



# **Alliance for Choice, Belfast Response:**

## **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**

**July 2013**

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## **Alliance for Choice's, Belfast Response: The limited Circumstances for a Lawful Termination of Pregnancy in Northern Ireland. July 2013**

### **Introduction**

Alliance for Choice Belfast (AFC Belfast) welcomes the opportunity to respond to, 'The limited Circumstances for a Lawful Termination of Pregnancy in Northern Ireland,' published for consultation by the DHSSPS in April 2013, after approval from the Northern Ireland Executive. Our sister organisation, AFC Derry will also be making a submission to these guidelines.

In this submission, in which we make in good faith, we outline who we are, some initial comments on the guidance document and set the context of abortion law as well as an outline of legal concerns as this is consistently mis-understood and misrepresented across a number of forums, including the Department, civil servants and politicians. We outline the key issues concentrating on equality and human rights issues as well as some commentary on counselling and access to information, financial costs and public opinion. Lastly, we outline the key findings from our education project.

### **Who We Are**

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 who reflect the diverse population of Northern Ireland and who want to see equality and self-determination for women. Alliance for Choice was set up in 1996, emerging from the 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 giving voice to the tens of thousands of women from Northern Ireland who have had abortions in England and elsewhere since 1967.

We have established groups in Derry and Belfast who meet on a regular basis and our Northern Ireland Steering Group, which is made up of members from across Northern Ireland set the regional agenda for Alliance for Choice.

Our recent campaigns have been about increasing awareness of the restrictive nature of abortion law, campaigning for legislative change at Westminster with the amendment to the Human Fertilization and Embryology Act, submitting evidence to the Northern Ireland Affairs Committee on the Bill of Rights in Northern Ireland. In addition we host seminars on abortion law in Northern Ireland the most recent being on the Guidelines on the Termination of Pregnancy in Northern Ireland issued by the Department of Health, Social Services and Public Safety.

### **Initial Comments on the Guidance**

Whilst we welcome the production of this guidance document we would argue that this is an inappropriate term as 'guidance' usually refers to a document that acts as an aid to assist those who work within a particular area to remain within the parameters of the legislation. As we will outline later in this response we expose how the document contradicts the current legislative provisions in Northern Ireland.

This guidance document as currently drafted exposes and reinforces the moral hysteria and backward view of abortion in Northern Ireland. AFC Belfast considers this to be a deliberate, carefully constructed and policed attempt to prevent women and the medical profession from getting accurate information; to prevent the public from understanding the health, human rights and gender issues deeply ingrained in the abortion debate; and, to prevent the legal, cultural and societal change that might come about if open, honest, informed, democratic debate was allowed to take place<sup>1</sup>.

In the first instance, the document does not refer to the term 'abortion' despite being accepted by those working in the field, as the correct terminology, and is easier to understand and helps normalise abortion as a reproductive health choice for women.

Furthermore, it is important to use the term woman throughout the document as the pregnant woman may or not be a mother. Also as pregnancy is not an illness, therefore they are not patients.

### **Alliance for Choice, Belfast Consultation**

Alliance for Choice Belfast held three consultation events to inform our response to this guidance. We consulted with over 75 women in May and June 2013 and provided briefing notes for our membership which currently stands at 648

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<sup>1</sup> Fegan. E. 2010 *Abortion Law in Northern Ireland: Address to the Pro-Choice Society, QUB*. February 2010

individuals. We invited representatives from the Department to attend one of these consultation sessions but disappointedly no-one was available to attend. We note too at this point that the Department failed to host any public consultation events on the draft document. We note that at section 1.8 the document states that the DHSSPS has undertaken an extensive work programme which included “*wide engagement with a range of stakeholder groups through formal consultation exercises and informal discussions.*” **We would be grateful if you could let us know the detail of this engagement, formal and informal, including dates of events and who participated in these sessions.**

The overwhelming view from across the three events hosted by Alliance for Choice Belfast was the failure in the duty of care to women by the DHSSPS by consistently refusing to provide safe and legal abortions on the NHS in Northern Ireland. Many women also shared their own experiences of having to travel to obtain abortions elsewhere and the lack of aftercare available to them when they returned home.

Attendees at these seminars noted that the guidance as currently drafted do not give them a sense of confidence for a number of reasons:

- The guidance is not clear as to what it means to be a “*physical and mental wreck.*”
- On the one hand we test for foetal abnormality but do not offer abortion services for those who are in this difficult position;
- What type of society do we live in that refuses to be compassionate and caring for those who are pregnant as a result of rape or incest?
- The guidance reinforces and reflects the views of the religious right in Northern Ireland, who are a small minority. These views should have no place in the development of public policy;
- There is a lack of a robust evidence base to underpin developments in this health care area;
- This is the **only** healthcare area that has **no** clear clinical pathway;
- The sense that it is acceptable that over 40 women per week leave Northern Ireland for an abortion – what do you say to these women and their families?
- Psychiatry cannot predict suicide – they can identify risk factors and help address these. It is not possible to determine whether someone will commit suicide

## Context

Abortion is legal in Northern Ireland and is covered by the 1861 Offences Against the Person Act. The 1967 Abortion Act was never extended to Northern Ireland.

The DHSSPS were instructed to produce Guidelines in 2004 on when it was legal to have an abortion in Northern Ireland. Guidelines were published in 2008 and in 2010 but were withdrawn due to legal challenges and political pressure.

The Guidance states that *“the circumstances where a termination of pregnancy is lawful in Northern Ireland are highly exceptional.”* Some commentators however have suggested the contrary and argue that Section 58 of the Offences Against the Person Act 1861, in light of the Bourne Judgement, can be interpreted as liberally as the 1967 Abortion Act since there are no structural requirements for the imposition of time limits or the need for two doctors. Alliance for Choice, Belfast therefore considers that the need for two doctors moves beyond the scope of the legislation. **Alliance for Choice, Belfast recommend that this section is redrafted to ensure that the Guidance reflects the current legislative framework in that a single doctor can assess whether a termination of pregnancy is legal.**

### **Key Issues - Legal Concerns:**

Alliance for Choice Belfast notes that the document as currently drafted disregards the context of domestic law and binding international human rights standards which Northern Ireland is located within, for example:

#### **Domestic Law**

- The 1967 Abortion Act permits abortions to be carried out only in England, Scotland and Wales. Exclusion from this legislation in Northern Ireland means that the issue of abortion continues to be governed by case law which is legally ambiguous;
- The exclusion of Northern Ireland from the 1967 Abortion Act criminalises women from Northern Ireland who seek and abortion and denies them:
  - Equal entitlement to healthcare; and
  - Equal protection of the law enjoyed by their British counterparts;
- The need for two doctors goes beyond the scope of the current legal framework governing abortion in Northern Ireland;
- The legal status given in the Guidelines to the ‘unborn child’ is unfounded.

#### **International Law**

- The lack of access to terminations for those women who are pregnant as a result of rape, incest or foetal impairment is contrary to the jurisprudence of Article 6 of the International Covenant on Civil and Political Rights which has made links between restrictive access and criminalisation in such circumstances and unsafe, clandestine or life-threatening abortions<sup>2</sup>;
- Restrictive access to termination also engages violation of Articles 3 and 8 of the European Convention of Human Rights<sup>3</sup>;
- Sections 24(1) and 26 of the Northern Ireland Act place a duty upon devolved government in Northern Ireland to create law and policy in line with international human rights obligations the UK is a party to, including those outlined above.

**Alliance for Choice Belfast recommends that the Guidance is re-drafted to ensure it is compliant with domestic and international law.**

### **Key Issues – Equality and Human Rights**

Alliance for Choice Belfast is somewhat surprised that the DHSSPS has largely ignored the advice and evidence from statutory bodies such as the Equality Commission for Northern Ireland (ECNI) and the Northern Ireland Human Rights Commission (NIHRC). Both of these bodies, set up under the Northern Ireland Act 1998, have a statutory function to ensure that public policy meets the standards set as outlined in the relevant equality and human rights instruments. This aspect was brought up at our consultation sessions and many commented with surprise that this advice was consistently ignored by the DHSSPS, despite being statutory advice.

- **CEDAW**

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<sup>2</sup> Concluding Observations of the UN Human Rights Committee regarding: Chile, 30 March 1999, CCPR/C/79/Add.104 at para. 15; Colombia, 1 April 1997, CCPR/C/79/Add.76 at para. 24; Ecuador, 18 August 1998, CCPR/C/79/Add.92 at para. 11; Guatemala, 27 August 2001, CCPR/CO/72/GTM at para. 19; Mali, 16 April 2003, CCPR/CO/77/MLI at para. 14; Mongolia, 25 May 2000, CCPR/C/79/Add.120 at para. 8(b); Peru, 15 November 2000, CCPR/CO/70/PER at para. 20; Poland, 29 July 1999, CCPR/C/79/Add.110 at para. 11; and United Republic of Tanzania, 18 August 1998, CCPR/C/79/Add.97 at para. 15; Chile, 18 May 2002 CCPR/C/CHL/CO/5 at para. 8; Madagascar, 11 May 2007, CCPR/C/MDG/CO/3 at para. 14; Venezuela, 26 April 2001. CCPR/CO/71/VEN at para. 19; El Salvador, 22 August 2003, CCPR/CO/78/SLV para 14; Poland, 2 December 2004, CCPR/CO/82/POL para. 8.

<sup>3</sup> See *Tysiac v Poland* (20 March 2007) App No. 5410/03; *A, B and C v Ireland* (16 December 2010) App No. 25579/05 ; *P and S v Poland* (30 October 2012) App No. 57375/08.

In respect of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Northern Ireland Women's European Platform co-ordinates the response of the NGO sector to the UK Periodic Reports. They have consistently criticised the lack of action and the failure to follow-up with the concluding observations on a public consultation on abortion law and to remove the criminal sanctions on women access abortions.

The ECNI in its Shadow Report in 2008 to the Committee on the Elimination of All Forms of Discrimination Against Women, recognising the differential and discriminatory access for women in Northern Ireland to abortion services, called for equal access to reproductive healthcare as are available in Great Britain<sup>4</sup>. In their recent Shadow Report in 2013, the ECNI regrets that that consultation on abortion law in Northern Ireland has not taken place and regrets also that law has not been amended to remove the punitive provisions imposed on women who undergo abortion. They conclude that they do not consider the current consultation on the guidance as constituting full consultation or public debate on abortion.<sup>5</sup>

The Northern Ireland Human Rights Commission in its Parallel Report to the Committee on the Elimination of All Forms of Discrimination Against Women in June 2013 called for an explanation from the Northern Ireland Executive as to why it has ignored the Concluding Observations from the CEDAW Committee in 1999 and in 2008 for public consultation and the abolition of criminal abortion laws<sup>6</sup>.

- **CEDAW 2013**

As the DHSSPS are aware the UK Government was heard recently on its 7<sup>th</sup> Periodic Report in July 2013. The CEDAW Committee again reminded the government that it had made recommendations with regard to abortion in 1999 and in 2008. The Committee member (the UK Rapporteur Ruth Kaddari) asked if the UK Government was planning any reform in line with the recommendations of CEDAW and other human rights bodies. She also said that she was aware of the guidance

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<sup>4</sup> Equality Commission for Northern Ireland (2008) *Response to the 6<sup>th</sup> Periodic Report of the United Kingdom of Great Britain and Northern Ireland*. Belfast. ECNI

<sup>5</sup> Equality Commission for Northern Ireland (2013) *Shadow Report to the Committee on the Elimination of Discrimination against Women*. Belfast. ECNI

<sup>6</sup> Northern Ireland Human Rights Commission (2013) *Submission to the United Nations Committee on the Elimination of All Forms of Discrimination Against Women*. Belfast NIHRC

out for consultation, that she herself had looked at them and that they were even more ambiguous and restrictive.

The representative from the Northern Ireland Executive at this hearing, stated that the guidance consultation was for professionals; it did not constitute public consultation; that abortion was not legal for rape, incest; and that there were no plans to change the law. This statement is a flagrant disregard of international standards.

**The recently published Concluding Observations state,**

***“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.”<sup>7</sup>***

We also note that the UK Government have to provide written information within one year on the steps taken to implement this recommendation. We await with interest as to how the DHSSPS will respond to this.

**Given the directions of the NIHRC, ECNI, the CEDAW Committee and NIWEP, Alliance for Choice Belfast is recommending that the DHSSPS undertakes the actions outlined in the Concluding Observations from 1999, 2008 and 2013.**

- **Human Rights and the Guidance**

In their response to the current Guidance the NIHRC have reaffirmed that *“A Minister or Northern Ireland Department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights.”*

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<sup>7</sup> CEDAW, C/GBR/CO/7 *Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland*

**Alliance for Choice Belfast recommends that the Minister takes the appropriate action and amends the guidance to ensure that it is compliant with Conventions rights.**

The NIHRC concludes and advises that:

- the legal and procedural framework governing abortion would not likely meet the requirements of the European Convention on Human Rights (ECHR);
- the guidance must provide a timely opportunity for the woman to be heard and that women must have access to information to enable their voice to be heard.
- the section on conscientious objection are not compliant with the requirements of human rights law and thus this section should be amended
- Blanket restrictions on the receipt and provision of information concerning abortion services outside Northern Ireland are not permissible under Article 10 of the ECHR.<sup>8</sup>

Indeed the NIHRC made similar recommendations in 2010<sup>9</sup> and it is disappointing that the DHSSPS choose to ignore their advice in the re-drafting of this guidance. It appears to be a common thread that the DHSSPS are acting in violation of equality and human rights standards. **Alliance for Choice Belfast recommends that the DHSSPS amend the guidance to reflect the statutory advice and recommendations from the NIHRC and the ECNI.**

### **Key Issues – Optional Protocol: Inquiry Procedure**

Alliance for Choice in partnership with the Northern Ireland Women's European Platform (NIWEP) and the Family Planning Association (fpani) in 2010 submitted a substantial report to the CEDAW Committee under the Optional Protocol Inquiry Procedure outlining:

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<sup>8</sup> Northern Ireland Human Rights Commission (2013) *Response to the Public Consultation on the Draft Guidance on the Termination of Pregnancy in Northern Ireland*. Belfast. NIHRC

<sup>9</sup> Northern Ireland Human Rights Commission (2010) *Response to the DHSSPS Consultation on Guidance on the Termination of Pregnancy in Northern Ireland*. Belfast. NIHRC

- The daily discrimination and inequality faced by women in Northern Ireland with an unplanned or crises pregnancy;
- The lack of equal access to legal, safe and state provided abortion services;
- The grave and systematic nature of human rights violations under CEDAW; and
- How the UK Government has failed to lift restrictions on the abortion law in Northern Ireland.

We are hopeful that the CEDAW Committee will undertake and launch an inquiry into the provision of access to abortion services in Northern Ireland, which could prove highly embarrassing both the Northern Ireland Executive and the UK Government.<sup>10</sup> We have attached a copy of this report to this response.

**Alliance for Choice Belfast recommends that the DHSSPS reflects on the Inquiry Report and amends the Guidance accordingly.**

### **Key Issues - Counselling and Access to Information:**

Alliance for Choice Belfast is of the opinion that the DHSSPS are deliberately misleading women and those who provide advice to women on access to abortion services outside Northern Ireland. The Guidelines state that counsellors who provide advice on abortion services do so at their own risk as this is a “grey area” and that this issue has not been “tested by the courts.” We find it hard to believe, in fact astonished, that the lawyers acting for the DHSSPS are not aware of the 1992 *Open Door and Dublin Well Women v Ireland* case in the European Court of Human Rights<sup>11</sup>.

As the provision of information to pregnant women concerning abortion facilities abroad is clearly protected under Article 10 of the European Convention, it is hard for Alliance for Choice Belfast not to conclude that the DHSSPS, backed up by senior legal figures, are promoting an anti-choice policy agenda by deliberately threatening those who provide advice and counselling and reinforcing the culture of fear and silence in respect of abortion.

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<sup>10</sup> Alliance for Choice, Northern Ireland Women’s European Platform and Family Planning Association (2010) *Submission of Evidence to the CEDAW Committee: Optional Protocol: Inquiry Procedure*. Belfast. fpani

<sup>11</sup> *Open Door and Dublin Well Woman v Ireland* [1992] ECHR 68.

**Alliance for Choice Belfast is recommending that this section is removed and redrafted to comply with equality and human rights standards.**

### **Key Issues - Financial Costs:**

One issue that was consistent across all three seminars hosted by Alliance for Choice Belfast concerned the issue of having not only to travel to access abortion, but also to have to pay for a NHS service that is provided to women from England, Scotland and Wales. These women considered that as they pay the same fiscal taxes they should have equal access to abortion on the NHS. Participants felt that this was unfair and that women from Northern Ireland should be able to avail of abortions on the NHS. **Alliance for Choice, Belfast is recommending that women from Northern Ireland should be able to avail of abortions on the NHS in GB.**

### **Key Issues - Public Opinion**

- There have been repeated calls by various International human rights committee's to have public consultation on reforming the law in Northern Ireland in relation to abortion<sup>12</sup>. These calls have been ignored.
- Despite this lack of action evidence from a number of sources indicates broad support amongst the public for improved access to abortion:
  - A population level survey published in 2008 (Northern Ireland and Times Survey), found that only 25% of respondents stated that abortion was always wrong in response to the question 'is it wrong or not wrong for a woman to have an abortion if there is a strong chance of a serious defect in the baby?'<sup>13</sup>
  - A poll carried out on behalf of the Belfast Telegraph found that only 31% of respondents expressed anti-abortion views<sup>14</sup>.
  - Polls funded by fpani have produced similar results – 59% of respondents to a Omnibus survey agreed with that abortion should be legal when the

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<sup>12</sup> Concluding Observations of CEDAW regarding: The United Kingdom of Great Britain and Northern Ireland, June 1999, 21st session, at para 310; Concluding Observations of CEDAW regarding: The United Kingdom of Great Britain and Northern Ireland, 18 July 2008, C/GBR/CO/6, at paras 41,42

<sup>13</sup> NILT (2008) Northern Ireland Life and Times Survey, <http://www.ark.ac.uk/nilt/2008/ReligiousObservance/ABORWRGA.html>.

<sup>14</sup> Clarke, L. (2012) Abortion: 45% want a liberalisation of the law in Northern Ireland, *Belfast Telegraph*, 30 November 2012.

- pregnancy is the result of rape/incest; a further 21% were unsure, with the remaining 18% disagreeing with the statement<sup>15</sup> (Rutherford, 2012a).
- Surveys of the medical profession have also provided evidence of support for reform. Francome and Savage's 2011 study of gynaecologists found that 57% of respondents supported legal reform; 32% thought the law should remain unaltered; whilst the remaining 11% believed that the law should be made more restrictive<sup>16</sup>.
  - Previous surveys of General Practitioners by Francome also indicate broad support for improved access to abortion<sup>17</sup> (Francome, 1997; 2004.)

It is significant that the draft document fails to refer to evidence regarding public and professional opinions on abortion and fails to consider recommendation from international human rights bodies regarding the provision of abortion in Northern Ireland. **Alliance for Choice, Belfast recommends that this evidence base be used to inform the Guidance.**

### **Key Issues - Emotional Consequences**

- The strong anti-choice socialisation process that pervades Northern Ireland churches, schools and the political sphere makes choosing to have an abortion a more emotional decision for Northern Ireland women. Being forced to leave one's own country because abortion is defined as a criminal act, and being called 'murderers' by politicians and protestors stigmatises these women as criminals and inevitably leaves them with emotional scars which many of their British counterparts are spared.

**Alliance for Choice, Belfast recommends that the DHSSPS undertakes research into the impact this has on women in Northern Ireland.**

### **AFC Belfast Education Project**

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<sup>15</sup> Rutherford, M (2012) Just one in five believe rape victims should not be allowed an abortion. *Belfast Telegraph*, 30 August 2012

<sup>16</sup> Francome, C. and Savage, W. (2011) 'Attitudes and practice of gynaecologists towards abortion in Northern Ireland', *Journal of Obstetrics and Gynaecology*, 31(1), 50

<sup>17</sup> Francome, C. (1997) 'Attitudes of general practitioners in Northern Ireland toward abortion and family planning'. *Family Planning Perspectives* 29:234–236. Francome, C. (2004) *Abortion in the USA and the UK*. Burlington: Ashgate Publishing.

***“I learned that I have a voice as a woman and a mother and that I am the educator of my children. I want them to grow up with freedom and choice<sup>18</sup>”***

- In May 2012, Alliance for Choice Belfast was granted funding by the Joseph Rowntree Reform Trust to design and deliver a six-week training programme on gender awareness, feminism, reproductive rights and strategies to implement them in Northern Ireland. The overall aim of the project was to address the widespread lack of awareness about the abortion law among women in Northern Ireland and the issues it raises for their equality and human rights. The remit was to make a legally complex issue accessible to those with no prior knowledge of it and to provide vital, user-friendly information on a women’s healthcare service.
- The training materials were researched and developed by an expert on gender, feminism law and human rights and was titled ‘*Challenges and Choices: A Woman’s Guide to the 21<sup>st</sup> Century*’ (‘A Training Programme on Gender, Human Rights and Abortion Law in Northern Ireland’). 86 participants attended the programme, which was delivered from May 2012 to April 2013 to seven groups, throughout Northern Ireland.
- An external evaluation on the project found that participants benefitted from having the complex legal development and regulation of abortion in Northern Ireland explained in a clear and accessible way. They became better informed on the legal issues, enabling them to discuss strategies specifically tailored to address them. They were further inspired by the training on international human rights instruments, bodies and cases, which are supportive of reform the current abortion law in Northern Ireland. It was also noted that there remains a clear need to deliver this training evidenced by:
  - the confusion and misinformation still occurring when members of the public participate in media discussions;
  - the continued efforts of Northern Irish politicians to obfuscate the issues and to restrict the availability of legal abortions in Northern Ireland, for example through an amendment to the Criminal Justice Bill proposed in March 2013, which proposed to ban private healthcare providers from offering abortions *within* the law;

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<sup>18</sup> Alliance for Choice, Belfast (2013) *Challenges and Choices: A Women’s Guide to the 21<sup>st</sup> Century*. AFC. Belfast

- the written feedback of the participants, many of whom expressed a desire for further training on abortion law as it develops;
- the participants' need to understand the differences in the legal issues in abortion regulation between Northern Ireland and the Republic.

**Alliance for Choice, Belfast recommends that the DHSSPS consults directly with women on the Guidance and measures are developed to ensure that women are aware of when they are legally entitled to an abortion.**

## **Conclusions**

Alliance for Choice has submitted this response in good faith and expects that our comments will be taken on board and incorporated within the final guidance document. However we have also highlighted the continued flagrant disregard for not only domestic law, but also of international human rights standards. The legal standards of clarity and consistency are frequently ignored by those purporting to represent the majority of the population in Northern Ireland in the name of religion, morality and culture. What we have shown here in this response is that there is no evidence base for these claims.

The DHSSPS have a duty of care to all of the population of Northern Ireland and in this aspect they have failed. The conversation needs to start with the forty women this week who are at train and bus stations, at airports and ferry terminals to travel to GB. Some women will turn to the internet to buy abortion pills and in many instances these pills are not safe – what do you say to these women?