

This factsheet looks at abortion practice and provision in Northern Ireland. It outlines the legal background, professional and public attitudes, and consequences for the women who live here.

Key issues

- Abortion is legal in Northern Ireland in some circumstances.
- The majority of women have to travel to England to secure an abortion.
- Women from Northern Ireland are not entitled to an NHS abortion in England.

History of abortion law in Northern Ireland

- **The 1861 Offences Against The Person Act**
This act, which provides the foundation for Northern Ireland’s abortion laws, became law on 1 November 1861. It classifies abortion as a felony and makes it a criminal offence to have an unlawful abortion or to perform one. The 1861 Offences Against The Person Act still remains in force throughout the whole of the UK. It is widely accepted by legal experts that the use of the term “unlawful” in respect of abortion implies that some abortions could be lawful.
- **The 1929 Infant Life (Preservation) Act**
The 1861 act was modified in England, Wales and Scotland by the 1929 Infant Life (Preservation) Act, subsequently enacted in Northern Ireland in 1945 as the Criminal Justice (Northern Ireland) Act. This act allows the abortion of a “child capable of being born alive” only where the mother’s life would otherwise be put at risk.

Because of the reference to a “child capable of being born alive”, it was generally assumed that this act focused on abortion after the 28th week of pregnancy. Confusion therefore arose as to whether it was legal or illegal to perform a similar abortion in the first 27 weeks of pregnancy.

- **The ‘Bourne Judgement’ of 1938**

In England in 1938, Dr Alex Bourne performed an abortion on a 14 year old who had been raped. He deliberately challenged the law in order to clarify the legal position and, in the subsequent trial, brought evidence that if the young woman had been forced to continue with the pregnancy, she would have become a mental and physical wreck.

Dr Bourne was acquitted and the judgement passed into English case law, thus extending the grounds for a lawful abortion to include risk to the physical and mental wellbeing of the mother. There were no further changes to the law until the 1967 Abortion Act was introduced in England, Wales and Scotland, but this act does not extend to Northern Ireland.

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Abortion practice in Northern Ireland

In 1998, the Department of Health, Social Services and Public Safety (DHSSPS) published the first official statistics on abortions performed in Northern Ireland. As Table 1 shows, since 2000 there has not been a significant difference in the number of women having abortions in Northern Ireland.

Table 1: Discharges from hospital where the primary diagnosis was abortion

	2006/07	2005/6	2004/05	2003/04	2002/03	2001/02
Missed abortion	1,173	1,182	1,131	1,059	942	1,033
Spontaneous abortion	1,139	1,077	1,108	1,270	1,271	1,443
Medical abortion	79	80	64	67	76	71
Other abortion	0	0	0	1	2	3
Total	2,391	2,339	2,303	2,397	2,291	2,550

Source: Hospital Inpatient System

FACT SHEET

The terminology used in the above table is explained by the DHSSPS as follows:

Spontaneous abortion – the expulsion of the products of conception without deliberate interference.

Medical abortion – the interruption of pregnancy for legally acceptable, medically approved indications.

Other/unspecified abortion – includes cases where an abortion occurs as a result of medical or personal intervention, eg where the person requires treatment for a life-threatening condition and, as a consequence, an abortion occurs. Significantly, there are no available statistics to indicate which women have access to abortion, why, and at what stage of pregnancy.

Legal developments

In May 2001, **fpa** in Northern Ireland took the historic step of initiating legal action against the DHSSPS. **fpa** asked the courts to advise the DHSSPS that it was failing in its statutory duty to ensure that all women had equal access to reproductive healthcare services. In a landmark ruling on 13 June 2001, **fpa** won the right to the first judicial review of medical practices relating to abortion and the provision of abortion services in Northern Ireland.

The judicial review took place in the High Court in Belfast on 21-22 March 2002. On 7 July 2003, Mr Justice Brian Kerr presented his judgement. While he found that the DHSSPS was not failing in its statutory duty to issue guidelines, he thought it would be prudent to do so. However, Mr Justice Kerr clearly stated that abortion is legal in Northern Ireland in certain circumstances. They are as follows:

- The continuance of the pregnancy threatens the life of the mother, or would adversely affect her mental or physical health.
- The adverse effect on her mental or physical health must be a “real and serious” one, and must also be “permanent or long-term”.
- In most cases, the risk of the adverse effect occurring would need to be a probability, but a possibility might be regarded as sufficient if the imminent death of the mother was the potential adverse effect.

- It will always be a question of fact and degree whether the perceived effect of a non-termination is sufficiently grave to warrant terminating the pregnancy in a particular case.

On 28 July 2003, papers were lodged by **fpa** at Belfast High Court with regard to appealing the outcome of the judicial review. The appeal was heard on 24-26 May 2004. On 26 November 2004, Belfast Court of Appeal ruled that the DHSSPS had failed to perform its duties under Article 4 of the Health and Personal Social Services (Northern Ireland) Order 1972 to secure provision of integrated health and personal social services to women seeking lawful termination of pregnancy in Northern Ireland. In 2005, in response to the court’s ruling, the DHSSPS instigated a formal investigation into the provision of termination services in Northern Ireland. As stated in the ‘Politicians’ section, the final document will be published in October 2008.

Until clear guidelines on applying the legal principles stated above are produced, the ambiguity that has historically surrounded the availability and accessibility of abortion in Northern Ireland will remain. In essence, the provision of abortion is still often determined by the moral views of individual doctors or by unwillingness to test the law. In the past, this ambiguity has resulted in the following negative consequences:

In 1992, a survey of gynaecologists in Northern Ireland revealed that although just under half had a conscientious objection to performing abortions, only two would not carry out an abortion at all.¹ In effect, 95% carried out abortions, although two said they would only do so if the fetus would clearly not survive. This research confirms the inconsistency in abortion practice, eg one doctor indicated that an abortion would be offered if rape was involved but not for detected fetal disability. In contrast, another would not perform an abortion in the case of rape but would do so for fetal disability.

It is important to note that the 1981 Criminal Injuries (Northern Ireland) Order states that those women who become pregnant as a result of rape but keep their babies will be paid £5,000 - effectively an award for damages that ignores the option of abortion. The following court cases clearly demonstrate the inconsistency of abortion provision (albeit restrictive) in Northern Ireland.

FACT SHEET

The 'K' case (October 1993)

'K' became pregnant at 14 years old. She lived in a children's home, was suspected of substance abuse and had physically and verbally abused staff. She was adamant that if she did not have an abortion, she would kill herself and/or the baby. She had cut her wrists with broken glass, seemed to be starving herself and punched her stomach repeatedly in attempts to miscarry.

As K was a ward of court, it was for the courts to decide if she should have an abortion. K's mother had not seen her since she was five years old. She refused social workers' requests to meet with her pregnant daughter, but went to court to state her opposition to the abortion. K's father, who had maintained contact with his daughter, indicated that the abortion should proceed.

The judge concluded that an abortion would be in the best interests of K, but no doctor could be found in Northern Ireland to carry out the operation. Although those consulted had no conscientious objection, they were wary of the

girl's mother initiating legal proceedings given the uncertainty of the law. At the time of the court hearing, K had been admitted to hospital with appendicitis. On being discharged, she had to travel to England to obtain a private abortion.

The 'A' case (January 1994)

In the case of 'A', a 24 year old with a low IQ, the judge, despite the absence of any real threat of suicide by A, ruled that an abortion should be made available. The doctors involved agreed to perform the operation.

The 'S' case (October 1995)

'S' was 17 years old and 12 weeks pregnant. She was described in court as being mentally handicapped. The case came before the court by application of the Western Health and Social Services Board, which had previously made the girl a ward of court. This is significant because S lived with her mother, whom the judge described as very caring and having the best interests of her daughter at heart.

Figure 1: Women travelling to England from Northern Ireland fpa for an abortion alone or accompanied, 2000–2007

Accompanied 257, alone 83, total 340.

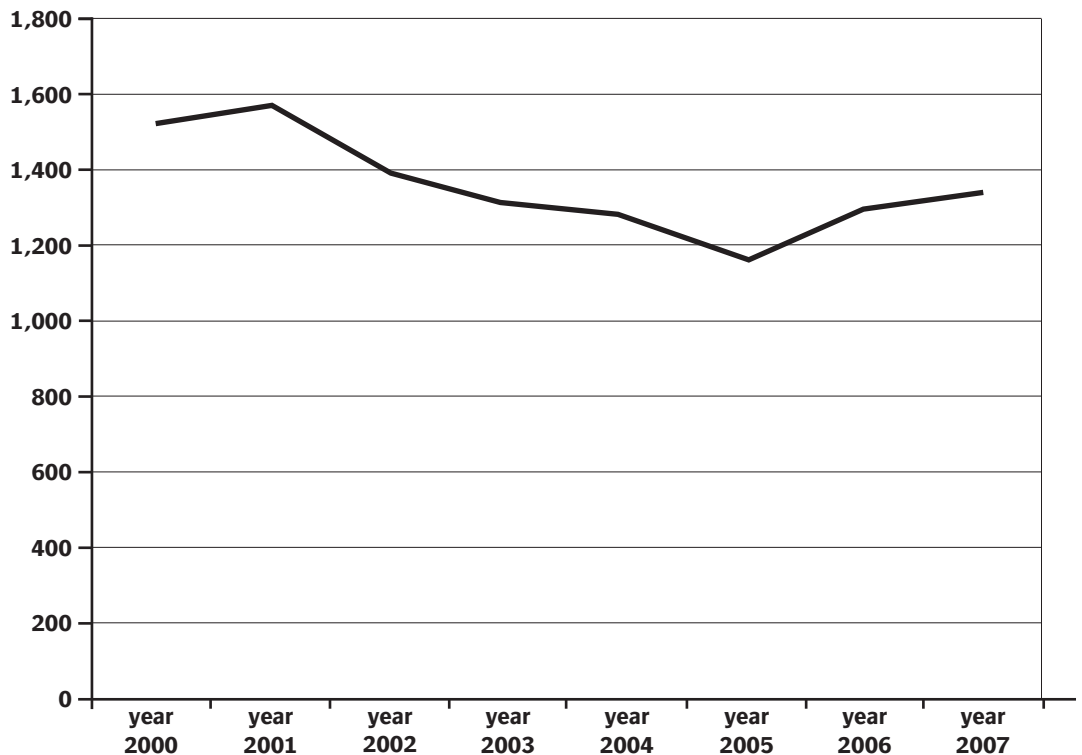


Table 2a: Abortions performed in England to Northern Ireland residents, 2000–2007

Week of pregnancy	2000	2001	2002	2003	2004	2005	2006	2007
Under 9 weeks	563	619	829	751	737	697	816	696
9–12 weeks	725	735	368	382	362	298	298	463
13–19 weeks	214	192	176	172	163	146	156	152
20+ weeks	26	31	18	13	18	23	25	32
Total	1,528	1,577	1,391	1,318	1,280	1,164	1,295	1,343

A gynaecologist and two psychiatrists (none of whom were identified by name) gave evidence that if the pregnancy continued, S would suffer severely and a mental breakdown was a strong possibility. The judge ruled that termination was clearly in the girl's best interests. The abortion was subsequently carried out in Northern Ireland.

It is evident that to date, abortion practice in Northern Ireland has been confused, inconsistent and determined by moral views or unwillingness to risk testing the law.

Table 2b: Abortions performed in England to Northern Ireland residents, 2006–07, by age

Age	2006	2007
Under 16	23	28
16–17	78	76
18–19	112	131
20–24	361	386
25–29	301	298
30–34	193	205
35–39	147	162
40 & over	80	57
Total	1,295	1,343

Source: Office for National Statistics

The reality for women in Northern Ireland

The vast majority of women in Northern Ireland have to travel to England to obtain a private abortion (see Table 2a). However, these figures,

based on clients' addresses, are an under-estimation. It is widely accepted that many women give false addresses for fear of detection. It is also known that some women are going overseas to countries such as the Netherlands for an abortion.

The figure is probably nearer 2,000 per year. It is significant that more women are now having a termination in the first nine weeks of pregnancy (65% of abortions in 2007 compared to 39.2% in 2001, the year the judicial review process was initiated). It is probably valid to assume that health professionals and women were more aware of fpa's counselling, information and support service as a result of the widespread publicity surrounding the legal proceedings.

Figures presented in Tables 3–7 only relate to women who had fpa counselling sessions in 2007

Table 3: Marital status of women travelling to England from Northern Ireland fpa for an abortion, 2007

Marital status	Number
Single	240
Separated	8
Married	31
Unknown	1
Divorced	7
With partner	52
Widowed	1
Total	340

Table 4: Age of women travelling to England from Northern Ireland fpa for an abortion, 2007

Age	Number
Under 16	12
16–19	70
20–24	93
25–29	61
30–34	48
35–39	33
40+	20
Unknown	3
Total	340

fpa's unplanned pregnancy counselling, information and support service is non-directive, non-judgemental and provides detailed information on all options. In 2007, 466 counselling sessions were provided. Following counselling, 340 women (73%) chose to terminate their pregnancy.

Securing an abortion in England costs around £600 if the woman is under 14 weeks pregnant, rising to around £2,000 if the pregnancy is further advanced. This includes medical fees and travel expenses. If accompanied by a friend, relative or partner, the cost can increase by around £200 to cover travel and accommodation expenses. Women unable to afford abortions in England either continue the pregnancy or may risk unsafe illegal abortions.

Table 5: Stage of pregnancy in weeks (at time of counselling), 2007*

Stage of pregnancy	Number
8 weeks and under	267
9–12 weeks	150
13–15 weeks	26
16–19 weeks	10
20 weeks and over	3
Unknown	10
Total	466

*includes follow-up appointments, women continuing with pregnancy and women undecided.

Revised Department of Health guidelines issued in 1999 state that women in the earlier stages of pregnancy (under 16 weeks) are usually no longer required to stay overnight in the clinic after a termination, provided they are assessed by medical staff as suitable for discharge. This means that, in theory, women can travel from, and return to, Northern Ireland on the same day.

However, as clinic appointments are always early morning, it is not always possible to make suitable travel arrangements – in many cases, an overnight stay will still be needed prior to the procedure. If the woman is over 16 weeks pregnant, she will be required to stay in the clinic overnight following the procedure.

Table 6: Women travelling to England from Northern Ireland fpa for an abortion supported by a male partner, 2007

Male involvement	Number
Yes	247
No	93
Total	340

Table 7: Women travelling to England from Northern Ireland fpa for an abortion alone or accompanied, 2007

Travel	Number
Accompanied	257
Alone	83
Total	340

As Tables 6 and 7 show, many women do not have the support of a male partner and some are forced to make the journey alone for financial or personal reasons. Some women have never been out of Northern Ireland. Some women turn to unsafe illegal abortions and, since 1967, there have been five known deaths in Northern Ireland due to illegal abortion. Dr Colin Francome carried out a survey with Northern Ireland's general practitioners (GPs) and found that 11% had experience of patients suffering from the consequences of amateur abortion.²

Public and professional attitudes towards abortion in Northern Ireland

Public attitudes

Three surveys carried out by Ulster Marketing Surveys show that public opinion is broadly sympathetic to a liberalisation of the abortion law in Northern Ireland. The surveys were conducted in May 1992, February 1993 and August 1994 at 50 sampling points throughout Northern Ireland.³ A representative sample of the population aged between 16 and 45 was asked to specify the circumstances in which abortion should be allowed.

The latest survey showed a significant increase in the number of people who supported abortion at the request of the woman – from 25% in 1992 to 30% in 1994. The rise in the number of people supporting abortion in cases of extreme poverty was even greater – from 27% in 1992 to 36% in 1994.

Generally, respondents living in Greater Belfast are more likely to support the legalisation of abortion under all circumstances than those living elsewhere in Northern Ireland, particularly where a woman does not wish to have a child or additional children.

Similarly, Protestants are more likely than Catholics to support legal abortion on all grounds, especially in cases of severe disability – 74% of Protestants against 39% of Catholics. A majority of Catholics do, however, support abortion where the physical or mental health of the woman is in danger (67%), and in cases of sexual assault (59%).

A 2000/2001 survey of women attending British abortion clinics, carried out by Marie Stopes International, found that 95% would have preferred to have had their abortion in Northern Ireland – 44% had to borrow money, 68% knew of other women who had also had abortions, and 95% supported the extension of the 1967 Abortion Act to Northern Ireland. There was widespread mistrust of GPs – only 34% had consulted a GP about their abortion choice and those who did were often dissatisfied. Some women felt they qualified for an abortion in Northern Ireland but found their GPs were confused about their rights under the law.⁴

Professional attitudes

Gynaecologists

See the previous section 'Legal developments'.

General practitioners

Francome's survey covering 123 GPs in Northern Ireland was carried out in October and November 1994.² The GPs were randomly selected by a major medical organisation and the response rate was 64%.

The survey found that, on average, each GP had received just over one request for an abortion in the previous six months. Overall, 43% of these GPs had received a request for an abortion in the previous three months. Seventy per cent said the decision whether or not to continue a pregnancy should be left to the woman in consultation with the GP, while 16% disagreed with this.

Politicians

In February 1984, the Northern Ireland Assembly debated the motion:

"That this Assembly opposes the extension of the Abortion Act 1967 or like legislation to Northern Ireland."

Only one MP did not support the motion, arguing that it was impossible for men to understand how a woman would feel about an unwanted pregnancy.

In 1987 when the Alton Bill, which did not relate to Northern Ireland, was being debated at Westminster, sponsors of the bill included two Northern Ireland MPs (one SDLP and one UUP). At the second reading in January 1988, 15 of the 17 Northern Ireland MPs (all male) attended.

In 1990, during a debate on extending abortion rights to Northern Ireland, Virginia Bottomley, Secretary of State for Health, said:

"[Abortion] is offensive to the overwhelming majority of those in the Province... All the soundings of opinion have made it very clear that there is no will in Northern Ireland for such change."

In June 1993, the Standing Advisory Commission on Human Rights (SACHR), an independent body set up to ensure that Northern Ireland law measures up to international human rights obligations, issued a public consultation document on the issue of abortion. Written by Simon Lee, Professor of Law at the Queen's University of Belfast, it observed that:

*"The law on abortion in Northern Ireland is so uncertain that it violates the standards of international human rights law. It could not withstand a challenge before the European Court of Human Rights at Strasbourg."*⁵

SACHR suggested that the issue of abortion in Northern Ireland is governed by confusing legal ambiguities. SACHR subsequently made three recommendations:

1. The Government should bring forward options for a clearer law.

In May 1995, Sir Patrick Mayhew, Secretary of State for Northern Ireland, responded as follows:

"...I am writing to inform you that I have decided against proposing any changes to the law on abortion in Northern Ireland at present."

In February 1998, the Parliamentary Under-Secretary of State for Northern Ireland, in reply to a parliamentary question, stated:

"...The Government have no plans to liberalise the law or to extend the Abortion Act 1967 to Northern Ireland."

2. The Government should ensure that information on the practice of abortion is collated.

The Parliamentary Under-Secretary of State for Northern Ireland stated:

"...Work is proceeding on identifying and resolving some of the problems with the quality of abortion figures in Northern Ireland. Although more remains to be done, improvements have been made to the quality of the diagnosis and procedure codes used by hospitals, which would form the basis of any future abortion statistics."

As stated on page 1 of this factsheet, statistics were published for the first time in 1998.

3. The issue of pecuniary advantage should be removed from the debate.

The Parliamentary Under-Secretary of State for Northern Ireland stated:

"...Ministers are mindful of the concern which has been expressed about some of the difficult consequences of the present law for individuals and families, and of the significant numbers of women from Northern Ireland who travel to GB each year for abortions."

Northern Ireland women are still excluded from abortion services within NHS provision, and therefore continue to be subjected to pecuniary disadvantage.

On 20 June 2000, members of the new Northern Ireland Assembly debated a motion similar to that in 1984, and included an amendment referring the issue of abortion to the Health Committee for a period of research and reflection. However, there continued to be opposition to the extension of the 1967 Abortion Act to Northern Ireland.

Following the 2002 judicial review and subsequent appeal by **fpa** in 2004 (outlined in the 'Legal developments' section), the DHSSPS in 2005 instigated a formal investigation into the provision of termination services in Northern Ireland. The findings of the investigation informed the development of a guidance document for health professionals and this was disseminated for consultation in January 2007.

On 22 October 2007, the Northern Ireland Assembly debated the following motion:

"That this Assembly opposes the introduction of the proposed guidelines on the termination of pregnancy in Northern Ireland; believes that the guidelines are flawed; and calls on the Minister of Health, Social Services and Public Safety to abandon any attempt to make abortion more widely available in Northern Ireland."

FACTSHEET

While the focus of the debate was on the draft guidelines, members of the Assembly from all parties continued to express their opposition to the extension of the 1967 Abortion Act to Northern Ireland. The DUP and SDLP have fixed policy positions on abortion, while for the Ulster Unionists and the Alliance Party a free vote is given. During the debate, members of Sinn Fein indicated that their party does not support abortion or the extension of the 1967 act. Health Minister Michael McGimpsey pointed out that whatever the outcome of the debate, he would still be legally obliged to bring forward guidelines.

Revised draft guidance, taking account of comments already received, was issued in July 2008 for consultation prior to referral to the Assembly Committee for Health, Social Services and Public Safety for its scrutiny and comment.

In May 2008, **fpa** received written confirmation from the Health Minister that guidelines on the provision of termination of pregnancy services in Northern Ireland would be published in October 2008.

The Labour Government's current position on changes to abortion law in Northern Ireland is that this issue should be dealt with by the Northern Ireland Assembly once it has assumed responsibility for criminal justice.⁶

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Since the mid 1990s, legal and political systems around the world have, to varying degrees, examined the issues surrounding abortion and amended their laws accordingly. Northern Ireland remains unique in having yet to do so.

References

1. Francome C. Gynaecologists and abortion in Northern Ireland. *Journal of Biosocial Science* 1994; 26: 389-94.
2. Francome C. Birth control and GPs in Northern Ireland. 1994 (unpublished).
3. Birth Control Trust. Birth control and abortion. 1992/93/94 (unpublished).
4. Rossiter A, Sexton M. *The other Irish journey*. London: Marie Stopes International, 2001.
5. **fpa**. *The abortion law in Northern Ireland: human rights and reproductive choice*. Belfast: fpa, 1995.
6. Written answer, 10 June 2008, Col 122W Hansard. Last accessed 27 August 2008.

Other Northern Ireland factsheets:

Family planning services in Northern Ireland
The legal position regarding contraceptive advice and provision to young people
Relationships and sexuality education in schools
Sexual behaviour and young people
Sexual health and people with learning disabilities
Sexual orientation
Sexually transmitted infections
Teenage pregnancy

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