**BRIEFING FOR JEFF DUDGEON: Belfast City Council Motion on Access to Abortion in Northern Ireland**

**FPA**

FPA is a pro-choice organisation. We believe that abortion is an essential part of women’s reproductive health and it should not be considered or implied to be a criminal act. We call for abortion to be removed from criminal law in all parts of the UK. Abortion is, and should continue to be, regulated as a healthcare procedure, with the final decision resting with the woman.

Regulation of abortion should be in the best interests of women and abide by standards of best clinical care. It should trust women to decide what is best for them and allow healthcare professionals to practise without fear of punishment.

Our abortion policy can be viewed in full [here](http://www.fpa.org.uk/sites/default/files/abortion-policy-statement.pdf).

**The Law**

FPA realise that there is a substantial difference between our policy on abortion and the reality women face. The law in Northern Ireland can be summarised as follows:

1. The Abortion Act 1967 does not apply to Northern Ireland (pursuant to s.7(3) Abortion Act 1967);
2. Attempting to procure an abortion, having an abortion, and performing an abortion remain criminal offences in Northern Ireland (ss.58 and 59 Offences Against the Person Act 1861), as does the “destruction” of a child then capable of being born alive (s.25(1) Criminal Justice Act (Northern Ireland) 1945);
3. Abortion in Northern Ireland is unlawful unless performed in good faith for the purpose of preserving the life of the pregnant woman. An abortion will only be lawful where the continuance of a pregnancy threatens the life of the woman, or would adversely affect her mental of physical health. The adverse effect on her mental or physical health must be “real and serious” and must also be “permanent or long term” (Family Planning Association of Northern Ireland v Minister for Health and Social Services and Public Safety [2004] NICA 37, at §12);

The result of the law has been that only 16 abortions were carried out in Northern Ireland in 2015/16[[1]](#footnote-1). The practical result of the legal regime is that women who require an abortion have to travel and until recently pay privately to obtain one, or buy medical abortion pills online, which is illegal and leaves them vulnerable to prosecution.

**Statistics**

Official figures show that 724 women and girls from Northern Ireland travelled to England and Wales to terminate their pregnancies in 2016[[2]](#footnote-2). As the Supreme Court recognised in the A&B case, these figures are likely to be an under-estimate as a number of women may provide a false address in order to shield their identity, such is the stigma surrounding abortion in Northern Ireland.

Between 2010 and 2016 the number of women travelling from Northern Ireland to England decreased by 34%. However, this does not mean that fewer women from Northern Ireland are now having abortions, they are simply accessing treatment by different means.

**Abortion Pills**

The availability of abortion pills via the internet has resulted in a rapid rise in the number of women who have terminated their pregnancies whilst remaining in Northern Ireland.

Data from one online provider shows that between, 2010-2015 they prescribed pills for 5,650 women from across Northern Ireland and the Republic of Ireland[[3]](#footnote-3).

It is not possible to disaggregate this data into Irish and Northern Irish residents. However, in line with their respective populations, it is reasonable to assume that at least a quarter of these women – amounting to over 1,400 over the six years for this supplier alone – came from Northern Ireland.

**Prosecutions**

Buying or taking this medication outside of a clinical setting is a criminal offence throughout the UK and individuals have been prosecuted for doing so in Northern Ireland.

In April 2016 a woman was handed a three month suspended sentence for self-inducing an abortion in Northern Ireland, because she could not afford the cost of travel to England and the expense of a private procedure[[4]](#footnote-4).

In January 2017, a man and a women received official cautions under the Offences Against the Person Act 1861 for the same offences[[5]](#footnote-5) and in the same month a woman being prosecuted for procuring abortion pills online for her 15 year old daughter has been granted a judicial review into the decision of the Public Prosecution Service to pursue the prosecution[[6]](#footnote-6). This case is due to be heard in October 2017. A number of other individuals are awaiting trial and on International Women’s Day, the Police Service in Northern Ireland carried out a number of searches connected to the purchase of abortion medication online[[7]](#footnote-7).

**International human rights standards**

As a signatory to UN conventions, the UK has continually been criticised on its failure to meet its duties in regard to reproductive rights. The relevant provisions of these instruments establish the following legal standards of international human rights law:

1. States must guarantee universal and non-discriminatory access to adequate reproductive health services, including abortion services;[[8]](#footnote-8)
2. States must refrain from obstructing action taken by women in pursuit of their reproductive health goals. Such barriers include laws that criminalise medical procedures only needed by women and requirements or conditions that prejudice women’s access to such procedures, such as high fees for healthcare services, distance from health facilities, and the exclusion of particular reproductive health services from public funding;[[9]](#footnote-9)
3. States must supply free services where necessary to ensure safe pregnancies.[[10]](#footnote-10) Abortion laws that prohibit and criminalise abortion lead women to obtain illegal and unsafe abortions;[[11]](#footnote-11)
4. Legislation criminalising abortion should be amended.[[12]](#footnote-12)

At the heart of each of these standards is the principle of autonomy. Put simply, states should avoid placing barriers in the way of women exercising a free and informed choice.[[13]](#footnote-13)

These are standards and obligations which are binding upon the UK on the international plane, the fulfilment of which must inform the interpretation of national laws and the reasonable exercise of executive discretion in the UK. The situation as exists in Northern Ireland is a clear violation of human rights.

**Abortion law in Europe**

The majority of European countries allow abortion upon the woman’s request in the first 12 weeks of pregnancy. Thereafter abortion is carried out under specified circumstances such as a threat to the life or health of the pregnant woman or if the foetus is diagnosed with a severe or fatal abnormality. The countries with the most restrictive abortion laws are Ireland, north and south, as well as Malta.

**Potential Belfast City Council Motion**

We recently discussed a potential Motion you wished to bring to Belfast City Council on access to abortion in Northern Ireland. You had mentioned a time period of around 10/12 weeks and stated a preference for medical abortion rather than surgical.

Based on your comments as well as international human rights standards, the law as it stands in most European countries, the current law in Northern Ireland and the availability of medical abortion pills online perhaps your Motion could enable abortion services to be provided upon request during the first 12 weeks of pregnancy?

Thereafter abortion would be restricted other than to preserve the life of the pregnant woman; or a serious risk to the pregnant woman’s health; or the foetus has been diagnosed as having a condition which is likely to result in death either before birth, or during birth, or the condition of the foetus is such that if a live birth should occur, there is no medical treatment which could be offered to alter the fatal nature of the condition or improve the chances of survival.

This would enable women to access abortion in hospitals or private clinics with medical supervision rather than self-aborting at home under the threat of prosecution.

**After 12 weeks**

The current abortion law in Northern Ireland allows for abortion at any stage of the pregnancy if there is a threat to the pregnant woman’s life or a serious threat to her health. This is included above.

Also included is provision for an abortion if the foetus has an abnormality which will result in death either before or during birth, or in a short time thereafter. This is what has become to be known as a fatal foetal abnormality or FFA.

FPA, alongside other organisations such as the Royal College of Midwives and Amnesty International will argue in the UK Supreme Court this October that denying abortion in circumstances of FFA is a breach of human rights.

**Medical and surgical abortion**

A medical abortion involves first taking a medicine called mifepristone which stops the hormone that allows the pregnancy to continue working. A second medicine called misoprostol is taken which breaks down the lining of the womb, causing bleeding and loss of the pregnancy. bpas clinics give both pills at the same time, Marie Stopes and NUPAS administrator them six hours apart, while NHS hospitals will leave 24 to 48 hours between giving the first and second set of pills.

FPA believe women should also be able to choose a medical or surgical procedure. Vacuum aspiration is the surgical method used in the first trimester. This involves inserting a tube through the cervix and into the womb. The pregnancy is then removed using suction. This takes about 5 to 10 minutes and most women go home a few hours later. In FPA’s experience given the choice women would choose this option over a medical procedure.

N.B. If a woman has a miscarriage she may require medical or surgical intervention to remove any tissue which has remained in her womb. The exact same methods described above will be used to perform this so hospitals in Northern Ireland would be equipped to deal with these changes.

**Conclusion**

I am keen to hear your thoughts on this document and on the access to abortion which I have outlined for a potential Motion.

I should point out that if you wished to proceed without access in later stages for FFA and/or wished to only grant access to medical rather than surgical procedures, it would be difficult for FPA to support the Motion. However, I am keen to work with you on this issue so I hope we can discuss any differences of opinion and agree on the best way to proceed.

I had previously mentioned that I have been speaking with Cllr Kate Nicholl on a potential Motion regarding the criminalisation of women for accessing abortion. This Motion would not be as detailed as yours with regards to access but would enshrine the principal that women should not end up with a criminal record for having an abortion.

I believe this Motion should be submitted before yours as it would perfectly compliment it. If a majority at Council vote to say women should not be criminalised then you could present your Motion as a solution to end the criminalisation.

I look forward to hearing your thoughts on this document and on working with you on this issue.

Yours sincerely

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1. Northern Ireland termination of pregnancy statistics, 2015/16 (Department of Health, 2017) <https://www.health-ni.gov.uk/news/ni-termination-pregnancy-statistics-201516> [↑](#footnote-ref-1)
2. Abortion Statistics, England and Wales: 2016 (Department of Health, 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/618533/Abortion_stats_2016_commentary_with_tables.pdf> [↑](#footnote-ref-2)
3. Irish women 'access abortion pills online' (BBC, 2016) <http://www.bbc.co.uk/news/health-37657042> [↑](#footnote-ref-3)
4. Woman who bought drugs online to terminate pregnancy given suspended sentence (BBC, 2016) <http://www.bbc.co.uk/news/uk-northern-ireland-35962134> [↑](#footnote-ref-4)
5. Woman and man receive caution over 'abortion pills' (Irish News, 2017) <http://www.irishnews.com/news/2017/01/19/news/pair-receive-caution-over-abortion-pills--892355/> [↑](#footnote-ref-5)
6. Woman who bought abortion pills for daughter can challenge prosecution (The Guardian, 2017) <https://www.theguardian.com/world/2017/jan/26/ulster-woman-who-bought-abortion-pills-for-daughter-can-challenge-prosecution> [↑](#footnote-ref-6)
7. Abortion pills: PSNI carry out searches and seizures (BBC, 2017) <http://www.bbc.co.uk/news/uk-northern-ireland-39255534> [↑](#footnote-ref-7)
8. Articles 12 and 16(1)(e) of the Convention on the Elimination of all Forms of Discrimination Against Women (“CEDAW”); CEDAW Committee, General Recommendation No. 24, at §11; Article 12 International Covenant on Economic and Social Rights (“ICESR”); Committee on Economic, Social and Cultural Rights (“CESCR”), General Comment No. 22, at §13, §28, §34, and §45; Article 2(1) United Nations Convention on the Rights of the Child (“UNCRC”); Article 26 International Covenant on Civil and Political Rights (“ICCPR”); Human Rights Committee, determination in communication no. 2324/2013, at §§7.10, 7.11, and 8; Parliamentary Assembly of the Council of Europe, Resolution 1607, at §2. [↑](#footnote-ref-8)
9. Article 12 CEDAW, CEDAW Committee; General Recommendation No. 24, at §§13, 14, and 21; CESCR, General Comment No. 22, at §28, §41, and §57; Parliamentary Assembly of the Council of Europe, Resolution 1607, at §2 and §7. [↑](#footnote-ref-9)
10. CEDAW Committee, General Recommendation No. 24, at §27; CESCR, General Comment No. 22, at §28, §34, §41, and §49; Committee on the Rights of the Child (“CRC”), General Comment, No.15, at §56; Human Rights Committee, determination in communication no. 2324/2013, at §7.8. [↑](#footnote-ref-10)
11. CEDAW Committee, Concluding Observations regarding Chile, 25th August 2006, at §19; CESCR, concluding observations on the United Kingdom in 2009, at §25; CESCR, General Comment No. 22, at §10 and §28; CRC, Concluding observations on the fifth periodic report of the UK, at §65(c). [↑](#footnote-ref-11)
12. CEDAW Committee, General Recommendation No. 24, at §31(c); CEDAW Committee, Concluding Observations regarding the United Kingdom, 10th July 2008, at §289; CEDAW Committee, Concluding Observations regarding the United Kingdom, 30th July 2013, at §51; CESCR, concluding observations on the United Kingdom in 2009, at §25; CESCR, General Comment No. 22, at §34 and §40; CRC, Concluding observations on the combined third and fourth periodic reports of Ireland, at §58; CRC, Concluding observations on the fifth periodic report of the UK, at §65(c); Parliamentary Assembly of the Council of Europe, Resolution 1607, at §7.1. [↑](#footnote-ref-12)
13. CESCR, General Comment No. 22, at §34; Parliamentary Assembly of the Council of Europe, Resolution 1607, at §7.3. [↑](#footnote-ref-13)