

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

Annex D: Consultation questions

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Are you responding as an individual or representing the views of an organisation? If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.	
Details of organisation (if applicable)	Royal College of Nursing [RCN]

Question 1: Should the gestational limit for early terminations of pregnancy be:	Yes	No
Up to 12 weeks gestation (11 weeks + 6 days)	√	
Up to 14 weeks gestation (13 weeks + 6 days)		√
If neither, what alternative approach would you suggest?		

Question 2: Should a limited form of certification by a healthcare professional be required for early terminations of pregnancy?	Yes	No
		√
<p>If no, what alternative approach would you suggest?</p> <p>The RCN concurs with the commentary on page 14 of the consultation document, whereby: “Given that the woman or girl will not be required to explain or justify why she is seeking a termination, it may therefore mean that no certificate of opinion would be required for the early termination (up to 12/14 weeks gestation), because it is proposed that termination will be available up to this gestational limit without any medical grounds being required to be met”. This being the case, we see no need to develop any form of “certification”, limited or otherwise.</p>		

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:	Yes	No
21 weeks + 6 days gestation		√
23 weeks + 6 days gestation		√
<p>If neither, what alternative approach would you suggest?</p> <p>As the consultation document acknowledges (page 16): “... with advances in medicine and healthcare, it could be possible that a fetus having reached a gestation of 22 weeks (21 weeks + 6 days) is viable and thus capable of being born alive, depending on the individual circumstances of the woman and the fetus”. The RCN endorses this view and emphasises that viability is a variable entity. We are therefore unable to support the imposition of a specific timescale as outlined above. A further consideration is the relative lack of accessibility to fetal abnormality testing in Northern Ireland, which must be addressed as part of the implementation of service provision within the new legislative framework. The RCN believes that decisions in relation to the issues addressed in this particular question should be considered on the basis of health care decisions determined by specific individual circumstances and the informed consent of the woman.</p>		

Question 4: Should abortion without time limit be available for fetal abnormality where there is a substantial risk that:	Yes	No
The fetus would die in utero (in the womb) or shortly after birth	√	
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	√	
<p>If you answered 'no', what alternative approach would you suggest?</p> <p>The RCN believes that this is a straightforward human rights issue and the autonomous choice of the woman must be the key factor. Again, the current lack of accessibility of fetal abnormality testing in Northern Ireland is a further consideration relevant to this question.</p>		
Question 5: Do you agree that provision should be made for abortion without gestational time limit where:	Yes	No
There is a risk to the life of the woman or girl greater than if the pregnancy were terminated?	√	
Termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman or girl?	√	
<p>If you answered 'no', what alternative provision do you suggest?</p> <p>Once again, the RCN considers this to be straightforward human rights issue wherein the autonomous choice of the woman must be the key factor. Furthermore, it must also be noted that both of these provisions applied in Northern Ireland under the previous (pre 22 October 2019) legislation. To depart from this principle would be a retrograde step and therefore entirely unacceptable.</p>		

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	No
	√	

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

The RCN endorses the commentary on page 20 of the consultation document whereby: "In line with developments in practice, a framework is proposed, which would enable a medical practitioner or any other registered healthcare professional to be able to provide terminations, provided they are appropriately trained and competent to provide treatment in accordance with their professional body's requirements and guidelines. We believe this to be the most appropriate model because the role of nurses and midwives has developed significantly in recent years and they are now taking on increasingly complex duties." The only caveats that we would wish to cite are [1] that the term "registered healthcare professional" should be replaced with "registered nurse or midwife" and [2] that the need for these practitioners to be appropriately educated, qualified (in prescribing, for example) and supported must be specified. The RCN welcomes the recognition of the key role of registered nurses and midwives in this respect.

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	No
	√	

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

Women across Northern Ireland must be able to access services based on choice and clinical need. This must embrace access to the right person with the right skills, together with the minimisation of risk and complications. Commissioners must be vigilant and proactive in mitigating the potential development of a "postcode lottery" in service provision. The RCN is pleased to note the reference in the consultation document (page 21) to the need to ensure that "pills for the second stage of early medical abortion" can be taken by women in their own home. In our current (UK) position statement on the decriminalisation of termination of pregnancy, the RCN highlights the need for regulation and quality monitoring processes to protect the rights of women in accessing free, safe and effective services and in supporting best practice. These principles must apply uniformly across Northern Ireland.

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	No
	√	
<p>If you answered ‘no’, what alternative approach do you suggest?</p> <p>Again, the RCN would emphasise that women across Northern Ireland must be able to access services based on choice and clinical need. This must include access to the right person with the right skills, and the minimisation of risk and complications, including, where appropriate, access to intensive care services. In this respect, the RCN suggests that this proposal should be considered to be a recommendation, rather than a requirement. We would also suggest that the Northern Ireland Office [NIO] should be more precise in defining what is meant by the term “acute sector hospital”, perhaps by specifying “HSC acute sector hospital”.</p>		

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	No
		√
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?		√
<p>If you answered ‘no’ to either or both of the above, what alternative provision do you suggest?</p> <p>Given that access to services will be on the basis of self-referral, the RCN sees no merit in developing a system of certification as outlined on pages 23 and 24 of the consultation document. It is important that the NIO should draw a clear distinction between, on the one hand, the needs of data collection (to ensure that service provision is evidence-based and that an accurate record is maintained for commissioning and evaluation purposes of the numbers accessing services) and, on the other, of the idea that women should somehow have their access to services “approved” or “validated”. The former is entirely reasonable, as long as strict confidentiality is maintained. The latter is outdated and somewhat patrician.</p>		

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	No
	√	

If you answered ‘no’, what alternative approach do you suggest?

The RCN would reiterate the same general observations as noted in response to question 9 (above). The purpose and function of notification must be clear and focused solely on the effective commissioning and evaluation of services, as well as understanding service requirements, including the need to ensure that staffing arrangements and capacity are capable of delivering safe and effective woman-centred care. All data thus collected must be secure and anonymised.

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	No
	√	

If you answered ‘no’, what alternative approach do you suggest?

The RCN has consistently advocated a statutory right to conscientious objection. We endorse the commentary set out on page 26 of the consultation document, particularly in respect of such a right covering “the whole course of treatment for the purposes of the abortion but ... not ... any ancillary, administrative and managerial tasks that might be associated with that treatment”. The exemption in relation to emergency situations is also essential. However, the RCN believes that it would be helpful for the NIO to define, with as much precision as possible, what is meant by “the whole course of treatment”. Given the history of this issue in Northern Ireland, it is important to be clear about where the limits of the right to exercise conscientious objection are drawn, and to support this distinction with appropriate education, support and guidance for health care staff. We also recommend that reference is made to the requirements of relevant statutory regulatory bodies (including the Nursing and Midwifery Council), as well as to the RCN’s own [guidance on conscientious objection](#).

Question 12: Do you think any further protections or clarification regarding conscientious objection is required in the regulations?	Yes	No
		√
If you answered 'yes', please suggest additional measures that would improve the regulations:		

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	No
	√	
If you answered 'no', what alternative approach do you suggest?		
<p>As a trade union and a professional organisation, the RCN will rigorously defend the right of our members to undertake their professional practice free from the risk of harassment and threats, as well as the right of women (and their families and friends) to access health care services in the same manner. We therefore strongly support this proposal and urge that a clear message is sent from the outset that intimidating and/or threatening behaviour towards women and health care staff will be met with the full force of the law. There is no doubt that effectively implementing this proposal will be challenging but we believe that it is essential to do so.</p>		

Question 14: Do you consider there should also be a power to designate a separate zone where protest can take place under certain conditions?	Yes	No
		√
If you answered 'no', what alternative approach do you suggest?		
<p>The RCN accepts that those who object to the provision of termination of pregnancy services have the right to conduct peaceful and lawful protest. However, we see no reason why the HSC should be required to designate specified areas in order to facilitate and accommodate such protests. Indeed, we believe that the key issue is that such protests must be conducted well away from any service location so that it is not possible to identify and target service users and health care staff.</p>		

Question 15: Have you any other comments you wish to make about the proposed new legal framework for abortion services in Northern Ireland?
<p>The RCN urges the NIO to ensure that the new legal framework for the termination of pregnancy in Northern Ireland repeals the remaining criminal provisions enshrined in section 25 of the Criminal Justice (Northern Ireland) Act 1945.</p>

The RCN commends the NIO for the way in which it has conducted its stakeholder engagement prior to the publication of this consultation document, and for the clarity and quality of the consultation framework. We hope that our response is helpful and we look forward to continuing to work with the NIO and other stakeholders in the interests of our members and the women of Northern Ireland.

Central to this issue is the need to continue to raise awareness of the issues surrounding the termination of pregnancy in Northern Ireland, the new legal requirements and, perhaps most importantly of all, to ensure that appropriate education and support is available, not just for health care staff but for women, their families and friends, and the people of Northern Ireland more widely. Education must embrace, in particular, young people through programmes such as the multi-agency Relationship and Sexuality Education project.

It is essential that we, as a society, can continue to move towards a greater tolerance of divergent views and develop both the capacity and desire to conduct debate on what, we recognise, remain contentious issues for many people in Northern Ireland, in a respectful and courteous manner.