do not require legislation to take forward. Work is underway on all recommendations and further information about the UK Government's proposals will be available shortly.

There are a range of sensitive policy issues that need to be carefully worked through to implement the duty to bring forward regulations to introduce a new legal framework for abortion in Northern Ireland by 31 March 2020. **A public consultation on a proposed legal framework for Northern Ireland will open on or shortly after 22 October 2019.** Following analysis of the consultation responses, regulations will be laid to enact a new legal framework for abortion in Northern Ireland to come into force by 31 March 2020.

Annex A - Current Legal Position

The current abortion law in Northern Ireland is different from that in the rest of the United Kingdom. The Abortion Act 1967 which applies in England, Scotland and Wales has never extended to Northern Ireland.

In Northern Ireland, the law relating to the termination of pregnancy has been contained in sections 58 and 59 of the Offences Against the Person Act 1861, and, for late term abortions, in section 25 of the Criminal Justice Act (Northern Ireland) 1945. Under the Offences Against the Person Act 1861, it is a criminal offence for any woman who is pregnant to do any act with intent to procure a miscarriage; and for any person unlawfully to do an act to procure a miscarriage of any woman; or to unlawfully supply or procure drugs or instruments to cause an abortion. Section 25(1) of the Criminal Justice Act (Northern Ireland) 1945 also makes it a criminal offence for anyone to assist or wilfully act to 'destroy the life of a child then capable of being born alive', except where the purpose is to preserve the life of the mother 'in good faith'.⁷ Section 25 (2) of the Criminal Justice Act (NI) 1945 states that a foetus with a gestational age of 28 weeks is presumed to be capable of being born alive. Medical advances since this Act mean that a foetus can often survive earlier in gestation.⁸

Common law has interpreted 'preserving the life of the woman' to mean that 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', then the doctor is 'operating for the purpose of preserving the life of the woman'.⁹ This common law interpretation has been followed in Northern Ireland where abortions can only be provided in these very narrow circumstances.

⁷ The Act provides that evidence that a woman had been pregnant for a period of 28 weeks is prima facie (automatic) proof that she was at that time pregnant with a child capable of being born alive.

⁸ And see *R v McDonald* 1999 where the Crown Court ruled 'capable of being born alive' meant the foetus has a real chance of being born and existing as a live child, breathing through its own lungs, whether unaided or with the assistance of a ventilator and whether for a short time or a longer period.

⁹ *R v Bourne* [1939] 1 KB 687 and subsequent cases.

Annex B – Information about the central booking service in England

The UK Government's Department of Health and Social Care has established a central booking service (CBS) that is run by the British Pregnancy Advisory Service (BPAS).

Women from Northern Ireland can call a single telephone number to make an appointment with the most appropriate provider, based on:

- **the woman's requirements**
- **her medical condition, and**
- **provider availability**

The number is 0333 234 2184.

All treatment is funded free of charge. The package of care available includes:

- a consultation including impartial information/advice, and where needed, counselling with an abortion provider in England, including an assessment of whether the legal grounds for an abortion in England are met;
- an abortion procedure;
- HIV and sexually transmitted infection tests; and
- choice of contraception from the abortion provider.

From 22 October 2019, if the NIEF Act changes have come into effect all travel and, if needed accommodation, will be funded through the scheme (this is currently only available on a means-tested basis for low-income patients).

The CBS can only refer to services in England.

Further information is also available on gov.uk

Annex C: UN CEDAW RECOMMENDATIONS ON ABORTION IN NORTHERN IRELAND

For the full report, see

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fOP.8%2fGBR%2f1&Lang=en

Recommendation
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 who undergo abortion or against qualified health-care professionals and all others who provide and assist in the abortion;
Adopt legislation to provide for expanded grounds to legalize abortion at least in the following cases: <ul style="list-style-type: none">(i) Threat to the pregnant woman's physical or mental health, without conditionality of "long-term or permanent" effects;(ii) Rape and incest;(iii) Severe fetal impairment, including fatal fetal abnormality, 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;
Introduce, as an interim measure, a moratorium on the application of criminal laws concerning abortion and cease all related arrests, investigations and criminal prosecutions, including of women seeking post-abortion care and health-care professionals.
Adopt evidence-based protocols for health-care professionals on providing legal abortions particularly on the grounds of physical and mental health and ensure continuous training on the protocols.
Establish a mechanism to advance women's rights, including through monitoring authorities' compliance with international standards concerning access to sexual and reproductive health, including access to safe abortions, and ensure enhanced coordination between the mechanism with the Department of Health, Social Services and Public Safety and the Northern Ireland Human Rights Commission.

Strengthen existing data-collection systems and data sharing between the Department and the police to address the phenomenon of self-induced abortion.

Provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion.

Ensure the accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral, emergency, long-term and permanent forms of contraception, and adopt a protocol to facilitate access at pharmacies, clinics and hospitals.

Provide women with access to high-quality abortion and post-abortion care in all public health facilities and adopt guidance on doctor-patient confidentiality in that area.

Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation.

Intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception.

Adopt a strategy to combat gender-based stereotypes regarding women's primary role as mothers.

Protect women from harassment by anti-abortion protesters by investigating complaints and prosecuting and punishing perpetrators.