

# **Consultation on the Limited Circumstances for a Lawful Termination of Pregnancy in Northern Ireland**

## **Response from Alliance for Choice Derry**

**July 2013**

### **Introduction**

Alliance for Choice Derry (AFC Derry) welcomes the opportunity to respond to the DHSSPS consultation on the document entitled *The limited Circumstances for a Lawful Termination of Pregnancy in Northern Ireland*. Our sister organisation, AFC Belfast is also responding to the consultation document.

Alliance for Choice is an organisation that campaigns for the extension of the 1967 Abortion Act to Northern Ireland. It is made up of women and men, from both Catholic and Protestant communities in the North of Ireland, who want to see equality and self-determination for women here. Alliance for Choice was set up in 1996, emerging from the Derry Women's Right to Choose Group, to encourage the incoming Labour government to implement Labour Party policy to extend the 1967 Abortion Act.

Much of our work has been about making heard the voices of the tens of thousands of women from NI who have had abortions in England and elsewhere since 1967 and the many hundreds who flout the law each year to obtain abortion pills over the internet and to cause an abortion themselves at home here in Northern Ireland.

Since its inception, AFC Derry has helped to fund many women to access safe and legal abortions in other parts of the "United Kingdom". In recent years, we have tended to help such women to access safe abortions here in Northern Ireland, the legality of which are open to question.

We published an Open Letter in March of this year in which over 100 women and a number of men admitted that they had broken the law by either taking the abortion pill or by 'aiding and abetting' a woman to obtain the abortion pill. Four months later, AFC Derry continues to assist women in Northern Ireland to obtain the abortion pill from safe websites and to support them in any way they need. We do so in the firm belief that the current law on abortion here, as delineated in case law, is far more liberal than the current consultation document *The limited Circumstances for a Lawful Termination of Pregnancy in Northern Ireland* suggests.

## **The Language of the Consultation Document**

AFC Derry is shocked to find that the language of the consultation document is not appropriate for a professional document, still less one published by a government department. It is the language of theology rather than law, medicine or policy. We note that some of the formulations are taken directly from the responses from the Association of Catholic Lawyers of Ireland (ACLI) to consultations on earlier drafts of the Guidance. While those of the Roman Catholic faith have every right to live their lives according to the dictates of their church, it is most concerning to find formulations which are essentially theological within a government document. For example, the final sentence of para 1.1. of the Guidance "Intervention cannot have as its direct purpose the ending of the life of the unborn child" is a statement of Roman Catholic theology which should have no place in a health policy.

The use of the term "unborn child" is also highly emotive; it has neither legal nor medical meaning. This document is supposedly intended as "A Guidance Document For Health And Social Care Professionals On Law And Clinical Practice". Health and Social Care professionals use the correct terms: 'embryo' (up to eight weeks gestation) and 'foetus' (from eight weeks through to full term). The meaningless term 'unborn child' must be removed from the document. Further, not all pregnant women are mothers and the document should not conflate the two.

AFC Derry is also concerned that a document which is supposed to give clarity to the law on abortion in Northern Ireland is replete with vague language. There is much use of the conditional tense – may, might, could, should etc. For example, para 2.7 iii. *'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.'* The use of the conditional form 'would' here makes the statement unclear. Does it mean that professionals must report women who travel for a termination? Because a termination procedure that *is* lawful in England, often *would not* be lawful in Northern Ireland. Or para 2.8 "...the possibility of an adverse effect *may* be sufficient grounds if, for example, the imminent death of a woman was the potential adverse effect." Or para 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". To suggest that the imminent death of a woman *may* be sufficient grounds is clearly against the 1861 Offences Against the Person's Act as interpreted by some 75 years of case law.

**AFC Derry recommends that the language of the document is amended to be clearer and to use only the language used by health and social care professionals at whom it is aimed.**

## **Abortion Law in Northern Ireland**

Although para 1.9 of the Guidance states that “It is important to emphasise that ***this guidance cannot, and does not, make any change to the law of Northern Ireland***”, AFC Derry is concerned that the first sentence of para 1.3 of the draft Guidance *does* attempt to change the law since it states that “The circumstances where a termination of pregnancy is lawful in Northern Ireland are highly exceptional.” As stated above, AFC Derry has helped many women to travel to other parts of the UK whose health was at great risk because of a pregnancy. These included women with cardiac and renal problems and several women with severe hypertension. In all of these cases, local medical professionals said they were unable to provide abortions in their local hospitals but were anxious to ensure that their colleagues in England had the women’s medical notes. On a few occasions, doctors from here spoke to doctors in England about the seriousness of these women’s health conditions. Given that the Guidance accepts that abortion is legal “*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’*”, our experience would suggest that such circumstances are not at all exceptional. Indeed, medical professionals who presented evidence to the Oireachtas Health Committee hearings in the Republic of Ireland in relation to the new abortion law in that jurisdiction were quite clear that there are a wide range of conditions a woman might suffer which would mean that continuing a pregnancy would leave her “a physical or mental wreck”, without necessarily placing her life at immediate danger. Some of the conditions they mentioned included severe hypertension, cardiac or renal problems and cancer.

**AFC Derry would suggest, therefore, that the DHSSPS consult the Royal Colleges of medical practitioners to ascertain which medical or psychiatric conditions are likely to mean that an unwanted pregnancy would affect a woman’s physical or mental health “in a manner that is ‘real and serious’ and ‘permanent or long term’” and then be explicit that abortion is legal in such instances.**

It is the case that in most of these cases, treatment will have as its direct purpose the termination of the pregnancy, that is, the ending of foetal life. Thus, the final sentence in para 1.1. of the Guidance “Intervention cannot have as its direct purpose the ending of the life of the unborn child” is not only medically meaningless but is contrary to the law as defined by case law.

Para 2.7 iv. States that “Fetal abnormality is not recognised as grounds for termination of pregnancy in Northern Ireland.” However, there is widespread ante-natal screening for foetal abnormality. When there is an abnormality, this is usually a tragedy for the couples involved in what was a wanted pregnancy. While it used to be possible for families to be provided with a termination in local

hospitals, many are now forced to travel to England at this most difficult of times. Further, because of the illegality surrounding such abortions here, the information that families receive is not always as good – or as positive towards children with disabilities – as would be the case in England where organisations such as **Antenatal Results and Choices** provide information and support that leads some couples to decide to continue such pregnancies and that ensures that those who decide to terminate are allowed to grieve for the child they had hoped to have. There are a number of genetic conditions which means that some families in Northern Ireland have more than one disabled child and often more than one child with a life-limiting disability. Such families need and receive genetic counselling – yet are not legally entitled to an abortion which is to ensure that they do not give birth to another child that they will have to watch die – whether that death is in hours, weeks or years. This is made much worse by the lack of easily accessible support services, such as speech therapy, respite care or supported living for severely disabled children and adults.

There is widespread support in Northern Ireland for abortion in this circumstance. The 2008 Northern Ireland Life and Times Survey found that only 25% of respondents thought abortion was always wrong “if there is a strong chance of a serious defect in the baby?”

**AFC Derry urges the DHSSPS to review the law in relation to abortion for reasons of foetal abnormality.**

### **Counselling Services**

AFC Derry believes that para 5.11 and 5.12 regarding counselling services for women with crisis pregnancies are extremely misleading. It is hard to countenance that the DHSSPS’s legal advisors are not aware of the ruling by the European Court of Human Rights with regards to *Open Door and Dublin Well Women v Ireland*. It is not (5.12) a ‘grey area’ to provide advice on abortion services. It is a right protected by Article 10 of the European Convention.

### **Joined-up government – the impact of the proposed Benefit Cap**

As the DHSSPS knows, children living in severe poverty are more likely to come into the care system than children from better-off families, particularly if their mother is suffering from mental ill-health. Northern Ireland has larger families than is the norm in the rest of the UK and the DSD in its recent updated EQIA on the Welfare Reform Bill estimated that there are 600 families here who will be impacted by the Benefit Cap. Most of these will be families with four or more children.

Alliance for Choice is an organisation that believes that women deserve support from society in raising their children and we are opposed to the benefit cap. However, we are concerned that a woman living on benefits and pregnant with a fifth potential child should not have to put her family into deeper poverty to access a legal abortion in Britain or bring into the world a child for whom she would not receive even a penny in Child Benefit.

**AFC Derry would ask if the DHSSPS could clarify whether being faced by the Benefit Cap – and the consequent stress and potential damage to her physical and mental health – will be considered 'real and serious' and 'permanent or long term' enough to qualify a woman for an NHS abortion in Northern Ireland.**

### **Conclusion – International Human Rights Law**

It is now almost twenty years (1993/4) since the UK Government's Standing Advisory Committee on Human Rights (SACHR) carried out a consultation on abortion which received 1,800 responses. SACHR made three recommendations in its 19th Report:

- \* That the Government should bring forward options for clearer law.
- \* That the Government should ensure that information on the practice of abortion is collated.
- \* That the issue of 'pecuniary advantage' should be removed from the debate.

There is no evidence that any of these three recommendations have been addressed: the current draft Guidance does nothing to clarify the law; the only aspect of the practice of abortion about which information is to be collected are the very few abortions carried out in NI's public hospitals – no information is to be collected on self-induced abortions or on the difficulties women face accessing abortions in other parts of the UK; the issue of 'pecuniary advantage' remains – women who have money can travel to England for a legal abortion while those who do not have little choice but to access pills over the internet or to continue an unwanted pregnancy. With the impending Benefit Cap, women living on benefits will be in an even more invidious position.

The UK Government was heard recently on its 7<sup>th</sup> Periodic Report to the UN Committee on the Elimination of Discrimination Against Women in July 2013. The CEDAW Committee again reminded the government that it had made recommendations with regard to the availability of legal abortion in Northern Ireland in 1999 and in 2008. One Committee member (the UK Rapporteur Ruth Kaddari) said that she was aware of the consultation on the Guidance, that she herself had read it and that it was "ambiguous and restrictive".

The Concluding Observations of the CEDAW Committee are worth reflecting upon. In relation to health, they state:

50. While acknowledging the consultation process on a revised set of guidelines issued by the Northern Ireland Department for Health, Social Services and Public Safety on the 'limited circumstances for a lawful termination of pregnancy in Northern Ireland' (2012), the Committee regrets that a public consultation regarding the possible abolition of criminal abortion laws, as called upon by the Committee in its previous concluding observations (A/63/38, paras. 288 and 289), has not been undertaken, and it is concerned that abortion continues to be illegal in Northern Ireland in all cases except where continuance of the pregnancy threatens the life of the mother, thus making it necessary for women to seek abortion in other parts of the State party.

**51. Recalling its previous recommendation, the Committee reiterates that, in line with general recommendation No. 24 on women and health and the Beijing Declaration and Platform for Action, the State party should expedite the amendment of the anti-abortion law in Northern Ireland with a view to decriminalise abortion. The State party should also ensure that legal abortion not only covers cases of threats to the life of a pregnant woman but also other circumstances such as threats to her health and in cases of rape, incest and serious malformation of the foetus.**

Given the binding nature of CEDAW as a UN Convention for the Elimination of all Forms of Discrimination Against Women, we would urge that this guidance be revisited.

Alliance for Choice Derry is happy to meet with officials of the DHSSPS to discuss anything contained in this response. For further information etc. please contact:

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