



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Response to 'The Criminal Law On Abortion – Lethal Foetal Abnormality and Sexual Crime – A Consultation on Amending the Law by the Department of Justice'**

1. The Northern Ireland Human Rights Commission (the NIHRC or the Commission) under section 69 (1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. Further, and in accordance with section 69 (3) of the Northern Ireland Act 1998, the Commission provides advice to the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights.
2. The NIHRC bases its position on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 (HRA) and the treaty obligations of the Council of Europe and United Nations (UN) systems. The relevant international treaties in this context include:
  - The European Convention on Human Rights, 1950 (ECHR) [UK ratification 1951];
  - The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) [UK ratification 1976];
  - The International Covenant on Civil and Political Rights (ICCPR) [UK ratification 1976];
  - The United Nations Convention on the Elimination of Discrimination Against Women (CEDAW) [UK ratification 1986];
  - The United Nations Convention on the Rights of the Child (CRC) [UK ratification 1991].

3. The Northern Ireland (NI) Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom's ratification. In addition section 24 (1) of the Northern Ireland Act 1998 states that "A Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights".
4. The Commission considers that it has fulfilled its statutory duty under s69 (1) and s69 (3) of the Northern Ireland Act. The Commission has engaged extensively with the Department in advance of the current consultation<sup>1</sup> and has advised both the Department of Justice and the Department of Health, Social Services and Public Safety that the law on termination of pregnancy in Northern Ireland in circumstances of serious malformation of the foetus, rape and incest is incompatible with articles 3, 8 and 14 of the ECHR<sup>2</sup>. A copy of that advice is annexed to this response.
5. When the Commission uses the term 'woman' or 'women' or pregnancy in general, this should be read to include girls of whatever age who are capable of becoming pregnant. The Commission has repeatedly advised the Department that, in its view, the existing law violates the human rights of women. A change in the law is required so that women in Northern Ireland have the choice of accessing a termination of pregnancy in circumstances of serious malformation of the foetus, rape or incest.
6. The consultation addresses the need for legislation in cases of lethal foetal abnormality and the Commission welcomes the commitment to introduce legislation to provide for termination of pregnancy in these circumstances. The consultation, however, does not deal with serious malformation of foetus and only seeks public opinion on cases of sexual crime including rape and incest without putting forward proposals to change the law.

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<sup>1</sup> The Commission has been in correspondence with the Department on the issues raised in this consultation since November 2013.

<sup>2</sup> S69 (1) states "(1) The Commission shall keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights"; s69 (3) states "The Commission shall advise the Secretary of State and the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights..."

7. In December 2014, the Commission initiated legal proceedings on this matter as a last resort exercising its powers under s69 (5)(b) Northern Ireland Act 1998. By this litigation the Commission will challenge the legislation that governs the criminal law on termination of pregnancy in Northern Ireland, namely:
- (a) Offences Against the Person Act 1861, sections 58 and 59;
  - (b) Criminal Justice Act (Northern Ireland) 1945, section 25.
8. The Commission considers that the current law is incompatible with articles 3, 8 and 14 of the ECHR, and is therefore seeking a declaration of incompatibility from the Court pursuant to section 4 Human Rights Act 1998. In particular Article 3 prohibits inhuman or degrading treatment; Article 8 provides a right to respect for a person's private and family life and Article 14 ensures freedom from discrimination in the exercise of ECHR rights.
9. The Commission also considers the current law is contrary to various provisions of international human rights law, including:
- ICESCR, Article 12 (1) which states:  
*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
  - ICCPR, Article 7 which states:  
*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*
  - CEDAW, Article 12 (1) which states:  
*States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.*
  - CRC, Articles 3, 13, 24 and 37 which state:  
*Article 3:  
In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law,*

*administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

*Article 13:*

*The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*

*Article 24:*

*States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*

*Article 37:*

*States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*

10. **The Commission reiterates its advice that the Department should introduce legislation to the Northern Ireland Assembly to remove the criminal sanctions that prevent access to termination of pregnancy in Northern Ireland in circumstances of serious malformation of the foetus, rape or incest.**

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