A New Legal Framework for Abortion Services in NI

Consultation questions

Question 1: Should the gestational limit for early terminations of pregnancy be:

Up to 12 weeks gestation (11 weeks + 6 days)

No

Up to 14 weeks gestation (13 weeks + 6 days)

No

If neither, what alternative approach would you suggest?

Please understand that the Christian Medical Fellowship is opposed to abortion in principle, except in the very rare situations where the life of the mother is at risk. It is our view that human life begins at conception and is worthy of respect and protection from that time.

In a secular, democratic society, we recognise that the argument against abortion in certain difficult situations, such as rape or fatal fetal abnormality, is harder to press. Although we would not actively promote abortion in any circumstance, we understand that the CEDAW recommendations do appeal for abortion to be made available to women in these specific and distressing situations and we would not actively oppose a legal framework that allowed for such difficult circumstances, under well-prescribed criteria.

We deeply regret that around 200,000 abortions take place every year in the UK under the terms of the 1967 Abortion Act and note that the Northern Ireland group 'Both Lives Matter' assert that 100,000 lives have been saved who would have been otherwise aborted if they had Great Britain's abortion laws. This assertion was upheld as valid by the Advertising Standards Authority.

We also believe that the UK Parliament was wrong to force NI to liberalise its law on abortion when it was a devolved responsibility, and in the knowledge that the democratically elected NI Assembly had rejected any change to their abortion law as recently as 2016. We believe that the changes required by Section 9 of the Northern Ireland (EF) Act 2019 lack moral credibility and should be reversed.

We accept (with regret) that this consultation excludes both the opportunity to revisit that decision and to discuss the morality of abortion itself. CMF has a number of members in medical practice in NI and we are grateful for the chance to participate in the consultation process on their behalf. However, that participation should in no way be taken as endorsement of the proposed new framework.

As we understand it, the requirements of the CEDAW report do not call for 'abortion on request' for any reason up to 12 or 14 weeks, which appears to be the suggestion behind Q1.

Any reasonable reading of the CEDAW Report would not interpret it to recommend early abortion 'on demand'. The Report recommends expansion of the scope of abortion law to include rape and

incest, fatal/severe fetal abnormalities, and threat to the pregnant woman's physical or mental health. This is a far cry from 'abortion on request.'

That a phrase such as ‘long-term or permanent’ [effects] is not added as a condition should NOT be taken to imply abortion on demand, without any assessment of the pregnant woman's health. Even a normal pregnancy carries a degree of threat greater than the non-pregnant state and thus every normal pregnancy would qualify automatically for termination, if ANY degree of threat was the criterion. The CEDAW Report must surely be interpreted to imply a 'significant' degree of risk (as suggested by their use of the word 'threat') to the woman's physical and/or mental health that is, at the very least, greater than the short and long term risks associated with having an abortion. To weigh the balance of risks in each case requires careful assessment by qualified and unbiased professionals.

We note that the CEDAW report does not include mention of threat to 'existing children or other family members' and these categories should not form part of the new legislative framework for NI.

That the UK Government is now proposing a law that extends the requirements of Section 9 (required by the CEDAW report) will surely be seen on the other side of the Irish Sea as further disrespect for the devolution settlement.

The alternative we would suggest would be to reverse Section 9 and restore to the NI Assembly their right, as elected representatives, to make their own law on abortion.

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

Yes

If no, what alternative approach would you suggest?

If the Northern Ireland Office introduces and imposes a law that permits abortion on request up to 12/14 weeks, then a certificate confirming that gestation is within that limit should be required.

Question 3: 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

23 weeks + 6 days gestation?

No

If neither, what alternative approach would you suggest?

The CEDAW Report recommends extension of abortion to cover three categories but it does not stipulate gestational time limits. In many parts of Europe, the gestational time limit for early abortions is 12 weeks, with higher extensions in rare situations where the life of the mother is endangered. In our opinion, it is therefore not appropriate to suggest a time limit of 22/24 weeks gestation.

Given that all the elected NI MP's who were present when Parliament made the decision to impose abortion legislation on NI voted against it, that time allocated to discussion in the House was shamefully brief, and that no consultation with the people of NI was undertaken, the UK Government should go no further than to implement the minimum requirements of Section 9. A gestational limit no higher than 12 weeks should be set and it should be possible for the NI Assembly to revisit and amend this limit in the future.

As stated in our answer to Q1, we do not support the legislative framework proposed by the UK Government. However, if implemented we suggest the use of wording that we believe would clarify both the scope and intent of the CEDAW Report, allowing access to abortion 'where continuation of the pregnancy poses a threat of serious and substantial harm to the mental or physical health of the pregnant woman.'

Such wording would not presuppose that a pregnancy arising from sexual crime would necessarily be terminated, but it would be sufficiently broad, in our opinion, to encompass such situations. Alternatively, a specific, stand-alone provision for cases of rape and incest, up to 12 weeks gestation and subject to medical certification, could be drafted (similar to legislation in Germany and some other European countries). The recommendation of the CEDAW Report would be satisfied either way.

Question 4: 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?

No

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?

No

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

Our view is that where there is life, even handicapped, disabled or predictably short life, that life is worthy of the same respect, care and support.

There is no provision in the proposed legislative framework to safeguard the CEDAW Report recommendations that if abortion is permitted in cases of 'severe fetal impairment, including fatal fetal abnormality, [this should occur] without perpetuating stereotypes towards persons with

disabilities and ensuring appropriate and ongoing support, social and financial, for women or girls who decide to carry such pregnancies to term'.

We believe strongly that statutory regulations must address the care of children, both before and after birth, and the support of parents, including access to information, to families of children living with the same or similar disabilities, and to non-directive counselling by agencies that have no financial interest in the outcome. It should not be assumed by medical and nursing staff that termination of pregnancy will be the automatic choice of parents who discover their child is likely to be significantly disabled or handicapped. The cost to the public purse of ongoing care should never be made a factor in their choice - to add guilt to the many struggles faced by such parents is as unprofessional as it is inappropriate.

Access to perinatal and neonatal palliative care services for newborn and infant children whose life-expectancy may be measured in hours, days or weeks must be part of that holistic approach to care. They may be hopelessly disabled, but their brief lives will very often still be treasured. Their worth cannot be weighed on utilitarian scales. The NIO proposals do little, if anything, to comply with CEDAW recommendations that legislation should do nothing to 'perpetuate negative stereotypes'.

Further, we believe the NIO proposals to run contrary to provisions of the UNCRPD, to which the UK is legally bound and which state that abortion should not be available purely on the grounds of disability.

We note that the Supreme Court, in its 2018 NI abortion judgement, did not argue that there was a right to abortion in cases where the disability of the child would not be fatal. A press summary of the judgment stated: 'A disabled child should be treated as having equal worth in human terms as a non-disabled child', referencing comments by Baroness Hale, Lord Mance and Lord Kerr.

Question 5: 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?

No

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', what alternative provision do you suggest?

CMF believes that the law should reflect the position as stated in previous DoH guidance for the province, namely: 'In Northern Ireland it is lawful to perform a termination of pregnancy only if: 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 serious'.

Where pregnancies are ended for this reason after the point in gestation where there is a chance that the fetus could survive outside the womb, then all necessary support to maintain the life of that baby should be given. Where surgery takes place beyond 20 weeks gestation, anaesthesia for the unborn child should be given on the basis that it is likely to be able to experience pain.

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?

No

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

An abortion involves the deliberate ending of a human life. It is a serious decision to take and a procedure that can have serious side-effects and complications. In our opinion, it should not be entrusted to 'other registered healthcare professionals' but undertaken only by registered medical practitioners. We believe that a minimum of two doctors should be involved to ensure accountability and the safety of the woman concerned. They must ensure that consent is fully informed and that she has been made aware of the possible psychological and/or physical complications that may arise from the procedure. They should check that pre-abortion counselling has been offered and that due time for reflection has been allowed.

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?

No

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

The consultation document provides no detail on how the delivery of abortion services in NI will operate. Not does it indicate how such services will be inspected or by whom.

We believe that the regulatory framework should make clear that abortions should be conducted only in approved and regularly inspected premises, as is the case for the rest of the UK.

We recommend that the Regulation and Quality Improvement Authority in NI be given extended powers so as to be able to inspect abortion premises, powers equivalent to the CQC in England and Wales.

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?

Yes

Question 9: 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?

Yes

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?

Your view is that a higher proportion of healthcare professionals in NI will likely object on conscience grounds to participation in abortion and that for this reason patient safety could be jeopardised.

Our view is that abortions at any and all stages of gestation should require certification by two medically qualified professionals, to ensure accountability in the decision-making process and patient safety. Safety should be paramount, not ease of service delivery. It is the responsibility of the NIO to propose an arrangement that will both ensure patient safety and protect freedom of conscience for medical practitioners.

Two doctors are required for certification in other parts of the UK. We suggest that a decision to require only one medical signature for certification will be seen by residents there as further evidence of Westminster's sense of superiority, a high-handedness that will serve to compound the offense felt at the imposition of a liberal abortion law that they are known to oppose.

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?

Yes

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

It is clearly important that there be a statutory regulatory process in place that reviews the effect of the framework in practice and gathers data for research.

We also believe it is important that a patient's own medical records bear witness to her having had an abortion(s), and at what stage of gestation and by what means. Post abortion mental health issues are not uncommon and a doctor seeking to provide help to a depressed patient must be aware of any history of abortion. Similarly, a history of abortion may be relevant in preterm pregnancy loss.

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?

No

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

The current standard in the UK is, in our opinion, too narrow and presents many people who are expected to participate indirectly in abortions with a crisis of conscience. They feel complicit, even if not directly involved, and this provokes internal conflict that is sometimes incompatible with their continuing in the role. Such a narrow standard means that we are losing skilled professionals from healthcare because their conscience rights are not being respected.

Human Rights legislation holds that nobody should be forced to do something that is against their sincerely held beliefs. We believe that those in administrative, ancillary or managerial roles should enjoy the same freedom of conscience as those involved directly in abortion procedures.

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

Yes

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

See answer to Q11.

The health service in NI is already under pressure. It cannot afford to lose experienced personnel by the introduction of a narrow limitation to conscience rights. It is clear that ancillary, managerial and administrative staff are all essential to the provision of the service. They hold their beliefs as conscientiously as doctors and nurses and are as conflicted when asked to participate, even indirectly, with abortion. The existing standard in the rest of the UK is too narrow. The NIO should take this opportunity to right a wrong by including in the new framework a more just expression of conscience protection.

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?

No

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

Of course, harassment of women seeking to access services by anti-abortion protesters should be no more permitted in NI than in other parts of the UK. But there is a world of difference between harassment and a peaceful vigil outside an abortion clinic. We believe that the creation and

enforcement of exclusion zones is going too far and would quite possibly only serve to inflame passions in a country that prizes its right to march and to exercise the right of free speech.

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?

That protests are feared should make the UK Government revisit the decision they have taken to impose an unwanted law on people with a strongly pro-life culture and a tradition that prizes freedom of speech and assembly.

The answer is not to corral protesters in special zones but to reverse an insensitive decision.

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

We note with regret that there is no actual legal text for the new regulations available for scrutiny. Neither is there any estimate of the potential cost to the NI block grant. This lack of detail seems to us a significant flaw in the process. Will the Government consult on a final text before it is implemented?

The present consultation, over what is for NI an important and emotive issue, runs for just 6 weeks (and, as it has turned out, during the run-up to a general election). The message seems to be that this is of little account.

CMF opposes the new legal framework as it stands. But if it is to be implemented, then it should be an offence to provide an abortion in NI outside the three CEDAW categories beyond 12 weeks, or at any gestation where the mother's life is endangered.

Please also consider adding an offence of 'coercive abortion' to the framework. A recent D-Cyfor report suggested that as many as one in seven UK women have been coerced to abort. Such coercion normally comes from intimate partners but may also result from 'cultural pressures'. In 2016, the CQC reported high-pressure sales practices within one of Britain's largest abortion chains, Marie Stopes. For consent to be valid, it must be both fully-informed and free from pressure or coercion from any quarter.