

LIBERTY

LIBERTY'S BRIEFING ON THE NORTHERN IRELAND (EXECUTIVE FORMATION) BILL 2019 FOR COMMITTEE STAGE IN THE HOUSE OF LORDS – CLAUSE 9 / AMENDMENT NC10 REGARDING ABORTION RIGHTS IN NORTHERN IRELAND

INCLUSION OF NEW CLAUSE 9

1. Liberty urges parliamentarians to support the unamended inclusion of new Clause 9 in the Northern Ireland (Executive Formation) Bill 2019 (introduced in the Commons as NC10). New Clause 9 outlines that UK Parliament must legislate to give effect to the recommendations of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) regarding abortion law in Northern Ireland.¹ The vote to include new Clause 9 was passed by a substantial majority of cross-party MPs in the Commons.²
2. CEDAW found in February 2018 that the UK violates the rights of women and girls by unduly restricting access to abortions in Northern Ireland.³ In its report, CEDAW recommends these “grave and systematic” rights violations must be urgently remedied by (1) changing the law in Northern Ireland to stop criminal charges being brought against pregnant people who have abortions and anyone who assists them - through repealing ss.58 and 59 of the Offences Against the Persons Act 1861 (the 1861 Act) - and (2) making abortions legal in cases of rape, incest and fatal foetal abnormalities.⁴
3. New Clause 9 in the Northern Ireland (Executive Formation) Bill 2019 requires UK Parliament to implement these recommendations through legislative change, in the absence of a Northern Ireland Executive, and that such change must come into force by 21 October 2019. This would only affect the law on abortion in Northern Ireland, whilst provisions in England, Wales and Scotland would remain the same.

ABORTION LAW IN NORTHERN IRELAND VIOLATES HUMAN RIGHTS

4. Liberty supports new Clause 9 as it would safeguard the fundamental rights of women and girls in Northern Ireland. The right to access free, safe and legal abortions is protected by domestic and international human rights laws.⁵ Yet unlike other parts of the UK⁶, abortion law in Northern Ireland is still governed by ss.58 and 59 of the 1861 Act – which criminalises the termination of a pregnancy unless there is serious danger to the pregnant person’s life. The maximum penalty for breaking this law is life in prison. This even applies to those who have had abortions following rape, incest or due to fatal foetal

¹ The relevant recommendations specifically pertain to those outlined in CEDAW’s report of the inquiry concerning the UK and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

² Amendment NC10 was passed with a majority of 332 votes to 99.

³ Committee on the Elimination of Discrimination against Women, ‘[Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#)’, CEDAW/C/OP.8/GBR/1, 23 February 2018.

⁴ Ibid.

⁵ Denial of abortion services can interfere with – and may even breach – the right to a private life (Article 8), freedom from inhuman and degrading treatment (Article 3) and in exceptional cases, the right to life (Article 2) under the European Convention on Human Rights (ECHR).

⁶ In England, Wales and Scotland, the Abortion Act 1967 permits abortions up to 24 weeks into a pregnancy if it is carried out by a doctor, with the written agreement of a second doctor, and if the abortion takes place on registered medical premises.

abnormalities. Liberty therefore believes that the draconian and punitive law governing abortion in Northern Ireland is unjust, disproportionate and contrary to fundamental human rights standards. **New Clause 9 would expediently remedy this by ensuring UK Parliament decriminalises abortion in Northern Ireland as a matter of urgency.**

5. Moreover, the UK's highest court has signalled that UK Parliament should act both expediently and decisively due to the seriousness of the human rights violations in Northern Ireland. In June 2018, the Northern Ireland Human Rights Commission (NIHRC) received judgment in the UK Supreme Court for an appeal challenging the legality of ss.58 and 59 of the 1861 Act. Although the judgment is not binding, as the NIHRC did not have legal standing, robust comments from the court on the incompatibility of the 1861 Act with human rights law cannot be ignored. The court found that the legislation infringes upon fundamental human rights (engaging Articles 8 and 3 ECHR), stating that the 1861 Act is "*untenable*" and in need of "*radical reconsideration*".⁷ **Liberty therefore believes that parliamentarians should give due consideration to the comments made by the Supreme Court justices, and ensure human rights compliance by voting in favour of new Clause 9 in this Bill.**

DEVOLUTION AND ABORTION RIGHTS

6. Liberty contends that UK Parliament has a clear mandate to legislate for abortion law reform in Northern Ireland on the basis of the Devolution Agreement. Under Schedule 2 of the Northern Ireland Act 1998, matters of national importance will usually remain the responsibility of UK Parliament and are known as "excepted matters" – which under Schedule 2, s.3(c) includes, "*observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law*".⁸ As the reform of abortion law in Northern Ireland is an issue which involves implementing the UK's international human rights obligations and those under the European Convention on Human Rights, abortion law is clearly a matter for UK Parliament and not a devolved matter on the face of the devolution settlement. Further, as devolution is based on the existence of Northern Ireland Ministers being in place, new Clause 9 ensures that the absence a Northern Ireland Assembly since 2017 will not continue to be at the detriment of women and girls' fundamental human rights.

UK Parliament has an obligation to act under international and domestic law to ensure access to free, safe and legal abortions in Northern Ireland. Yet the current legal framework – governed by the outdated and unjust 1861 Act – continues to violate the human rights of thousands of people every year. New Clause 9 offers a crucial opportunity to repeal these provisions and for UK Parliament to decriminalise abortion in Northern Ireland in line with CEDAW's crucial recommendations. **We therefore urge parliamentarians to vote in favour of new Clause 9 and to oppose any counter amendments that seek to further stall vital progress for women and girls' human rights in Northern Ireland.**

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⁷ [In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review \(Northern Ireland\) \[2018\] UKSC 27.](#)

⁸ Schedule 2, s. 3(c), [Northern Ireland Act 1998](#), 1998 Chapter 47, 19 November 1998.