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M/S D Hill

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From: J A Daniell
DIRECTOR OF CRIMINAL JUSTICE
27 January 1999

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1. PS/MR INGRAM (B&L)
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INDEPENDENT REVIEW OF ABORTION LEGISLATION

Issue: The law on abortion in Northern Ireland is felt by some practitioners to be unclear. There have been various calls in the past for a clarification of the situation. A review of the issues raised by, and associated with, current abortion law has been under consideration for some time.

Timing: Routine.

Recommendation: That the Secretary of State seeks the agreement of colleagues to establish an independent review of abortion legislation.

Background

1. My minute of 15 January charted a possible way forward on a review of abortion law. I discussed this with the Secretary of State on 25 January. As requested, this minute and the attached draft provide an agenda for discussion with Ministers and officials locally and for consultation with Cabinet colleagues. I understand that the Secretary of State wishes to be in a position to launch the review shortly before devolution, which points to the need to consult colleagues during the early part of February.

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Background

2. The 1967 Abortion Act has never been extended to Northern Ireland. Instead, abortion in Northern Ireland is regulated by the 1861 Offences Against the Person Act, which makes it a criminal offence to procure a miscarriage unlawfully; and by the Criminal Justice Act (NI) 1945, which makes it an offence to cause a child, then capable of being born alive, to die before it has an existence independent of its mother. Definition of the term 'unlawfully' in the 1861 Act is determined by case law and this has been felt, by both medical and legal practitioners, to be unacceptably unclear.

3. There have, over the years, been calls from bodies such as SACHR, the High Court Judges, gynaecologists etc, for a clarification of the law. Most recently the report of the All Party Group on Population, Development and Reproductive Health (launched on 10 December 1998) recommended that 'the Government... take measures to deal with the anomaly of the denial of the right to legal abortion to the women of Northern Ireland.' However, apart from a few individuals, it is not the case that there has been significant pressure for change from within Northern Ireland in the recent past. In opposition the line was taken that, when in government, Labour would undertake a fundamental review of the law on abortion while recognising that imposing a change in the law without consent locally was not an option.

4. At present it is believed that around 1500 women travel from Northern Ireland to private clinics in Great Britain for abortions each year. (This figure is based on those who declare Northern Ireland as their permanent place of residence. An unknown number of NI women may be having abortions but giving GB addresses. It is equally possible that some women travelling from the Republic of Ireland for abortions might give Northern Ireland addresses.)

5. In 1996-7 there were a total of 1886 abortions (the term for any pregnancy which ends prematurely and without resulting in a live birth)

involving inpatient treatment in Northern Ireland health service hospitals. Whilst the majority of these were spontaneous abortions or miscarriages, 85 were 'medical abortions', i.e. terminations of pregnancies procured by doctors in accordance with the law. DHSS believe that this recorded figure of 85 may not be a true reflection of all medically induced abortions.

6. A 1993 survey, carried out by Ulster Marketing Surveys, found that a majority of those surveyed, from both sides of the community, would be in favour of relaxing the law to allow abortions in cases of severe foetal handicap, or in cases of rape or incest.

Review Body and Terms of Reference

7. An expert review of abortion legislation was suggested by DHSS last year, but did not proceed. It is now proposed that a small review team be established with the following terms of reference:

'to inquire into the legal and medical issues raised by the current abortion law and practice in Northern Ireland, to consider whether changes should be made, and make recommendations'.

The review would report jointly to the Secretary of State and to relevant members of the devolved administration. Given the more limited exercise envisaged by the Secretary of State (your minute of 22 January), the review could be asked to report in 6 months. As discussed with the Secretary of State, the secretariat would come from the NIO but DHSS would provide advice and assistance, especially in the early stages.

8. Membership of the review team should include medical and legal expertise. A number of names have previously been put forward by DHSS for consideration. A strong reaction in opposition to the review may dissuade some candidates from participating.

9. When the review was mooted last year, Lord Justice McDermott indicated his willingness to act as chairman. It is likely that he would remain willing to act in this capacity, but it would be necessary to approach him to ascertain whether this continues to be the case before making any public announcement.

Opposition

10. If it is decided to proceed with the review, stiff opposition from the churches and at least some political parties, as well as members of the public, should be expected. It is necessary, therefore, that prior to launch, both the First Minister and Deputy First Minister be consulted and then the remaining party leaders. We cannot of course be certain that Northern Ireland departments will be authorised to co-operate with the review after devolution.

Handling

11. The Secretary of State will wish to consult colleagues before implementing the review. Given the Prime Minister's close personal involvement in the political situation here, the Secretary of State may feel it more appropriate, in the first instance, to sound him out either informally, or in writing, in advance of consulting more widely.

12. The alternative would be to write to John Prescott, copying to the Prime Minister, HS committee, the Foreign Secretary and the Cabinet Secretary.

Recommendation

13. A draft letter is attached, which may be used for an approach to the Prime Minister, or for consulting HS and other colleagues. Officials have commenced work on a handling plan which will be submitted to the Secretary of State in due course.

Public Lines

14. Given that there is little current pressure from within Northern Ireland for a review or a change in the law, the presentational environment will not be easy. We do not recommend stimulating interest on the part of professional bodies or potential pressure groups. Any public comment will need to make it clear that the Government has no hidden agenda to impose the 1967 Act on the people of Northern Ireland. There are no pre-conceived notions; instead what is sought is genuine open consideration of the issues. Any change will only be implemented if it has the broad support of a cross-section of the people of Northern Ireland. Other points to make will include undertakings given while in opposition to review the law, the desirability of clarifying the law and concern about the number of women apparently travelling to GB for abortions.

15. In devising lines to take when news of the review first breaks (possibly when the First and Deputy First Minister are consulted), and when the review is launched, the exercise can be put in the broader context of government policy. For example, there is the importance attached by government to sex education in schools and the inclusion of teenage parenthood as an issue receiving special attention under the PSI initiative. Officials will develop a presentational strategy over the coming few days, along with the handling plan.

Recommendation

16. The Secretary of State is recommended to

- i) consider whether to approach the Prime Minister initially or cabinet colleagues more widely about her plans to establish an independent review;

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ii) agree that the review should be conducted by a small review team (probably 3 or 4) with a secretariat drawn from the NIO;

iii) agree the terms of reference in paragraph 6 above, including a reporting timeframe of 6 months;

iv) note that a handling and presentational plans are being prepared.

(SGD)

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cc: PS/Mr Pilling (B&L)
PS/Mr Semple
Mr Jeffrey
Mr Gowdy
Mr Kelly
Mr Hill (DHSS)
Mr Shannon
Ms Dodd
Mr Hill (CPL)
Mr Warner
Mr Maccabe
Ms Preece

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LETTER DRAFTED FOR SIGNATURE BY THE SECRETARY OF STATE

[The Right Hon Tony Blair
Prime Minister
10 Downing Street
London]

[The Right Hon John Prescott
Deputy Prime Minister
House of Commons
London]

PROPOSED REVIEW OF THE ABORTION LAW IN NORTHERN IRELAND

This letter seeks your agreement [and that of colleagues] for an independent review of abortion in Northern Ireland.

The Abortion Act 1967 does not extend to Northern Ireland, and the grounds for abortion here are more restricted than in Great Britain. Abortion in Northern Ireland is regulated by the 1861 Offences Against the Person Act, the Criminal Justice Act (NI) 1945, and by case law. It is felt, in some quarters, that the legal position is unclear, leaving the medical and legal professions unsure as to the grounds on which abortions may legally be performed.

In past years we have been pressed by, amongst others, the Standing Commission on Human Rights, High Court Judges, gynaecologists and doctors, to clarify the law. The recent report of the All Party Group on Population, Development and Reproductive Health, published on 10 December 1998, recommended that 'the Government... take measures to deal with the anomaly of the denial of the right to legal abortion to the women of Northern Ireland.' Survey data, dating from 1993, suggests that a majority in both main traditions would not oppose abortion in cases of rape or incest, or where a child would be born seriously handicapped.

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In opposition we said that when in government we would undertake a fundamental review of the law on abortion in Northern Ireland - we also made clear that we would not impose change against local wishes.

It is possible, at present, for women in Northern Ireland to obtain abortions, if they attend a private clinic in Great Britain. At present around 1500 women each year are believed to travel to Great Britain for abortions.

The latest Northern Ireland figures are those for 1996/7. In that year there were a total of 1886 abortions (the term for any pregnancy which ends prematurely and without resulting in a live birth) involving inpatient treatment in Northern Ireland health service hospitals. Whilst the majority of these were spontaneous abortions or miscarriages, 85 were 'medical abortions', i.e. terminations of pregnancies procured by doctors in accordance with the law. DHSS believe that this recorded figure of 85 may not be a true reflection of all medically induced abortions.

I propose, to set in place an independent review which would inquire into the legal and medical issues raised by the current abortion law and practice in Northern Ireland, consider whether changes should be made, and make recommendations. I envisage the review reporting jointly to me and to the relevant members of the devolved administration. I propose that it be undertaken by a small team of around 3 or 4, which would include expertise in legal and medical matters. Lord Justice McDermott, a recently retired Lord Justice of Appeal, has previously indicated his willingness to be involved in such a review, and I propose to invite him to chair the group. I would expect the review to report in six months.

The churches and local politicians, and the vast majority of representations to Ministers, have consistently opposed any extension of the 1967 Abortion Act to Northern Ireland. Any government action to clarify or change the position here is bound to be controversial. A handling plan is, therefore, being

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developed, which will make clear that we have no hidden agenda and no pre-conceived notions, but are seeking genuine and open discussion of the issue. I propose that we say, as we have in the past, that any recommendations for change resulting from the review will only be implemented with the broad support of a cross-section of the people of Northern Ireland. I would also intend to consult the First Minister designate and the Deputy First Minister designate, as well as other party leaders, before reaching a final decision to proceed.

On timing, I have held back from proposing the review previously because of political talks and the intensive post-Agreement activity. There is now an opportunity to launch this review prior to devolution, whilst recognising that the subject matter spans across into the responsibilities of the Northern Ireland administration. I shall, of course, be retaining responsibility for the criminal law in Northern Ireland for the immediate future in any case, and the dual reporting responsibilities placed on the review will ensure that the Assembly - and subsequently the Executive - are kept fully involved both in the conduct of the review and in deciding what, if any, action to take as a result of it.

[I am copying this letter to the Prime Minister, members of HS Committee, Robin Cook and Richard Wilson.]

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