

Is it Westminster's role under the Belfast/Good Friday Agreement to legislate on Northern Ireland abortion law?

CAJ Briefing Note, May 2018

Further to the 25 May 2018 referendum that resulted in the repeal of the Eighth Amendment of the Irish Constitution, there has been renewed discussion about legislation to amend Northern Ireland's restrictive abortion laws.

The Prime Minister has taken a position that Westminster legislation on this matter would transgress the devolution settlement. Whilst both health and justiceⁱ are transferred matters this position disregards the explicit provision under the Belfast/Good Friday Agreement (GFA) that places a duty on Westminster to legislate to ensure the UK's international obligations are met.

Northern Ireland abortion law is incompatible with such obligations, as highlighted in particular by a ruling of the UN CEDAW Committee, and hence there is a duty under the GFA for Westminster to legislate to liberalise Northern Ireland's abortion laws.

This has happened before. In 2007 when the DUP blocked the passage in the Northern Ireland Assembly of legislation transposing the EU Gender Directive (2004/113/EC)ⁱⁱ Westminster stepped in and legislated on the Assembly's behalf.ⁱⁱⁱ

The provisions of the GFA

The duties in question are in Paragraph 33 of Strand 1 of the GFA which sets out the role of Westminster, stating that (in addition to legislating for non-devolved matters) **the UK Parliament 'will'**:

"legislate as necessary to ensure the United Kingdom's international obligations are met in respect of Northern Ireland; (33(b))"

'International obligations' include compliance with the human rights treaties ratified by the UK in the UN and Council of Europe Human Rights systems.^{iv}

The CEDAW ruling

During periodic monitoring rounds there have been a number of rulings by UN treaty bodies that have found Northern Ireland abortion law incompatible with such UK international obligations. Most recently in February 2018 there was also a ruling resulting from an inquiry into NI abortion law by the UN Committee for the Elimination of All forms of Discrimination Against Women (CEDAW). This found that the current legislation "violates the rights of women in Northern Ireland by unduly

restricting their access to abortion.” The inquiry took place further to submissions by Northern Ireland NGOs under the CEDAW Optional Protocol, ratified by the UK.

CEDAW consequently advocated repeal of the existing legislation in Northern Ireland under the Offences against the Person Act 1861 and urged the UK to legislate to provide for expanded grounds to legalise abortion in a range of areas.^v

Whilst the UK Government has declined to act it is therefore consistent with duties under the GFA that Westminster take forward remedial legislation.

About CAJ

The Committee on the Administration of Justice (CAJ) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ also Co-Convenes the Equality Coalition with UNISON in Northern Ireland (NI).

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ⁱ Criminal justice legislation, the 1861 Offences Against the Person Act and the Criminal Justice Act (NI) 1945, outlaw abortion in Northern Ireland and provide for ‘life in penal servitude’ for women, and an indeterminate sentence for medical professionals or others who assist in terminations.

ⁱⁱ Through The Sex Discrimination (Amendment of Legislation) Regulations 2008. See: Decision Notice Freedom of Information Act 2000 (Section 50) Reference: FS50216279 Date: 24 June 2010.

ⁱⁱⁱ This was in a context when the then First Minister, Ian Paisley, reportedly wrote to an Assembly Committee to state he was ‘not agreeable’ due to ‘the explicit inclusion of reference to transgender or gender reassignment in the regulations’. Whilst gender reassignment is a different matter to sexual orientation, a DUP colleague on the Committee, Stephen Moutray, reportedly stated their concern was that ‘Bible-believing Christians would be put in a position where they could have to take part in ceremonies at gay weddings, or if they were a guesthouse owner, they would have to give a double room to two gay men.’ (see Paisley and McGuinness disagree over gay rights PINK NEWS 13 December 2007.)

^{iv} International Obligations are defined under s98 of the Northern Ireland Act 1998 as any international obligations of the UK (other than EU law or Convention rights which are provided for separately under the NIA).

^v <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22693&LangID=E>