

**THE LIMITED CIRCUMSTANCES FOR A
LAWFUL TERMINATION OF PREGNANCY
IN NORTHERN IRELAND**

**A GUIDANCE DOCUMENT FOR
HEALTH AND SOCIAL CARE PROFESSIONALS ON
LAW AND CLINICAL PRACTICE**

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1 INTRODUCTION

- 1.1 The aim of the health and social care system must be protection of both the life of the mother and her unborn child. The objective of interventions administered to a pregnant woman must be to save the mother's life or protect against real and serious long-term or permanent injury to her health. Intervention cannot have as its direct purpose the ending of the life of the unborn child.
- 1.2 Medical circumstances may dictate that it is not possible to save both lives. All health and social care professionals should be familiar with the legal framework relating to termination of pregnancy in Northern Ireland and be aware when they can be legally provided. They must also comply with the guidance from their respective regulatory body.
- 1.3 The circumstances where a termination of pregnancy is lawful in Northern Ireland are highly exceptional. This document is intended to guide clinicians on the application of the very strict and narrow criteria that are consistent with the law. It details the very limited circumstances under which a termination of pregnancy may be lawful in Northern Ireland. Examples of good clinical practice are provided throughout.
- 1.4 This document does not change the law that governs termination of pregnancy in Northern Ireland. In Northern Ireland it is illegal to perform a termination of pregnancy unless it is necessary to preserve the life of the pregnant 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. In any other circumstances it is unlawful to perform such a procedure.
- 1.5 The Abortion Act 1967, as amended by the Human Fertilisation and Embryology Act 1990 does not extend to Northern Ireland. The provision of treatment that leads to a termination of pregnancy must therefore always be one of clinical necessity based on an assessment that it is the most appropriate medical treatment based on the woman's condition.

- 1.6 Should termination of pregnancy occur, support must be provided for individuals through aftercare services including counselling. Access to aftercare support must be provided for all women regardless of where a termination of pregnancy was carried out. It is the responsibility of Health and Social Care Trusts to provide this.
- 1.7 A data collection system is being developed to assess the grounds for termination of pregnancies taking place in Northern Ireland, to inform future policy and service decisions, and to reassure the public.
- 1.8 The Department of Health, Social Services and Public Safety has remained committed to the publication of guidance on this issue since the decision of the Court of Appeal in 2004. It has undertaken an extensive work programme which has included wide engagement with a range of stakeholder groups through formal consultation exercises and informal discussions.
- 1.9 It is important to emphasise that ***this guidance cannot, and does not, make any change to the law of Northern Ireland.*** In the event of any conflict between this guidance and decisions of the courts, the latter will always prevail.
- 1.10 Treatment to a pregnant woman that results in the termination of a pregnancy must only be carried out for the purpose of treating the woman, and any harm to an unborn child must only be incidental to that treatment.

2. LAW ON TERMINATION OF PREGNANCY IN NORTHERN IRELAND

- 2.1 This section of the document outlines the legal framework for termination of pregnancy in Northern Ireland. The law relating to termination of pregnancy in Northern Ireland is very different from that in Great Britain.
- 2.2 The Abortion Act 1967, as amended by the Human Fertilisation and Embryology Act 1990, does not extend to Northern Ireland and the grounds on which a termination of pregnancy may be carried out here are much more restrictive than those in Great Britain.
- 2.3 In Northern Ireland, the law relating to the termination of pregnancy is contained in sections 58 and 59 of the Offences Against the Person Act 1861, and in section 25 of the Criminal Justice Act (Northern Ireland) 1945 as interpreted by the courts. Further extracts from legal cases relating to termination of pregnancy in Northern Ireland are provided at Annex A.
- 2.4 Following the devolution of justice powers to Northern Ireland in 2010, responsibility for the criminal legislation underpinning termination of pregnancy in Northern Ireland resides with the Department of Justice.
- 2.5 The grounding statute in Northern Ireland is the Offences Against the Person Act 1861 which contains in sections 58 and 59 the criminal offence of unlawfully procuring a miscarriage:

“58. Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or not be with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any

instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable...”

“59. Whosoever shall unlawfully supply or procure any poison or noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to procure the miscarriage of any woman, whether she be or not be with child, shall be guilty of as misdemeanour, and being convicted thereof shall be liable...”

2.6 Section 25 of the Criminal Justice Act (Northern Ireland) 1945 also provides:

(1) Subject as hereafter in this sub-section provided, any person who, with intent to destroy the life of a child then capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, shall be guilty of felony, to wit, of child destruction, and shall be liable on conviction thereof on indictment to life imprisonment:

Provided that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(2) For the purposes of this and the next succeeding section, evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be prima facie proof that she was at that time pregnant of a child then capable of being born alive

2.7 The law governing termination of pregnancy in Northern Ireland can be stated as follows:

- i. In Northern Ireland termination of pregnancies are unlawful unless performed in good faith only for the purpose of preserving the life of the

woman. The 'life' of the woman in this context has been interpreted by the courts as including her physical and mental health;

- ii. A termination of pregnancy can therefore be lawful only where the continuance of the pregnancy threatens the life of the woman, or would adversely affect her physical or mental health in a manner that is 'real and serious' and 'permanent or long term'.
 - iii. In any other circumstance it would be unlawful to perform such a procedure. Health and social care professionals have a legal duty to refuse to participate in, and must report, any procedure that would not be lawful in Northern Ireland. A person who has knowledge of the carrying out of a procedure which is not lawful in Northern Ireland and who has information which is likely to be of material assistance in securing the apprehension, prosecution, or conviction of any person in relation to that lawful procedure is under a duty to give that information, within a reasonable time, to the police. If that person fails to do so without reasonable excuse, he or she may be liable, upon conviction, to maximum penalty of ten years imprisonment.
 - iv. Fetal abnormality is not recognised as grounds for termination of pregnancy in Northern Ireland.
- 2.8 It will always be a question of fact and degree whether the perceived effect of non-termination is sufficiently grave to warrant terminating the pregnancy in a particular case. In certain circumstances the possibility of an adverse effect may be sufficient grounds if, for example, the imminent death of a woman was the potential adverse effect. In most other cases the risk of the adverse effect would need to be more likely than not.
- 2.9 The medical practitioners responsible for the care of the woman will assess, as a matter of professional clinical judgement and in keeping with the law in

Northern Ireland, whether the perceived effect of non-termination is sufficiently grave to warrant terminating the pregnancy.

- 2.10 As with any exercise of clinical judgement, there will be occasions where this will be a difficult decision. Each case requires careful and sensitive assessment within the law as outlined in this guidance. In the event of a termination of pregnancy being required, the standard procedures for obtaining informed consent should be adhered to. Information on the issue of consent can be found in section 6 of this document.
- 2.11 It should be clearly understood that any conclusion that the risk to life or to the permanent or long-term health of the mother is sufficiently serious to justify a termination of pregnancy must be based upon reasonable grounds and with adequate knowledge.
- 2.12 Termination of pregnancy beyond the time at which a child is ‘capable of being born alive’ is governed by the Criminal Justice Act (NI) 1945, which provides a statutory defence against the offence of child destruction where the act which caused the death of the child was done “in good faith only for the purpose of preserving the life of the mother”. This follows from the Bourne decision and its application to the Northern Ireland legislation. Section 25 (2) of the Act states that a fetus with a gestational age of 28 weeks is prima facie capable of being born alive. Whether a child is ‘capable of being born alive’ would be a matter of evidence in the event of a prosecution in Northern Ireland. A child may be considered capable of being born alive if he or she has a real chance of being born and existing as a live child, breathing through its own lungs, whether unaided or with the assistance of a ventilator and whether for a short time or for a longer time.
- 2.13 It is important for practitioners to appreciate that anyone who unlawfully performs a termination of pregnancy is liable to criminal prosecution with a maximum penalty of life imprisonment. A person who is a secondary party to the commission of such an offence is liable on conviction to the same penalty.

A secondary party will include any person who, with intent to procure an abortion, assists another person in carrying out an unlawful termination of pregnancy or indeed who encourages the carrying out of such a procedure. For this reason (unless in circumstances of an emergency) an assessment by two doctors (although not itself a legal requirement) is recommended. (See section 3).

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3 CLINICAL ASSESSMENT

- 3.1 This section recommends best practice procedures that health and social care professionals should follow when undertaking patient assessments.

Best practice

- 3.2 Although not required by law in Northern Ireland, where practicable, two doctors with the appropriate skills and experience should undertake the clinical assessment.
- 3.3 All clinical assessments should be completed in a timely manner without undue delay and reasons for termination of pregnancy must be clearly recorded in the woman's notes. Further clarity on this issue is provided at 3.10.

Exceptional circumstances

- 3.4 In exceptional circumstances, such as imminent death emergency, it may be sufficient for a single doctor to assess whether a termination of pregnancy is indicated.

Where the threat is to the mental health of the woman

- 3.5 In circumstances where the pregnancy is likely to cause an adverse effect on the woman's mental health that is real and serious, and long term or permanent, medical practitioners who are experienced and competent in making a clinical assessment in these situations will be best placed to determine the long term likely impact on the woman's mental health.
- 3.6 The issue of potential long term serious mental health impact as a result of continuation of a pregnancy will require very careful consideration. It is expected that cases with a prognosis leading to a termination of pregnancy will be very rare. Making this determination will require particular competence and experience. As such it is recommended that a Consultant Psychiatrist should

be involved where a mental health assessment is required. It is recognised that this may not be practicable at all times e.g. in an emergency.

- 3.7 Should medical practitioners decide to undertake such an assessment, they must ensure they are satisfied that they have the relevant qualifications, competence or experience to make an appropriate clinical judgement on the likely impact and immediacy of threat to the patient. Should a practitioner not have the relevant competence they should seek advice and support from a qualified source. All practitioners should ensure they comply with any guidance from their respective regulatory body. It is a GMC requirement that doctors recognise and work within the limits of their competence.
- 3.8 There may be situations when the mental health of a woman, needs to be assessed. For those under 18, a Consultant Child and Adolescent Psychiatrist is appropriate. For women aged 18 years or over, assessment would most appropriately be carried out by a Consultant General Adult Psychiatrist.

Women with a learning disability

- 3.9 For those with a learning disability, or where there is any doubt of mental competence, a Consultant Psychiatrist specialising in learning disability is appropriate.

Recording of clinical decisions

- 3.10 The record should show a full and clear rationale behind the decision to carry out a termination of pregnancy, why it is the most appropriate clinical management for the woman involved, and should include any consultation that has taken place with other medical professionals. The record should show that the decision is supported by relevant information, and that the woman where clinical urgency permitted, has received counselling regarding options available and the implications of continuing with the pregnancy. The record

should also show that the woman has understood and given her informed consent to the termination of pregnancy.¹

- 3.11 Clinicians involved with termination of pregnancy should be aware of the risk of possible complications and sequelae of termination and should discuss these with the woman so that she can give informed consent, recording discussions on a proforma similar to those used in Consent of Examination, Care and Treatment. The GMC's Consent: Patients and Doctors making decisions together, paragraphs 28–36 also gives guidance on discussing side effects, complications and other risks involved in a procedure.

¹ Reference should be made to guidance on record keeping – “*Good Medical Practice*” (GMC, 2006) and “*Record Keeping: Guidance for Nurses and Midwives*” (NMC, 2009)

4 THE RIGHT TO CONSCIENTIOUS OBJECTION

4.1 It is recognised that even in the very rare occasions in which a termination of pregnancy can take place lawfully in Northern Ireland, that some health and social care professionals and Trust employees may have a conscientious objection to termination of pregnancy. It is clear, however, that no-one is required to participate in a procedure that he or she may consider unlawful. No-one is obliged to participate in any procedure which they consider may have as its direct primary purpose the death of the unborn child.

Emergency situations

4.2 Healthcare professionals may not refuse to participate in a termination of pregnancy on grounds of conscience where the life of the woman is in danger *and* action by way of termination of her pregnancy needs to be taken without delay in order to save her life *and* where the death of the unborn child is not the direct primary purpose of any intervention.

4.3 In the circumstances set out in paragraph 4.2 above, healthcare professionals will be required and expected to participate in the procedure.

4.4 The only exception to this is where another competent, appropriately qualified and experienced healthcare professional is immediately available and is willing and able to participate in place of the objecting healthcare professional for the purpose of saving the life. Such life threatening situations are likely to occur very infrequently.

5 PROVISION OF COUNSELLING SERVICES

- 5.1 Counselling involves a deliberately undertaken contract with clearly agreed boundaries and commitment to privacy and confidentiality. It requires explicit and informed agreement. The counsellor should respect the woman's values, personal resilience and capacity for decision making within her cultural context.
- 5.2 The counsellor must adhere to the ethical standards and code of practice outlined in the following paragraphs by offering a supportive environment for the woman to explore her feelings.
- 5.3 Counselling should be available to a woman:
- i. who expresses a wish to have a termination of pregnancy, or
 - ii. who wishes to consider options available to her, one of which is, or may be termination of her pregnancy, or
 - iii. following a termination of pregnancy regardless of where it was carried out.
- 5.4 Health and social care professionals should ensure that in any of these circumstances women have access to counselling, provided by competent and appropriately trained personnel².

Counselling within the NI legal framework

- 5.5 Counselling in Northern Ireland must be carried out within the legal framework.

² Counselling is currently not a regulated activity in Northern Ireland. However, when considering what constitutes 'competent, appropriately trained staff', Trusts may wish to refer to the standards issued by the British Association of Counselling and Psychotherapy

- 5.6 Trusts must ensure that counsellors are familiar with, and understand the law as set out in section 2 of this document. A woman should never be subjected to emotional or moral pressure to give or to refuse her consent to treatment which is lawful and clinically appropriate.
- 5.7 When counselling is sought by any woman who has not yet had a termination of her pregnancy it is essential to explain to the woman, without delay, and in language which she could reasonably be expected to understand, that under the law of Northern Ireland she may only have a termination of her pregnancy if;
- i. in the clinical judgment of qualified medical practitioners, a termination of pregnancy is necessary to preserve her life, or
 - ii. there is a risk, if a termination of pregnancy is not carried out, of a real and serious adverse effect on her physical or mental health which is either long term or permanent.
- 5.8 If there is any reason to suspect that either of these circumstances may apply the woman should be advised, in the interests of her health, to consult a qualified medical practitioner as soon as possible for assessment. It is not the function of a non-medically qualified counsellor to make any such assessment.
- 5.9 Unless, and until, qualified medical practitioners have made a clinical judgment that the woman satisfies one or other of the criteria for a lawful termination of pregnancy in Northern Ireland any counselling must reflect, and proceed on the basis that termination of the pregnancy in Northern Ireland is not an option that is lawfully available to the woman.
- 5.10 The counsellor will need to be aware of and inform the woman of the other choices available, including medical treatment, adoption services and support available for continuing with the pregnancy.

5.11 Counsellors should understand that they must also keep within the law of Northern Ireland when any counselling includes the provision of information relating to termination of pregnancy services lawfully available outside Northern Ireland.

Advice on services in other UK jurisdictions

5.12 The question of whether it would be lawful in Northern Ireland to advocate or promote, to a pregnant woman in Northern Ireland, the termination of her pregnancy outside Northern Ireland, where that termination of pregnancy would be lawful in the place where it was to be carried out, but would not be lawful if it was being carried out in Northern Ireland, has never been considered by the courts. This is a 'grey area' in which, pending clarification by the courts, the lawfulness of such conduct would have to be regarded as uncertain.

5.13 On no account should anything in this guidance be taken as encouragement or approval of such conduct by the Department. Any counsellor wishing to engage in such conduct is strongly advised to take specific legal advice before doing so.

Counselling women who meet requirements of the NI legal framework

5.14 If an assessment has been made by qualified, competent medical practitioners that the woman satisfies one or other of the criteria for a lawful termination of pregnancy in Northern Ireland (i.e. paragraph 2.8 and 2.9 above), where clinical urgency permits, she should be advised that she may seek counselling, if she wishes, before she decides whether to consent to the procedure.

5.15 In such circumstances counsellors should exercise extreme caution and consider carefully whether, and if so to what extent, it is appropriate for them to counsel the woman concerned. This is particularly so where, as may often be the case, the counsellor will not be privy to the medical practitioner's assessment of the relative health risks associated with proceeding, and alternatively not proceeding, with a termination of pregnancy. A counsellor

should appreciate that the woman's account of her practitioner's assessment of those risks may, on occasions, be inaccurate or incomplete.

Aftercare services

- 5.16 Any woman who proceeds with a termination of pregnancy in Northern Ireland should be offered post-termination follow-up/counselling to help her to come to terms with the emotional impact of her choice, on herself and in some cases on her partner and children.
- 5.17 Such post-termination of pregnancy follow-up/counselling should also be made available to any woman in Northern Ireland who seeks it even if she has undergone a termination of pregnancy outside Northern Ireland.
- 5.18 Aftercare services should be available to any woman who presents with symptoms or complications following a termination of pregnancy, regardless of where it was carried out, so that she has access to appropriate treatment and counselling where required.

Patient confidentiality

- 5.19 Patients have a right to expect that health and social care professionals will not disclose any personal health information to a third party without consent. Women seeking termination of pregnancy are likely to be particularly concerned about the confidentiality of this information and staff should be sensitive to this.
- 5.20 Health and social care professionals should adhere to the DHSSPS Code of Practice on Protecting the Confidentiality of Service User Information and the requirements of the Data Protection Act 1998.
- 5.21 They should also refer to guidance on confidentiality available from their regulatory body including the GMC's Good Medical Practice (Nov 2006), Confidentiality (2009) and the NMC guidance "The Code: standards of conduct performance and ethics".

6 ENSURING APPROPRIATE CONSENT

- 6.1 It is a general legal and ethical principle that valid consent must be obtained before commencing an examination, starting treatment or physical investigation, or providing personal care.
- 6.2 The Department has produced A Reference Guide to Consent for Examination, Treatment or Care (March 2003). It provides guidance on the law relating to consent. This document is publicly available on the DHSSPS website - www.dhsspsni.gov.uk
- 6.3 All health and social care staff are advised to read this guidance before carrying out any termination of pregnancy procedure. Particular attention is drawn to the chapters on adults without capacity ('incapable adults') and on children and young people. These chapters also explain the circumstances in which a referral should be made to the court for a ruling before a medical procedure or treatment is undertaken.
- 6.4 This principle of consent reflects the right of individuals to determine what happens to their own bodies, and is a fundamental part of good practice. A health professional who does not respect this may be liable both to legal action by the person and action by their regulatory body.
- 6.5 Employing bodies may also be liable for the actions of their staff. While there is no statute here setting out the general principles of consent, in common law, touching an individual without valid consent constitutes the civil wrong and the criminal offence of battery.
- 6.6 Further, if health care professionals fail to obtain consent and the individual subsequently suffers harm as a result, this may be a factor in a claim for damages against the health care professionals and staff involved. Poor handling of the consent process may also result in complaints from individuals through the HPSS complaints procedure or to regulatory bodies. As with any

other procedure, the patient is entitled to obtain a second opinion before she gives consent.

- 6.7 With consent to termination of pregnancy, as with consent for other medical procedures, there are certain criteria which must be met in order for the consent to be valid. The woman must have sufficient competence to understand the procedure and its alternatives in broad terms and to make a decision.
- 6.8 It is also important that consent must be voluntary and the decision must be made on the basis of sufficient, accurate information. In those cases, where a termination of pregnancy is advised and taking account of the urgency of the procedure, where possible, the woman should be afforded the time to consider the decision to have a termination of pregnancy.
- 6.9 When a minor satisfies one or other of the criteria for a lawful termination within Northern Ireland the requirements relating to consent are the same as for any other medical procedure. The GMC publication 0-18 years – Guidance for All Doctors gives guidance on assessing whether a minor is competent to provide consent.

7 CONSIDERATION OF SEXUAL OFFENCES

- 7.1 In some circumstances a patient presenting in relation to the issue of possible lawful termination of pregnancy may lead a health or social care professional having to consider if a sexual offence has been committed.
- 7.2 It is a criminal offence³ to fail, without reasonable excuse, to report to the police a suspicion that a serious offence has been committed; this includes any sexual activity with a child under the age of 13, sexual activity between an adult and a child under the age of 16, or with a person who is unable to legally consent to sexual activity because of a mental disorder⁴.
- 7.3 Sexual activity with a person with a mental disorder which does not impact on their capacity to consent, is an offence if it is procured by inducement, threat or deception, or if the person undertaking the activity is a care worker for that individual.
- 7.4 The Sexual Offences (Northern Ireland) Order 2008 provides the legislative framework for sexual offences in Northern Ireland, including offences against children and people with a mental disorder.

Child protection reporting requirements

- 7.5 Where a young person under the age of 16, the age of consent for sexual activity, presents for a termination of pregnancy, staff should be aware of and comply with the reporting requirements relating to minors as set out in the relevant child protection guidance.
- 7.6 Health and social care practitioners should always consider the possibility of abuse having occurred in a situation where a minor presents seeking a termination of pregnancy. Guidance to assist practitioners to determine

³ Section 5 Criminal Law Act (NI) 1967.

⁴ As defined in the Mental Health (NI) Order 1986.

whether a sexual relationship may in itself be abusive can be found in Chapter 9 of the Regional Child Protection Policy and Procedures⁵.

- 7.7 If it appears that the relationship which has resulted in the pregnancy of a minor has been an abusive relationship, the matter should be progressed in accordance with the Regional Child Protection Policy and Procedures. A referral should be made to the local Gateway Team in Children's Services.

Adult protection reporting requirements

- 7.8 In circumstances where an adult with a mental disorder presents for a termination of pregnancy, the reporting requirements set out in relevant adult protection guidance⁶ should be followed.

⁵ <http://www.dhsspsni.gov.uk/acpcregionalstrategy.pdf>

⁶ Safeguarding Vulnerable Adults – Regional Adult Protection Policy and Procedural Guidance
http://www.rqia.org.uk/cms_resources/Safeguarding_Vulnerable_Adults_-_3_Nov_06.pdf

8 ALTERNATIVE OPTIONS

“The investigations or treatment you provide or arrange must be based on the assessment you and the patient make of their needs and priorities, and on your clinical judgement about the likely effectiveness of the treatment options. You must not refuse or delay treatment because you believe that a patient's actions have contributed to their condition. You must treat your patients with respect whatever their life choices and beliefs. You must not unfairly discriminate against them by allowing your personal views to affect adversely your professional relationship with them or the treatment you provide or arrange. You should challenge colleagues if their behaviour does not comply with this guidance.”

Source - GMC's Good Medical Practice (Nov 2006) paragraph 7

If a woman does not meet the criteria for a termination of pregnancy

- 8.1 Any woman seeking a termination of pregnancy who does not meet the criteria in Northern Ireland should be treated sensitively.
- 8.2 Health and social care professionals should explore the woman's concerns and expectations to establish what kind of support she is getting or may expect to receive from her partner, family, social services, work colleagues or school/college authorities.
- 8.3 It is important to discuss any difficulties she foresees as well as any concrete measures that can be taken to help her particular situation.

Alternatives to termination of pregnancy

- 8.4 A woman should be offered information about alternatives to termination of pregnancy such as continuing with the pregnancy, adoption, etc. She should also be offered information on organisations which can offer support and advice.

- 8.5 Trusts should make women aware of the chaplaincy services available to them for spiritual and pastoral care should they wish to avail of them.
- 8.6 Verbal advice should be supported by accurate, impartial printed information that the woman can understand and may take away to consider further.
- 8.7 Information for women and health and social care professionals should emphasise the duty of confidentiality by which health and social care staff are bound.

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9 ACCOUNTABILITY AND INFORMATION COLLECTION

- 9.1 Health and Social Care Trusts have a statutory duty to deliver services that meet their local population requirements and are lawful. It is no different for treatments delivered to pregnant women that may lead in very limited circumstances to a lawful termination of pregnancy.
- 9.2 All services that Trusts provide are subject to robust systems of internal control. This ensures that policies and procedures for day-to-day activities are implemented and followed correctly. These systems provide reasonable assurance that objectives are met and risks are being reasonably managed.
- 9.3 Under existing accountability arrangements HSC Trust boards are required to have appropriate governance arrangements in place to ensure ongoing compliance with the law that governs termination of pregnancy in Northern Ireland.
- 9.4 A data collection system is being developed to provide additional detail on the termination of pregnancies in Northern Ireland. The system will collect information on the grounds for termination of pregnancies taking place and provide information to inform future policy management.
- 9.5 The data collection system will recognise the intrinsic right of confidentiality for patients and health and social care staff⁷. Data protection and the importance of anonymised information has underpinned thinking at every juncture in the development of the collection system.
- 9.6 All health and social care medical professionals working in Northern Ireland should be aware of the contents of this document and the limited circumstances under which termination of pregnancy is lawful in Northern Ireland. Similarly all organisations providing medical services to pregnant

⁷ <http://www.dhsspsni.gov.uk/confidentiality-code-of-practice0109.pdf>

women have a responsibility to ensure their staff have considered this guidance. As outlined in 2.7(iii), health and social care professionals have a legal duty to refuse to participate in, and report, any procedure that would not be lawful in Northern Ireland.

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Annex A - CASE LAW ON TERMINATION OF PREGNANCY IN NORTHERN IRELAND

The High Court has considered a small number of applications in relation to young people and women lacking decision making capacity and has confirmed that the termination of pregnancy proposed would be lawful. In each case, the court came to its decision after detailed consideration of medical reports by consultant psychiatrists and obstetricians.

The Bourne case 1939

1. The Bourne case, R v Bourne [1939] KB 687, centred on an obstetrician who was charged with having procured the miscarriage of a fourteen-year old girl contrary to section 58 of the 1861 Act. The girl was pregnant as the result of a rape. The obstetrician had attested that, having made an examination of the girl, he had concluded that the continuance of the pregnancy would severely affect her mental health.
2. In his charge to the jury, Mr Justice Macnaghten referred to section 1 (1) of the Infant Life (Preservation) Act, 1929 and pointed out that the proviso (that a person shall not be guilty of an offence if he acted in good faith to preserve the mother's life) did not appear in section 58. However, he went on to say:

“...but the words of that section (i.e. section 58 of the 1861 Act) are that any person who “unlawfully” uses an instrument with intent to procure miscarriage shall be guilty of felony. In my opinion the word “unlawfully” is not, in that section, a meaningless word. I think it imports the meaning expressed by the proviso in section 1 sub-section 1, of the Infant Life (Preservation) Act, 1929, and that section 58 of the Offences against the Person Act, 1861, must be read as if the words making it an offence to use an instrument with intent to procure a miscarriage were qualified by a similar proviso.”

3. What this means is that a person who procures an abortion in good faith for the purpose of preserving the life of the woman shall not be guilty of an offence.
4. In terms of what is meant by “preserving the life of the mother”, Mr Justice Macnaghten said this:

“...those words ought to be construed in a reasonable sense, and, if the doctor is of the opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor who, under those circumstances and in that honest belief, operates, is operating for the purpose of preserving the life of the mother.”

Cases in the Courts in Northern Ireland since 1993

In each case the court came to its decision after detailed consideration of medical reports by consultant psychiatrists and obstetricians.

5. In 1993, the Northern Ireland High Court heard the first of a series of cases which began to circumscribe the nature of lawful termination of pregnancies. All of the cases involved individuals who were unable to consent for themselves by reason of diminished mental competence or age.
6. The 1993 case of *Re K* concerned a fourteen year old minor who was a ward of court. The Northern Health and Social Services Board sought an order permitting a termination of the pregnancy on the basis of the minor’s statements that she would commit suicide if the pregnancy was not terminated. Having heard medical evidence that “...to allow the pregnancy to continue to full term would result in her being a physical and mental wreck”, the judge found that a termination of pregnancy in such circumstances would be lawful.

7. In the 1994 case of *Re A.M.N.H.*, the pregnant woman was severely mentally handicapped and a ward of court. There was medical evidence that the continuation of the pregnancy would adversely affect the woman's mental health. The judge held that abortion is lawful where the continuation of the pregnancy would adversely affect the mental or physical health of the woman. However, he said that the adverse effects must be real and serious. He found in the case that the termination of the woman's pregnancy would be lawful.
8. The 1995 case of *Re S.J.B.* involved a seventeen-year-old severely handicapped girl who was made a ward of court. On the basis of medical evidence presented to the court, the judge held that a termination of the pregnancy would be lawful.
9. The case of *Re C.H.*, also decided in 1995, concerned a sixteen-year-old girl who was a ward of court. She stated that she wished to have her pregnancy terminated and threatened to commit suicide if she was forced to continue with her pregnancy. On the basis of medical evidence, the judge held that it would be lawful for the pregnancy to be terminated.
10. In the case of *R v MacDonald* in 1999, in a decision during a criminal trial, the Crown Court considered the meaning of 'capable of being born alive' in s.25 of the Criminal Justice Act (NI) 1945. It ruled that it meant the foetus has a real chance of being born and existing as a live child, breathing through its own lungs, whether unaided or with the assistance of a ventilator and whether for a short time or a longer period.

Annex B - MEETING PATIENTS NEEDS

1. Information should be available for both women and health and social care professionals. Although the number of terminations will be small, relevant Health and Social Care providers should have arrangements in place to deal with those circumstances where the need for a termination arises.
2. Access to services should be ensured for women with special needs as appropriate. For example, special arrangements should be made for non English speaking women and those with speech or hearing impairment, physical or learning disability.
3. Where termination of pregnancy is being considered there should be timely access to clinical assessment.
4. Appropriate information, support and counselling should be available for those who consider but do not proceed to termination of pregnancy.
5. The timeframe between the decision being taken and the termination of pregnancy being carried out will be dictated by clinical needs. The immediacy of the harm of the mother (and consequently the urgency of the action to terminate the pregnancy) may be a relevant factor in making a defence.
6. Where clinical circumstances permit the women should be afforded sufficient time to reflect on the treatment choices available, and access to counseling.
7. Service arrangements should be such that:
 - i. Women admitted for termination of pregnancy should be cared for with great sensitivity in the most appropriate ward/location.

- ii. Women having second-trimester termination of pregnancies by medical means should be cared for by appropriately experienced staff. Ideally, they should have the privacy of a single room.
8. Aftercare services should be available to any woman who presents with symptoms or complications following a termination of pregnancy.
 9. Clinical management guidance is available at: www.rcog.org.uk/ However, where a legal issue arises, the guidance in this document should be followed.

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