



## Abortion law

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A brief outline of the law regulating abortion in the UK. A list of Bills related to abortion is provided in Standard Note [PC/03657](#) and abortion statistics can be found in Standard Note [SG/4418](#).

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## Introduction

Abortion in England, Scotland and Wales is regulated by the *Abortion Act 1967*. This Act has never extended to Northern Ireland, where abortion continues to be regulated by provisions in criminal law and is illegal other than in very specific circumstances.

The *Abortion Act 1967* has been substantively amended only once since 1990, despite the placing before Parliament of 31 abortion-related Bills since its passage, and considerable lobbying from all sides of the abortion debate. Most recently, the passage of the *Human Fertilisation and Embryology Act 2008* had offered the possibility of altering abortion law but despite considerable lobbying and media interest none of the proposed amendments was successful.

## 1 Definitions

Abortion is the commonly used term for the termination of an established pregnancy, where “established” is taken to mean that the embryo has implanted in the uterus.

This definition has in itself produced controversy, with some pro-life activists arguing that abortion includes the prevention of implantation of a fertilised embryo. This has led to calls for control of post-coital contraception, such as the “morning-after” pill or insertion of an IUD, on the basis that these work at least in part by preventing implantation.<sup>1</sup>

A 2002 judgement on a request for judicial review of the matter clarified the legal situation, finding that a pregnancy can only be considered established once implantation has occurred and that prevention of implantation is therefore not covered by existing controls on abortion.<sup>2</sup>

## 2 The Abortion Act 1967

The *Abortion Act 1967* came into effect on 27 April, 1968 and has since been amended only once, by Section 37 of the *Human Fertilisation and Embryology Act 1990*. The Act permits abortion in Great Britain (not including Northern Ireland) by registered practitioners subject to certain conditions.

The Act is unusual in its provision of a 'conscience clause' which allows doctors and other health care professionals to override any contractual obligations and opt out of performing abortions.

### 2.1 Grounds for abortion

All abortions other than those performed as an emergency require approval by two registered medical practitioners and must be performed in facilities registered for this purpose. The grounds for permitting abortions under Section 1 of the *Abortion Act 1967* as amended are:

- (a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or

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<sup>1</sup> This has been challenged, particularly in the case of the morning after pill for which there is good evidence of a primary effect on preventing fertilization. See International Consortium for Emergency Contraception (ICEC) and International Federation of Gynecology & Obstetrics (FIGO), *How do levonorgestrel-only emergency contraceptive pills (LNG ECPs) prevent pregnancy?*, October 2008

<sup>2</sup> R v Secretary of State for Health [2002] 2 FLR 146

(b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

(c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

## **2.2 Definition of handicap**

Neither the Act nor the courts have provided legal guidance on the degree of serious handicap which is sufficient to invoke Section 1(d), leaving the interpretation to the opinion formed in good faith of two doctors. This matter was addressed by Lord Warner in June 2006 in a reply to a written question from Lord Alton:

Parliament decided in 1967 that one of the grounds for an abortion is, "that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped." Parliament did not define serious handicap in the Act. Indeed, it chose to leave this to the expert judgment of the two doctors involved, who are required to form their own opinion about the seriousness of the handicap the child would suffer if born, taking into account the facts and circumstances of each individual case. The Royal College of Obstetricians and Gynaecologists' guideline Termination of Pregnancy for fetal abnormality (1996) gives advice to medical practitioners and also states that if an abnormality has been detected and two medical practitioners are of the opinion that there are grounds for a termination under the Abortion Act, then the woman should be advised that she has this option.<sup>3</sup>

There has been one attempt to legally challenge the decision of two doctors who authorised a post-24-week abortion in a case of cleft lip and palate (*Jepson v The Chief Constable of West Mercia* [2003]). The complainant was successful in achieving a judicial review but the Crown Prosecution Service decided against pursuing the case on the basis that the doctors had acted in good faith and that the risk of serious handicap was substantial.

## **2.3 Classification and reporting of abortions**

[Form HSA1](#) must be completed before all non-emergency abortions and classifies the grounds for the abortion as follows (these are used in statutory statistical reports):

A - the continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if the pregnancy were terminated

B - the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman

C - the pregnancy has NOT exceeded its 24th week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman

D - the pregnancy has NOT exceeded its 24th week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, or injury to the physical or mental health of any existing child(ren) of the family of the pregnant woman

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<sup>3</sup> HL Deb 19 June 2006 c53WA

E - there is substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped

Form HSA2 is used for emergency abortions and classifies the abortion as immediately necessary on one of two grounds:

F - to save the life of the pregnant woman

G - to prevent grave permanent injury to the physical or mental health of the pregnant woman

Over 98% of abortions are performed under grounds C and D.

Section 37 of the *Human Fertilisation and Embryology Act 1990* made changes to the *Abortion Act 1967*. A 28-week limit had originally applied for all grounds but the amendments introduced a time limit of 24 weeks for grounds C and D and removed the time limits on grounds A, B and E. The *Human Fertilisation and Embryology Act 1990* also confirmed that when a woman had a multiple pregnancy it was legal for a doctor to terminate the life of one or more fetuses while leaving others alive.

### **3 Abortion law in Northern Ireland**

The *Abortion Act 1967* never extended to Northern Ireland, where abortion continued (and continues) to be regulated by provisions in criminal law. Criminal law remains reserved under the *Northern Ireland Act 1998* but is due to be devolved to the NI Assembly as part of the *St Andrew's Agreement*.

#### **3.1 Legal basis for abortion in NI**

Under the *Offences Against the Person Act 1861* all abortions are illegal in NI, subject to very limited exceptions specified in the *Criminal Justice Act (NI) 1945* and application of case law (chiefly *R v Bourne* [1939] 1 KB 687).

In response to uncertainty regarding the legal position of abortion in NI, the NI Department of Health, Social Service and Public Safety (DHSSPS) issued guidelines in March 2009. These state that an abortion would only be legal where:

- it is necessary to preserve the life of the woman, or
- there is a risk of real and serious adverse effect on her physical or mental health, which is either long term or permanent.<sup>4</sup>

Fetal abnormality is not in itself grounds for an abortion under NI law, and the definitions of risk and serious adverse effects tend to be more strictly interpreted than the corresponding grounds in the *Abortion Act 1967* which apply in the rest of the UK.

In November 2009 the DHSSPS guidance was successfully challenged in the High Court of Northern Ireland by pro-life campaigners and has been ordered to be withdrawn despite a DHSSPS appeal.<sup>5</sup>

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<sup>4</sup> DHSSPS, *Guidance on the Termination of Pregnancy: The Law and Clinical Practice in Northern Ireland*, March 2009, p 4

<sup>5</sup> Belfast Telegraph, *Government's abortion guidelines withdrawn*, 15 December 2009

Because of continuing uncertainty about the legality of most abortions, few NI doctors offer abortions and most women living in NI who decide to have an abortion travel to other parts of the UK to obtain them.

### **3.2 Attempts to change NI abortion law**

During the parliamentary stages of the *Northern Ireland Bill* in 1998, Ministers said that it was the Government's intention that responsibility for criminal justice matters, including abortion, would be transferred to the Northern Ireland Assembly when conditions were appropriate.<sup>6</sup> In the meantime, the Government was aware of the strength of feeling on the issue in Northern Ireland, and pledged that it would not impose any change on the people of Northern Ireland against their will.<sup>7</sup> This was reiterated in a written answer in January 1999 from the then Northern Ireland Secretary, Mo Mowlam:

**Mr. Donaldson:** To ask the Secretary of State for Northern Ireland what plans she has to review the abortion legislation in Northern Ireland; and if she will make a statement. [63040]

**Marjorie Mowlam:** The suggestion that the law on abortion in Northern Ireland should be reviewed has been made on a number of occasions, most recently in the report of the All Party Group on Population, Development and Reproductive Health, launched on 10 December 1998. I am still considering what, if any, action, should be taken in response to these suggestions.

I am, however, aware of the great strength of feeling on this issue, and the divergence of opinion that exists. I would want to reiterate most strongly the assurances already given by the Government, that we will not impose any change in Northern Ireland on this issue without consultation with elected representatives, including the Northern Ireland Assembly, and that any change would come about only with broad support from a cross-section of the people of Northern Ireland.<sup>8</sup>

On 20 June 2000, the Northern Ireland Assembly passed a motion stating that the Assembly was opposed to the extension of the *Abortion Act 1967* to Northern Ireland.<sup>9</sup>

The following PQs set out the Government position on legislation on abortion in Northern Ireland:

**Ann Winterton:** To ask the Secretary of State for Northern Ireland if he will take steps to seek the views of the Northern Ireland Assembly before any legislation is brought forward at Westminster which would change the law relating to abortion in Northern Ireland. [148566]

**Paul Goggins:** The Government have no plans to amend the law on abortion in Northern Ireland. We believe the best forum for discussion of these questions is the Northern Ireland Assembly, once it has assumed responsibility for the criminal law.

**Mr. Donaldson:** To ask the Secretary of State for Northern Ireland what powers Parliament retains to legislate on abortion in Northern Ireland. [149805]

**Paul Goggins:** The legislation governing abortion in Northern Ireland falls within the field of criminal law and, as such, remains a reserved matter in Northern Ireland under the terms of paragraph 9(a) of Schedule 3 to the Northern Ireland Act 1998. This

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<sup>6</sup> See for example HL Deb 5 October 1998 c 228

<sup>7</sup> HL Deb 27 October 1998 c 1868

<sup>8</sup> HC Deb 27 January 1999 c 244w

<sup>9</sup> NIA Deb 20 June 2000 pp 210-237

means that any legislation on it would fall to Parliament at Westminster to take forward, although, as with all reserved matters, under the terms of section 8(b) of the 1998 Act, the Northern Ireland Assembly may legislate on this matter with the consent of the Secretary of State.<sup>10</sup>

There was further clarification in the following parliamentary answer:

**Ann Winterton:** To ask the Secretary of State for Northern Ireland pursuant to the answer of 16 July 2007, *Official Report*, column 79W, on abortion, whether Parliament will be able to pass legislation changing the law relating to abortion in Northern Ireland once the Northern Ireland Assembly has assumed responsibility for the criminal law. [153304]

**Mr. Woodward:** When responsibility for the criminal law is devolved, consideration of legislation relating to the law on abortion will be a matter for the devolved authorities in Northern Ireland. As paragraph 13 of the Devolution Memorandum of Understanding (Cm 5240, published in December 2001) makes clear:

“The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.”

The Government’s position on the law on abortion in Northern Ireland is as set out in the answer of 16 July 2007, *Official Report*, column 79W.<sup>11</sup>

Most recently, an attempt was made to extend to extend the *Abortion Act 1967* to Northern Ireland during passage of the *Human Fertilisation and Embryology Act 2008*. Amendment NC30 was tabled on 22 July 2008, after the committee stages:

To move the following Clause:— ‘(1) Section 7 of the Abortion Act 1967 (c. 87) (short title, commencement and extent) is amended as follows. (2) For subsection (3) substitute— “(3) This Act extends to Northern Ireland.”’.

The Minister of State, Department of Health, Dawn Primarolo, successfully proposed a programme motion at the commencement of the debate on the Bill’s Third Reading on 22 October 2008. This had the effect of ending debate at 6pm and placing debate on new clauses third in the order of proceedings. No clauses relating to amendment of the Abortion Act 1967 were subsequently considered. In debating the programme motion the proposed amendment relating to Northern Ireland was raised by both Diane Abbott and Jeffrey Donaldson.<sup>12</sup>

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<sup>10</sup> HC Deb 16 July 2007 c81W

<sup>11</sup> HC Deb 12 Sep 2007 c2146W

<sup>12</sup> See: <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm081022/debtext/81022-0007.htm> and <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm081022/debtext/81022-0008.htm>

## **4 Sources of further information**

Abortion Rights

[www.abortionrights.org.uk/](http://www.abortionrights.org.uk/)

British Medical Association

[http://www.bma.org.uk/images/lawethicsabortionnov07\\_tcm41-146867.pdf](http://www.bma.org.uk/images/lawethicsabortionnov07_tcm41-146867.pdf)

British Pregnancy Advisory Service

[www.bpas.org/](http://www.bpas.org/)

CARE (Christian Action Research and Education)

[www.care.org.uk/](http://www.care.org.uk/)

Christian Medical Fellowship

[www.cmf.org.uk/](http://www.cmf.org.uk/)

Family Planning Association

[www.fpa.org.uk/](http://www.fpa.org.uk/)

Society for the Protection of the Unborn Child (SPUC)

[www.spuc.org.uk/](http://www.spuc.org.uk/)