



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## 2021 Fact Sheet:

# Human Rights Commission Legal Action on Lack of Abortion Services in NI

### What is the current law in Northern Ireland on Abortion?

- Since 31 March 2020, the now [Abortion \(NI\)\(No.2\) Regulations 2020](#) legalised terminations in NI in a number of circumstances, including under any circumstances by a registered doctor, nurse or midwife up to 12 weeks and where there is a risk to physical or mental health in the opinion of two registered medical professionals up to 24 weeks.
- Terminations with no gestational limit are also legal in NI where there is an immediate necessity to save a life or to prevent a grave permanent injury to the physical or mental health of a pregnant woman, or in cases of severe foetal impairment or fatal foetal abnormality.
- The Executive Formation Act (NI) 2019 required the Secretary of State for Northern Ireland to implement in full the recommendations of the [UN Convention of Elimination of Discrimination of Women inquiry](#) into abortion in Northern Ireland which held that the (then) law created grave and serious violations of human rights.

### How is the current law being implemented in Northern Ireland?

- The Department of Health has not commissioned or funded termination services for the purposes of implementing the Abortion (Northern Ireland) (No2) Regulations across Northern Ireland.
- The Department of Health has failed to issue any guidance to health and social care trusts on the provision of abortion services including when and in what circumstances medical staff may exercise their freedom of conscience when delivering a service.
- Papers were submitted to the NI Executive by the Department of Health

in April and May 2020 seeking to commission a service. We understand the NI Executive has not yet discussed, and therefore made no decision on the paper submitted in May 2020.

- Health and social care trusts are offering termination within existing services and only where resources allow. This was done as a short term measure by transferring staff from other sexual and reproductive services which were held in abeyance or reduced as a result of Covid restrictions.
- In August 2020, the five health and social care trusts produced an application seeking funding to meet the new legislative requirements for abortion services but this was not considered by the Health and Social Care Board.
- From 5 October 2020 the Northern Health and Social Care Trust had to transfer staff back into other sexual and reproductive health care services and therefore ceased to take any new referrals for termination services and the remaining four trusts are not providing abortions for between 10 and 12 weeks due to lack of resources. The Northern HSCT restored the service on 4 January 2021 having secured a locum resource.
- On 5 January 2021 the South Eastern Health and Social Care Trust ceased providing a service as the only staff member doing the work went on maternity leave and no replacement has been found.
- Other trusts did not have the resources to pick up the work in either of the Trusts.
- Termination services for medical reasons up to 24 weeks or without a gestational time limit, in line with the Abortion Regulations, are mainly performed by the Belfast Health and Social Care Trust.

### **What is the Northern Ireland Human Rights Commission's position?**

- Following pre-action correspondence, the Commission decided on 30 November 2020 to initiate legal action against the Secretary of State, NI Executive and Department of Health for Northern Ireland for the failure to commission and fund abortion services in Northern Ireland.
- The Commission is deeply concerned at the lack of commissioned and funded abortion services in Northern Ireland leading to a vacuum for many women and girls seeking such services.
- One health and care trust has now ceased to provide services leaving women and girls to travel to England, elsewhere in Ireland and pay for a service or to use unregulated services.

- The Commission believes that the failure of the NI Executive and Department to agree to fund and commission these services breaches the European Convention on Human Rights.
- The Secretary of State for Northern Ireland has a statutory requirement under the NI (Executive Formation etc) Act 2019 to ensure that the [recommendations](#) of the Committee on the Elimination of Discrimination against Women committee are implemented, namely that women have access to free and safe abortions in Northern Ireland.
- The Commission expects the NI Executive and the Department to commission and fund the abortion services envisaged in the Abortion (Northern Ireland) (No2) Regulations 2020; and expects the Secretary of State to take such legislative action as is necessary to ensure this occurs.

### **What are the key concerns?**

- The lack of a Department supported approach has created a disparity in accessing termination services within Northern Ireland.
- It has also meant that many, depending on their circumstances and where they live in Northern Ireland, continue to have to travel to other parts of the UK and Ireland or to use unregulated services.
- There are occasions when travel restrictions and threat to health created by COVID-19 rule out travelling for women.

### **What human rights are engaged?**

The decision of women and girls to make choices about continuing their pregnancy falls within the scope of Article 8 ECHR, which protects the right to private and family life. Article 8 states:

- (1) *Everyone has the right to respect for his private and family life, his home and his correspondence.*
- (2) *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*

The failure to commission and fund service giving effect to the Abortion (NI)(No.2) Regulations 2020 has resulted in women and girls not being able to access lawful abortions, a disproportionate interference with their rights under Article 8 ECHR.

## **What is the Commission doing to monitor implementation of Abortion Services in NI?**

- The Commission has committed to: monitor the provision of reproductive healthcare services and education in Northern Ireland, following the introduction of a new legal framework for abortion, and engage with the Department of Health and Department of Education in accordance with the Northern Ireland (Executive Formation etc) Act 2019.
- The Commission has undertaken the necessary discussions with key stakeholders to inform its monitoring project. In terms of the healthcare aspect this has included the Department of Health, Northern Ireland Office clinicians and managers providing the service, the regulator, Public Health Agency, Royal Colleges among others and conducted a roundtable with civil society organisations that both support and oppose the new law.
- A report on healthcare is due to be published in early 2021.

## **Human Rights Commission Legal Action on Lack of Abortion Services in NI**

### **Timeline**

#### **November 2020:**

The Northern Ireland Human Rights Commission on 3 November 2020 issued pre-action correspondence to the Secretary of State for Northern Ireland, NI Executive and the Department of Health for Northern Ireland.

#### **October 2020:**

From the start of October 2020, termination services introduced by the health and social care trusts have experienced a roll back. For three months the Northern Health and Social Care Trust could no longer offer any termination services due to lack of commissioning from the Department of Health and the service was only restored at the beginning of January 2021. On 5 January 2021 the South Eastern Health and Social Care Trust ceased to provide a service.

The other health and social care trusts continue to provide termination services, but these only extend to individuals that are less than 10 weeks pregnant. Thus those between 10 and 12 weeks pregnant, unless a termination is required for a medical reason, are not able to access termination services in NI in line with the Abortion Regulations and face having to travel or use unregulated services.

**May 2020:**

On 14 May 2020, the original regulations were revoked and replaced by the Abortion (NI) (No 2) Regulations 2020. This was for administrative reasons, with no substantive changes to the circumstances in which terminations can be performed in NI and the procedural requirements attached to this.

**April-June 2020:**

In April 2020, the Commission committed to:

monitor the provision of reproductive healthcare services and education in Northern Ireland, following the introduction of a new legal framework for abortion, and engage with the Department of Health and Department of Education in accordance with the Northern Ireland (Executive Formation etc) Act 2019.

Between mid-April and start of June 2020, health and social care trusts in NI guided by the regulations started providing certain services within their existing resources and without financial support from the Department of Health.

**March 2020:**

On 31 March 2020, in line with the NI (Executive Formation etc) Act 2019, the [Abortion \(Northern Ireland\) Regulations](#) 2020 came into force. The regulations allow terminations:

- Under any circumstances for a pregnancy not exceeding 12 weeks;
- Where the pregnancy poses an actual or reasonably foreseeable risk to the mental or physical health of the pregnant woman or girl for a pregnancy not exceeding 24 weeks; or
- Anytime during the pregnancy where there is an immediate necessity, a risk to life or grave permanent injury to physical or mental health of the pregnant woman or girl, or in cases of severe foetal impairment or fatal foetal abnormality.

**October 2019:**

- [On 3 October 2019, the High Court in Belfast found that Sarah Ewart's rights](#) had been breached by the law on abortion in NI, and ruled that her right to private and family life had been violated. The judgment relied on the decision of the UK Supreme Court in [Re an application by the Northern Ireland Human Rights Commission](#).

**June 2018: The Commission's Supreme Court Case**

In June 2018 the UK Supreme Court delivered its [judgment](#) in the Northern Ireland Human Rights Commission's [challenge](#) to Termination of Pregnancy laws. The Court concluded the current law in Northern Ireland breaches human rights, in particular women and girls' right to private and family life under Article 8 of the European Convention of Human Rights, in cases of fatal foetal abnormality, rape and incest.

### **April 2018**

[In April 2018, the Departments of Health and Justice](#) released a report on fatal foetal abnormality, which recommended that the law in NI is changed. In particular, the report found that the existing legal framework prevented healthcare professionals from fully meeting their duty of care to women.

### **February 2018**

[In February 2018, CEDAW Committee's Inquiry Report](#) called for the decriminalisation of termination of pregnancy in NI and for access to termination to be permitted in circumstances where there is a threat to the women's physical or mental health, in cases of rape or incest or in cases of serious fatal abnormality of the foetus. The Committee found the UK Government responsible for grave and systemic violations of the Convention. The UK Government did not accept the findings but held that a detailed response would be prepared once the NI Executive and NI Assembly were restored.

### **November 2017**

Since November 2017, NI women can receive NHS termination services in England, Scotland and Wales. Department of Health's 2016 guidance to healthcare providers remains unchanged and does not reflect the availability of free services in England, Scotland and Wales. It also does not clarify when NI health professionals can provide information to women about accessing services elsewhere.