



"Dorrian, Gerry"
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05/03/02 11:47

To: Carol Lavery <Carol.Lavery@dfpni.gov.uk>, Linda Devlin
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cc:
Subject: FW:

All, draft letter from my Minister to SOS now attached-please consider
urgently with the submission-Gerry

> -----Original Message-----
> From: McDonald, Laura
> Sent: 05 March 2002 11:08
> To: Dorrian, Gerry
> Subject:
>
> <<emergency contraception letter.doc>>



emergency contraception letter.

I understand that you have already been advised about the potential need to
submit the provisions of an Emergency Bill that may require to be
introduced at Westminster in the very near future for the reason that the
Department of Health (DOH) (UK) lost a judicial review brought by the Society
for the Protection of the Unborn Child (SPUC). The review was heard in
London on 12, 13 and 14 February and I understand that the judgement is
expected to be announced shortly after the Easter break.

Following the hearing, the DOH remains confident of winning the case but the
implications are so serious that it has devoted considerable time and energy to
preparing a robust contingency plan. These implications will apply here should
the case be lost. I am committed to ensuring that women here will not suffer a
loss of access to emergency contraception which they have enjoyed for many
years. Shortly thereafter, we expect but for the interim arrangements in place here.

The judicial review case to quash the Order dated December 2001, was
signed jointly by Yvette Cooper and me, which allowed emergency
contraception to be sold over the counter by pharmacists on a non-prescription.
This case brought by SPUC is the emergency contraception case.

Restricted – Policy

Dr John Reid

Secretary of State for N. Ireland

Judicial review of Emergency Contraception

I understand that you have already been advised about the potential need to extend here the provisions of an Emergency Bill that may require to be introduced at Westminster in the very near future in the event that the Department of Health(DOH) (L) loses a judicial review brought by the Society for the Protection of the Unborn Child (SPUC). The review was heard in London on 12, 13 and 14th February and I understand that the judgement is expected to be announced shortly after the Easter recess.

Following the hearing, the DOH remains confident of winning the case but the implications are so serious that it has devoted considerable time and energy to preparing a robust contingency plan. These implications will apply here should the case be lost. I am committed to ensuring that women here will not suffer a loss of access to emergency contraception, which they have enjoyed for many years. I have, therefore, no option but to set similar arrangements in place here.

The judicial review seeks to quash the Order laid in December 2000, and signed jointly by Yvette Cooper and me, which allowed emergency contraception to be sold over the counter in pharmacies, on certain conditions. The case brought by SPUC is that emergency contraception is a method of

abortion, and therefore anyone who administers or supplies it is committing a criminal offence under the Offences against the Person (OAP) Act 1861.

Emergency contraception has been available on prescription for nearly 20 years and the issue of whether this product is a method of contraception or abortion was considered before licensing of these medicines was granted. The then attorney General, Sir Michael Havers, in a written answer on 10 May 1983, concluded that prevention of implantation which is brought about by emergency contraception products does not amount to procuring a miscarriage under Sections 58 and 59 of the OAP Act.

An adverse judgement could apply not only to the supply of emergency contraception, whether prescribed or over the counter, but may also extend to any form of contraception which might affect implantation (including the pill), with condoms being the only obvious exception. Such a scenario would be totally unacceptable to my Department whose policy for many years has been to provide access to different forms of contraception for all women who wish to avail of it.

As part of its contingency plans the DOH(L) is proposing that an amendment would need to be made to the OAP Act to define a "miscarriage" as only taking place post implantation, and to make clear that the supplier of emergency or other forms of contraception is not committing an offence if implantation has not occurred. This emergency legislation, if passed, would re-establish the position upheld by previous administration in England and generally accepted here.

You will be aware that the OAP Act 1861 comes under the heading of criminal law and is therefore a reserved matter. Thus while the policy matter in question here is one of health i.e the availability of contraception, the means to secure continued availability depend upon an amendment to an Act that lies

within your bailiwick, i.e criminal law. My purpose in writing to you at this time is, therefore, to ask you to take the appropriate steps to ensure, if necessary, that the provisions of the Emergency Bill which may be brought forward by the DOH(L), extend here.

You have been here long enough now to know that rarely, however, is anything straightforward. As I said the crux of this matter is to ensure continued access for women to emergency contraception. That is the policy of my Department and one that I wish to see continuing. The difficulty, however, lies not with the end but may lie with the means to that end. The 1967 Abortion Act does not extend to this part of the world and any suggestion of tampering with the law governing abortion here ie the OAP Act, will result in a public argument with a great deal of emotional language coming from those on both sides of the abortion debate. (There is a current judicial review here in which SPUC is seeking a declaration from the Court that the law on abortion is unclear and that my Department should issue clear guidance on the availability of abortion services here). Your office has consistently taken the line that any change to the law on abortion could only come about with broad support from a cross-section of the people here. While the amendment being proposed will not actually change the law on abortion in any practical or meaningful way, you can expect that there will be those who will wish to muddy the waters.

In short whatever you do, you (and I) will be criticised but there is no way to avoid this if the judicial review outcome is adverse. Consultation followed by the introduction of primary legislation to ensure continued access to contraception, if such could be devised, is not something that in the circumstances we have the time to do. There is, therefore really no alternative to extending the Emergency Bill here, if indeed it becomes necessary for the DOH(L) to seek to have it passed at Westminster.

I am copying this letter to the First Minister and the Deputy First Minister.

BAIRBRE DE BRÚN

Minister of Health, Social Services and Public Safety