A new legal framework for abortion services in Northern Ireland - Implementation of the legal duty under section 9 of the Northern Ireland (Executive Formation etc) Act 2019

Response from the National Secular Society

SECTION 2.1, Part 1 - Early terminations of pregnancy

2.1 Early terminations of pregnancy

Question 1a: Should the gestational limit for early terminations of pregnancy be up to 12 weeks gestation (11 weeks + 6 days)?

No

Question 1b: Should the gestational limit for early terminations of pregnancy be up to 14 weeks gestation (13 weeks + 6 days)?

No

If you answered no to 1a and 1b, what alternative would you suggest?

The time limit for unrestricted access to abortion should be up to 24 weeks gestation. Before 24 weeks, abortion should be treated as a decriminalised procedure.

It is already well-recognised in the UK that there should be a distinction between abortions at less than 24 weeks gestation where the foetus is usually non-viable, and those beyond 24 weeks. It is therefore difficult to see a rationale for the 12 or 14 week cut-off. There is no medical reason for a distinction any time until viability.

Differentiating between abortions before and after 14 weeks will also mean providers are less likely to offer later services, which will reduce women's options.

There are many reasons why women may seek an abortion after 14 weeks. Some women may have difficulties accessing support or medical help until later, particularly when they have been subject to sexual violence. In some cases, they may only recognise they are pregnant well into the pregnancy. Such delayed recognition is more common among vulnerable women, including victims of abuse or younger women.

Section 2.1, Part 2 -Early terminations of pregnancy

Question 2: Should a limited form of certification by a healthcare professional be required for early terminations of pregnancy?

No

If no, what alternative approach would you suggest?

The process of getting an abortion should be as simple as possible for the woman or girl. We therefore suggest no certification is necessary at any gestational stage. Requiring certification would risk women being obstructed by healthcare professionals with strong anti-abortion views.

2.2 - Gestations beyond 12 or 14 weeks

Question 3a: Should the gestational time limit in circumstances where the continuance of the pregnancy would cause risk of injury to the physical or mental health of the pregnant woman or girl, or any existing children or her family, greater than the risk of terminating the pregnancy, be 21 weeks + 6 days gestation?

No

Question 3b: Should the gestational time limit in circumstances where the continuance of the pregnancy would cause risk of injury to the physical or mental health of the pregnant woman or girl, or any existing children or her family, greater than the risk of terminating the pregnancy, be 23 weeks + 6 days gestation?

Yes

If you answered 'no' to both of the above, what alternative provision do you suggest?

As expressed in our answer to Q1a and 1b, the time limit for unrestricted access to abortion should be up to 24 weeks gestation.

A paper published by the British Association of Perinatal Medicine this October shows that a baby born in week 22 only has a 3% chance of surviving to its first birthday. There is therefore no justification for considering this to be the point of viability.

We are especially concerned that Northern Ireland has a history of denying pregnant women or girls an abortion even where the serious risk of long-term harm to physical or mental health is self-evident. As recently as January, it was reported that a 12 year old rape victim in Northern Ireland was forced to travel to Britain to have an abortion because she was not found to be at risk of "serious harm" as a result of the pregnancy.

The decision to force a child victim of rape to travel to the UK in order to undergo an abortion was inhumane and cruel. No other woman or girl in Northern Ireland should be forced to suffer similar treatment. For this reason, women and girls should have unrestricted access to abortion up to 24 weeks.

2.3 - Fetal Abnormality

Question 4a: Should abortion without time limit be available for fetal abnormality where there is a substantial risk that the fetus would die in utero (in the womb) or shortly after birth?

Yes

Question 4b: Should abortion without time limit be available for fetal abnormality where there is a substantial risk that the fetus if born would suffer a severe impairment, including a mental or physical disability which is likely to significantly limit either the length or quality of the child's life?

Yes

If you answered 'no' to either or both of the above, what alternative provision do you suggest?

It is incredibly difficult to determine whether or not a pregnancy has a 'fatal' foetal abnormality and the prognosis varies between doctors. In cases where the prognosis of the foetus is unclear, such as in the case of severe impairment, the woman should be given the same choice as a woman in the case of a substantial risk that the foetus would die in utero or shortly after birth.

2.4 - Risk to the woman or girl's life or risk of grave permanent injury

Question 5a: Do you agree that provision should be made for abortion without gestational time limit where there is a risk to the life of the woman or girl greater than if the pregnancy were terminated?

Yes

Question 5b: Do you agree that provision should be made for abortion without gestational time limit where termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman or girl?

Yes

If you answered 'no' to either or both of the above, what alternative provision do you suggest?

We are concerned that these questions have been included in the consultation when it is already established in common law that abortions are lawful in Northern Ireland where the pregnancy presents a risk to the woman or girl's life, or grave permanent injury to her physical or mental health. It is clear that the proposed changes to Northern Ireland's abortion laws are intended to increase access to safe and legal abortions rather than placing further restrictions on women.

There should be absolutely no attempt to use the change in abortion law to further restrict women's rights to a safe and legal abortion. The changes should instead reaffirm what has been established in common law and further women's rights.

2.5 - Who can perform a termination

Question 6: Do you agree that a medical practitioner or any other registered healthcare professional should be able to provide terminations provided they are appropriately trained and competent to provide the treatment in accordance with their professional body's requirements and guidelines?

Yes

If you answered 'no', what alternative approach do you suggest?

An abortion is a medical procedure like any other. And as with any other medical procedure, the most appropriate people to determine whether a healthcare professional is properly trained are their professional body.

2.6, Part 1 - Where procedures can take place

Question 7: Do you agree that the model of service delivery for Northern Ireland should provide for flexibility on where abortion procedures can take place and be able to be developed within Northern Ireland?

Yes

If you answered 'no', what alternative approach do you suggest?

N/A

2.6, Part 2 - Where procedures can take place

Question 8: Do you agree that terminations after 22/24 weeks should only be undertaken by health and social care providers within acute sector hospitals?

No

If you answered 'no', what alternative approach do you suggest?

We think that women should have reasonable choice in terms of where to have an abortion. However, it is more appropriate that decisions about clinical safety are made at a regulatory level, rather than enshrining restrictions in law. There are often compelling reasons for women to have an abortion within a health facility after 24 weeks, but this should not be a matter for legislation.

2.7, Part 1 - Certification of opinion and notification requirements

Question 9a: Do you think that a process of certification by two healthcare professionals should be put in place for abortions after 12/14 weeks gestation in Northern Ireland?

No

Question 9b: Alternatively, do you think that a process of certification by only one healthcare professional is suitable in Northern Ireland for abortions after 12/14 weeks gestation?

No

If you answered 'no' to either or both of the above, what alternative provision do you suggest?

As per our responses to Q2, no certificate should be necessary. Other medical treatments do not require certification, simply informed consent. Abortion should be treated like any other medical intervention.

It would be draconian for a woman to be prosecuted if she had an abortion without certification.

2.7, Part 2 - Certification of opinion and notification requirements

Question 10: Do you consider a notification process should be put in place in Northern Ireland to provide scrutiny of the services provided, as well as ensuring data is available to provide transparency around access to services?

No

If you answered 'no', what alternative approach do you suggest?

The notification systems currently in place are out of step with modern data protection laws and expectations, because they gather unnecessary information that risks the identification of individual women. While high-profile government and administrative continue to publically express anti-abortion views, a notification process could result in patients declining to continue with care for fear of being identified.

Scrutiny and transparency can be achieved through the existing system for collecting healthcare data in Northern Ireland, in line with all other medical procedures and admittances.

2.8 - Conscientious objection

Question 11: Do you agree that the proposed conscientious objection provision should reflect practice in the rest of the United Kingdom, covering participation in the whole course of treatment for the abortion, but not associated ancillary, administrative or managerial tasks?

Yes

If you answered 'no', what alternative approach do you suggest?

Directly coping s4 of the Abortion Act 1967 should provide satisfactory framework for conscientious objection. This will limit potential confusion or delays in providing accessible care.

The UK 1967 Abortion Act allows doctors to conscientiously object to participation in treatment. Some religious organisations have sought to allow religious healthcare professionals to block abortion by opting out of tasks peripheral to abortion, such as delegating to or supervising staff involved in abortions. However successive legal judgments have clarified that the right to object to participation is limited to active participation.

Question 12: Do you think any further protections or clarification regarding conscientious objection is required in the regulations?

No

If you answered 'yes', please suggest additional measures that would improve the regulations:

The current British law achieves a good balance between the rights of patients to access safe and legal healthcare, and the rights of healthcare professionals to refuse to provide abortions.

2.9 - Exclusion zones

Question 13: Do you agree that there should be provision for powers which allow for an exclusion or safe zone to be put in place?

Yes

If you answered 'no', what alternative approach do you suggest?

Women have a right to access medical care. In cases where anti-abortion protests impede women accessing this care, they must be reasonably restricted to ensure the rights of patients seeking an abortion are protected.

Question 14: Do you consider there should also be a power to designate a separate zone where protest can take place under certain conditions?

No

If you answered 'no', what alternative approach do you suggest?

An exclusion or safe zone, as proposed in Question 13, would be sufficient, because the 'separate zone' would in effect be wherever is outside the exclusion/safe zone.

Many anti-abortion activists have made it clear that they want direct access to women as they enter clinics. They are therefore unlikely to accept the provision of a designated separate zone.

Furthermore, a designated separate zone is likely to need a constant form of security presence to ensure protesters abide by the rules. This would take up valuable police time and resources. It also would not help to minimise the distress to women who may still have to pass this zone.

Question 15: Have you any other comments you wish to make about the proposed new legal framework for abortion services in Northern Ireland?

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Since its founding the NSS has been supportive of reproductive rights. In 1878 our founder and vice-president were prosecuted for making information about birth control accessible for working class women. Attempts to control women's bodies and to restrict access to sexual and reproductive health have been a consistent feature of religious dogma and of societies where religious values are politically privileged.

In the UK, anti-choice groups are predominantly from the Christian right who wish to impose their extreme views on society in general. We must reject attempts by religious institutions to impose their beliefs, and listen more to those in the medical profession and to ethical philosophers.

People of all faiths and none can have disagreements on the boundaries of bodily autonomy and reproductive rights. However, one's personal religious beliefs should not be used to restrict the bodily autonomy of others. While individual religious people hold views on abortion as diverse as any others, every stage of progress in terms of reproductive health rights has been fought and challenged by religious organisations. The most virulent forms of intimidation, misinformation and restrictions on reproductive rights are almost exclusively motivated by religious groups.

We note that the Democratic Unionist Party (DUP) have stated "Let's Protect Mothers & Unborn Life Again" as one of their pledges in their 12-point plan for Ireland in their 2019 General Election manifesto. They say the "dangerous vacuum of law and guidance" in the wake of the vote to lift the abortion ban in

Ireland must be “matched by promoting a culture of choosing life”. This is consistent with the anti-abortion beliefs of the Free Presbyterian Church of Ulster, to which the DUP are strongly linked.

These objections to abortion rooted in religious ideology must be recognised for what they are – the imposition of religious dogma on everyone, regardless of their religion, belief or their own thoughts about abortion. Institutions with religious objections must not be allowed to dominate debates on abortion, and their beliefs must not be prioritised over women’s rights to bodily autonomy, to appropriate medical care and to make their own decisions about their family life.