



Department of
**Health, Social Services
and Public Safety**

www.dhsspsni.gov.uk

**GUIDANCE FOR HEALTH AND SOCIAL CARE
PROFESSIONALS ON TERMINATION OF PREGNANCY IN
NORTHERN IRELAND**

March 2016

<i>CONTENTS</i>			<i>Page</i>
1	-	INTRODUCTION	3
2	-	LAW ON TERMINATION OF PREGNANCY IN NORTHERN IRELAND	5
3	-	CLINICAL ASSESSMENT	9
4	-	CONSCIENTIOUS OBJECTION	11
5	-	PROVISION OF ADVICE AND PSYCHOLOGICAL SUPPORT	16
6	-	REQUIREMENTS FOR DISCLOSURE OF INFORMATION	20
7	-	SECOND OPINION	23
8	-	ACCOUNTABILITY AND INFORMATION COLLECTION	24
9	-	PENALTIES UNDER CRIMINAL LAW	25
ANNEX A	-	ADDITIONAL INFORMATION ON TERMS USED	27
ANNEX B	-	RELATED POLICY AND GUIDANCE	30
ANNEX C	-	RELEVANT LAW AND COURT CASES	33

1. INTRODUCTION

- 1.1 This guidance aims to provide clarity on the law framing termination of pregnancy in Northern Ireland. It is imperative that health and social care professionals understand their responsibilities under the law.
- 1.2 The law in Northern Ireland does not allow interventions that have as their sole purpose the ending of the life of the fetus. While the aim of the health and social care system is the protection of both the life of the pregnant woman and the fetus, medical circumstances may dictate that it is not possible to treat one without harm to the other. Any intervention to a pregnant woman that is potentially harmful to the fetus must only be carried out with the intention of protecting the woman against physical or mental health issues that are 'real and serious' and 'permanent or long term'.
- 1.3 All health and social care professionals practising in Northern Ireland must be familiar with the legal framework relating to termination of pregnancy in Northern Ireland and the restricted circumstances when it can be lawfully offered.
- 1.4 This guidance is intended to guide health and social care professionals on the application of the law in this area. It discusses some of the factors that need to be taken into account during clinical assessment and management of women for whom termination of pregnancy may be, or may have been, an option.
- 1.5 The Abortion Act 1967, as amended by the Human Fertilisation and Embryology Act 1990, does not extend to Northern Ireland. A termination of pregnancy must always be one of clinical necessity, based on an assessment that it is the most appropriate medical treatment for the woman.
- 1.6 This guidance recognises that women must be made aware of the options and choices available to them under the law in Northern Ireland. Support and

advice must respect the personal views of the woman and enable her to make her own informed choices.

- 1.7 Regardless of where a termination of pregnancy has been carried out, where necessary, support must be provided for individuals through aftercare services including counselling and other psychological support services. It is the responsibility of Health and Social Care Trusts to provide access to aftercare support for all women where it has been assessed to be required.
- 1.8 As in all areas of health and social care practice, professionals are obliged to comply with the law, and the guidance clearly sets out the maximum penalties which may be imposed in the event of conviction for offences related to termination of pregnancy or associated acts.
- 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 the law, the latter will always prevail.

2. LAW ON TERMINATION OF PREGNANCY IN NORTHERN IRELAND

- **The law in Northern Ireland is different from that of Great Britain.**
- **In Northern Ireland it is lawful to perform a termination of pregnancy only if:**
 - **it is necessary to preserve the life of the woman, or**
 - **there is a risk of real and serious adverse effect on her physical or mental health, which is either long term or permanent.**
- **It is for a medical practitioner to assess, on a case by case basis, using their professional judgement as to whether the individual woman's clinical circumstances meet the grounds for a termination of pregnancy in Northern Ireland.**

2.1 This section of the guidance outlines the legal framework governing termination of pregnancy in Northern Ireland, which is 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 under which a termination of pregnancy may be carried out here are 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. Extracts from the relevant legislation, as well as decided cases relating to termination of pregnancy, are provided at Annex C.

- 2.4 Following the devolution of justice powers to Northern Ireland in 2010, the Department of Justice has policy responsibility for the criminal legislation that governs termination of pregnancy in Northern Ireland.
- 2.5 It is not practicable to provide a list of the medical conditions that may indicate the need for a termination of pregnancy, given the range and severity of any given condition and the potential impact of a woman's medical history.
- 2.6 There will always be a degree of clinical judgement by health professionals as to whether the potential adverse effect on a woman of continuing the pregnancy is likely to be a threat to her life or her long term physical or mental health. Each case requires careful and sensitive assessment. Health and social care professionals are therefore encouraged to seek specialist support as required to aid decision making. Section three of this guidance provides additional advice relating to clinical assessment.
- 2.7 The conclusion that the risk to life or to the permanent or long-term health of the woman is sufficiently serious to justify a termination of pregnancy, must be based upon reasonable grounds and with adequate knowledge.
- 2.8 The law governing termination of pregnancy in Northern Ireland can be stated as follows:
- i. In Northern Ireland termination of pregnancy is lawful if 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.

2.9 Fetal abnormality, including an abnormality which inevitably means that the fetus will not survive, is not in itself grounds for a termination of pregnancy in Northern Ireland. However the impact of fetal abnormality on a woman's physical or mental health may be a factor to be taken into account when a health professional makes an assessment of a woman's clinical condition and recommends options for her ongoing care.

Capable of Being Born Alive

2.10 If a medical practitioner concludes that a pregnant woman, carrying a fetus that is capable of being born alive, needs treatment that will result in harm to her fetus, then the practitioner should attempt to protect both the woman and the fetus where possible. However, the primary consideration must always be the prevention of real and serious harm to the long term physical or mental health of the pregnant woman.

2.11 In relation to fetal viability, section 25 (2) of the Criminal Justice Act (NI) 1945 states that a fetus with a gestational age of 28 weeks is presumed to be capable of being born alive. Medical advances since this Act mean that a fetus can often survive earlier in gestation.

2.12 Viability in Great Britain is currently set in legislation at 24 weeks. While the relevant legislation has no force in Northern Ireland, the fact that a fetus may be viable at 24 weeks has implications for neonatal care and medical practice. Medical practitioners must consider whether a fetus is able to survive outside the womb when deciding upon the treatment that is most appropriate for a pregnant woman. This may include recommendation for a termination of pregnancy.

2.13 In a situation where treatment is necessary to prevent real and serious harm to the woman's long term physical or mental health, and a health and social

care professional has assessed that the fetus could survive outside the womb, then steps must be taken to try to preserve its life.

- 2.14 Health and social care professionals must be clear that the law in Northern Ireland requires the life of the pregnant woman to be the priority. There is no upper gestational age limit as to when a pregnancy may be terminated if a medical practitioner decides in good faith that 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'.

3. CLINICAL ASSESSMENT

- **While not a requirement of the law, it is recommended that two doctors with appropriate skills and expertise should undertake the clinical assessment.**
- **In an emergency situation it may not be possible for a doctor to seek additional specialist support. It is important in such circumstances that doctors act to ensure the safety of the pregnant woman.**

3.1 This section recommends best practice procedures that health and social care professionals should follow when undertaking a clinical assessment of a pregnant woman.

Certification by Two Doctors

3.2 The General Medical Council's 'Good Medical Practice' (2013) recognises the importance of medical practitioners working within the limits of their competence and liaising with other practitioners to meet patient needs¹.

3.3 Although not required by law, it is recommended that where practicable, two doctors with the appropriate competence, knowledge and experience should undertake the clinical assessment.

3.4 To aid their clinical assessment, health and social care professionals should seek support from the specialist most relevant to the individual case. Depending on individual circumstances and case history, this may require engagement with a range of specialists such as psychiatrists, obstetricians, or specialists in genetic conditions, as well as General Practitioners.

3.5 As recognised at 3.3, there is nothing within the law in Northern Ireland to compel a doctor to seek the clinical views of a second doctor. Should a medical practitioner decide to undertake a termination of pregnancy without input from a second doctor, they must ensure that they are satisfied that they

¹ http://www.gmc-uk.org/guidance/good_medical_practice.asp

have the necessary competence, knowledge and experience to make an appropriate clinical judgement on the likely adverse effect on the life or health of the woman.

Emergency situations

3.6 Nothing in this guidance impacts upon a doctor's ability to respond to urgent clinical circumstances. In exceptional circumstances, such as an emergency, it is understood it may not be possible to obtain a second opinion. A doctor may need to act alone in good faith if they assess a medical intervention is immediately necessary to preserve the life or prevent real and serious harm to the long term health of the woman.

Recording of clinical decisions

3.7 It is important that all clinical assessments should be completed in a timely manner and without undue delay. As with all medical procedures, reasons for a termination of pregnancy must be clearly recorded in the woman's notes. Such information is confidential between the doctor and patient and should be treated as such.

3.8 The patient 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, 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 advice regarding the options available and the implications of continuing with her pregnancy. The record should also show that the woman has understood and given her informed consent to the termination of pregnancy.

3.9 Clinicians involved with termination of pregnancy should be aware of the risk of possible complications and should discuss these with the woman so that she can give informed consent. A record of these discussions should be kept

on a proforma similar to those used in Consent of Examination, Care and Treatment².

4. CONSCIENTIOUS OBJECTION

- **There is no statutory right to have a conscientious objection to participation in a termination of pregnancy in Northern Ireland.**
- **Where practicable Health and Social Care Trusts should always seek to accommodate staff who have a conscientious objection to termination of pregnancy, but this must not endanger the woman's life.**

4.1 This section aims to provide clarity on the issue of conscientious objection.

4.2 While there is no statutory right to have a conscientious objection in Northern Ireland, it is recognised that some health and social care professionals may object to termination of pregnancy on moral and/or religious grounds. Apart from an emergency situation, detailed at 4.3, any objection on grounds of conscience should, as far as practicable, be recognised and respected. Except in an emergency situation, no-one with moral/religious objections should be compelled to participate in a termination of pregnancy, or handle fetal remains resulting from a termination of pregnancy. Trusts should put in place measures to accommodate personal views of staff as far as practicable.

Emergency situations

4.3 A health and social care professional may not refuse to participate in a termination of pregnancy on grounds of conscience where the life of the woman is in danger and treatment is needed without delay to save her life. In that circumstance, the health and social care professional would be required to participate unless another competent, appropriately qualified and

² <https://www.dhsspsni.gov.uk/articles/consent-examination-treatment-or-care>

experienced health professional is immediately available and willing to participate in their place.

4.4 The NMC Code Professional standards of practice and behaviour for nurses and midwives (2015) advises:

'You can only make a 'conscientious objection' in limited circumstances (NMC The Code 2015; note-pg 6).

You must:

- *respect and uphold people's human rights... (1.5).*
- *tell colleagues, your manager and the person receiving care if you have a conscientious objection to a particular procedure and arrange for a suitably qualified colleague to take over responsibility for that person's care' (4.4).*
- *you must tell someone in authority at the first reasonable opportunity if you experience problems that may prevent you working within the Code or other national standards..' (16.3).*

It also advises you to:

- *'keep to the laws of the country in which you are practising.'* (20.4).

The Code also requires that you:

- *'Always offer help if an emergency arises in your practice setting or anywhere else'. (15).*

You must:

- *make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way'. (20.7).*

4.5 At all times, health and social care professionals have a duty of care to their patients and failure to act, may lead to prosecution. In 2004, the Court of Appeal in England said in relation to a case of manslaughter by gross negligence that:

“... the offence requires first, death resulting from a negligent breach of the duty of care owed by the defendant to the deceased, second, that in negligent breach of that duty, the victim was exposed by the defendant to the risk of death, and third, that the circumstances were so reprehensible as to amount to gross negligence.....

A doctor would be told that grossly negligent treatment of a patient which exposed him or her to the risk of death, and caused it, would constitute manslaughter.”³

4.6 As far as the Department is aware, a defence of conscientious objection to a charge of manslaughter by gross negligence has not been tested in any court in Northern Ireland nor in the rest of the United Kingdom. However, it is unlikely that conscientious objection would ever afford a defence to such a charge.

4.7 Therefore, should a health and social care professional believe that they might find themselves in circumstances where they may wish to refuse to participate in any part of the procedures involved in an emergency termination of pregnancy on grounds of conscience, they should consult with their professional bodies.

4.8 Nothing in this guidance should be taken to support the view that conscientious objection would afford a lawful justification for refusing to act in circumstances of emergency where a doctor or other healthcare professional was under a duty of care to protect the life of a patient.

³ R v Misra and Srivastava, Court of Appeal [2004] EWCA Crim 2375

Non Emergency Situations

4.9 The General Medical Council's (GMC's) *Good Medical Practice* (Nov 2013) states that:

'You must explain to patients if you have a conscientious objection to a particular procedure. You must tell them about their right to see another doctor and make sure they have enough information to exercise that right. In providing this information you must not imply or express disapproval of the patient's lifestyle, choices or beliefs. If it is not practical for a patient to arrange to see another doctor, you must make sure that arrangements are made for another suitably qualified colleague to take over your role'

4.10 The GMC published guidance on *Personal Beliefs and Medical Practice* (March 2013) which expands on the principles set out in its core guidance⁴.

4.11 The GMC guidance ensures that patients are able to obtain advice and, if necessary, treatment, from a practitioner who does not have a conscientious objection.

4.12 The Northern Ireland High Court in 2009 considered earlier versions of the GMC's guidance – *Good Medical Practice* (2006) and *Personal Beliefs and Medical Practice* (March 2008)' - and stated that they accurately reflected the obligations of a medical practitioner⁵. The Court also said:

"Clearly if a patient presents with a medical problem that indicates a risk to life or long term health from continued pregnancy a general practitioner who objects to abortion on conscientious grounds remains obliged to take steps to ensure that her medical condition is properly catered for. It would appear obviously necessary for her to be referred to the appropriate clinicians. The general practitioner who failed to

⁴ http://www.gmc-uk.org/guidance/ethical_guidance/21171.asp

⁵ Application by the Society for the Protection of Unborn Children for Judicial Review (2009). Ref: GIR7672

take steps to ensure her proper treatment would be in breach of his duty of care and his duty to act consistently with the GMC's Guidance on proper practice. There may be situations where, for example, a patient has been advised by her obstetrician to have a termination and in considering whether to consent she seeks advice from her GP. In such a situation the GP's conscientious objection to abortion may be such that he could not give her dispassionate advice. '

5. ADVICE AND PSYCHOLOGICAL SUPPORT

- **Counselling must support women to come to their own decisions.**
- **Support and advice must respect the personal views of the woman and enable her to make her own informed choices.**
- **It is not unlawful to inform a woman of services available in other jurisdictions. However whether it is lawful to 'promote or advocate' the use of these services has not been considered by the Northern Ireland Courts.**

5.1 Women faced with the circumstances that lead them to consider whether or not to terminate a pregnancy may require a range of advice and/or psychological support services.

5.2 Emotional support and other psychological services should be available to women who need or request them. Individual health needs and personal beliefs should be accommodated where this is practicable.

5.3 A woman must never be subjected to emotional or moral pressure to give or to refuse her consent to treatment which is lawful and clinically appropriate. It should be recognised that the support women need will depend on their personal beliefs and cultural backgrounds. Support and advice should be available whether or not the woman meets the requirement for a lawful termination of pregnancy in Northern Ireland.

When advice or psychological support services should be provided

- 5.4 A woman should be offered access to advice and/or counselling and other relevant psychological support services, if
- i. she wishes to consider options available to her, one of which may be termination of her pregnancy, or

- ii. she has had a termination of pregnancy, regardless of where it was carried out.

If a woman requests a termination of pregnancy

- 5.5 While discussing the options and choices available to a woman who has requested a termination of pregnancy, it is important to explain the legal position in Northern Ireland at an early stage.
- 5.6 If there is any reason to suspect that there is a risk to the woman's life or health, the woman should be advised to consult a health professional as soon as possible.
- 5.7 The person advising the woman should, without advocating any course of action over another, inform the woman of the other options available, including medical treatment, adoption services and support available for continuing with the pregnancy.

If a woman is eligible for a termination of pregnancy in Northern Ireland

- 5.8 If an assessment has been made by medical practitioners that the woman satisfies one or other of the criteria for a lawful termination of pregnancy in Northern Ireland, where clinical circumstances permit, she should be advised that she may seek counselling, if she wishes, before she decides on whether to consent to the procedure.

If a woman has sought a termination of pregnancy but does not meet the grounds under the law in Northern Ireland

- 5.9 Such a situation must be treated sensitively. 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, Health and Social Care team etc.
- 5.10 It is important to discuss any difficulties she foresees as well as any measures that can be put in place to support her throughout the pregnancy.

If a woman seeks advice on services available outside Northern Ireland

5.11 Women may seek advice on access to, or availability of, termination of pregnancy services in other jurisdictions. Information on such services is in the public domain and accessible from a range of sources including magazines, television and the Internet. If requested, health professionals may inform women of the availability of information on these services to ensure that the woman is able to come to a fully informed decision.

5.12 The issue of provision of information in this regard was considered by the European Court of Human Rights in *Open Door & Well Woman v Ireland*⁶. It noted that the restrictions in that case:

'limited freedom to receive and impart information with respect to services which are lawful in other Convention countries and may be crucial to a woman's health and well-being.'

5.13 There are some circumstances in which it would be unlawful to terminate the pregnancy of a woman in Northern Ireland but, notwithstanding that, in those same circumstances it may nevertheless be lawful to terminate that pregnancy if the woman was present in another jurisdiction. In such circumstances it would be lawful to provide a pregnant woman in Northern Ireland with information about the circumstances in which it may be lawful to terminate her pregnancy if she was in another jurisdiction. Again it would be lawful to advise her that she is free to travel to such other jurisdiction for the purposes of ascertaining whether it would be lawful to have her pregnancy terminated there, and, if so, of securing its termination. The courts in Northern Ireland have never considered the issue of whether it would be lawful to 'advocate or promote' in Northern Ireland the termination of a pregnancy in another jurisdiction (in circumstances where it would not be

⁶ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57789>

lawful if carried out in Northern Ireland but would be lawful if carried out in that other jurisdiction).

If a woman has had a termination of pregnancy

- 5.14 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 any resulting emotional impact. It might also be appropriate to offer support services to the partner/children of the woman depending on her, or their, personal circumstances.
- 5.15 Post termination of pregnancy follow-up/counselling should be made available to any woman in Northern Ireland who seeks it, even if she has undergone a termination of pregnancy outside Northern Ireland.
- 5.16 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.

6 REQUIREMENTS FOR DISCLOSURE OF INFORMATION

- **Health and social care professionals have a duty of care to their patients.**
- **Health and social care professionals working in clinical situations need to be assured that procedures they are involved in are lawful.**
- **Health and social care professionals must balance the need for confidentiality of patients with the obligation to report unlawful terminations of pregnancy to the police and the need to protect others from risk of serious harm.**

- 6.1 If a health and social care professional knows or believes that a person has committed certain offences, including an unlawful termination of pregnancy, he/she has a duty under the Criminal Law Act (NI) 1967 to give to the police information likely to be of material assistance in securing the apprehension, prosecution, or conviction of that person. However the health and social care professional need not give that information if they have a reasonable excuse for not doing so; the discharge of their professional duties in relation to patient confidentiality may amount to such a reasonable excuse. Professionals should be clear, however, that patient confidentiality is not a bar to reporting offences to the police.
- 6.2 Trusts should put in place control mechanisms in clinical settings to provide assurance that any procedure or medicine administered to a pregnant woman, in relation to a termination of pregnancy, is carried out as part of a prescribed course of action and is done so in good faith in the best interests of the woman.
- 6.3 Health and social care professionals may encounter women who have attempted to terminate their own pregnancies, either through physical or pharmaceutical means. In many situations, the symptoms will be

indistinguishable from a natural miscarriage. In these circumstances, the first duty of care lies in the effective treatment of the woman.

- 6.4 As in any other area of clinical practice, health and social care professionals will need to balance the interests of their patient against the public interest in reporting certain information to the police. Guidance by the General Medical Council acknowledges that disclosure of personal information about a patient without consent may be justified if it is required by law or if failure to disclose may expose others to risk of serious harm⁷. The Nursing and Midwifery Council code states that Nurses and Midwives must share information if they believe someone may be at risk of harm, in line with the laws relating to the disclosure of information and the requirement to keep the laws of the country in which they are practising (NMC 2015 The Code; Professional standards of practice and behaviour for nurses and midwives). Health professionals should be familiar with the requirements of their professional bodies and seek legal advice where appropriate.

Abortifacient drugs purchased from the internet

- 6.5 Health and social care professionals may encounter women whom they suspect have used drugs purchased from the internet. The primary concern in such a situation, as with all matters of care, is to ensure that the woman is appropriately treated.
- 6.6 There are a number of websites which sell abortifacient drugs. Some use online or telephone based questionnaires to test whether the woman is an appropriate subject for the service offered; many do not. There is no guarantee that drugs supplied by these websites are what they are purported to be, and there is no effective medical supervision of any woman who decides to use them.
- 6.7 There is no way of determining the extent of the use of such services in Northern Ireland, however, it is likely that they are being used. Their use to

⁷ http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp

secure a miscarriage in Northern Ireland is likely to be an offence under the Offences Against the Person Act 1861.

- 6.8 Unless the woman herself provides the information, a health professional is unlikely to be able to tell whether a miscarriage has occurred naturally or has been caused by abortifacient drugs and if it has been, whether the drugs were administered lawfully (in Great Britain, for example) or otherwise.

7. SECOND OPINION

- **Where a woman requests a second opinion, every reasonable effort should be made to accommodate her request.**
- **There is no legal right to a second opinion in Northern Ireland.**
- **Where a doctor has a moral objection to termination of pregnancy, they must direct the woman to a colleague with no such objection.**

7.1 There are occasions when a woman may request a second opinion regarding an assessment that has taken place as to whether she meets the grounds for a termination of pregnancy. While there is no legal right to a second opinion every reasonable effort should be made to accommodate her request. Such situations should be treated no differently to any other request a health professional may receive from a patient seeking a second opinion.

7.2 The GMC advises that in circumstances where a doctor has a moral objection to termination of pregnancy, they must direct the woman to a colleague with no such objection⁸. This is not a second opinion.

7.3 It must be made clear to a woman that any decision that a termination of pregnancy is not an appropriate option for them is based on medical grounds and is not a matter of conscience.

7.4 Should a woman be unhappy with the treatment or care she has received, she should be directed to the appropriate complaints procedure⁹.

⁸ http://www.gmc-uk.org/guidance/ethical_guidance/21177.asp

⁹ <http://www.nidirect.gov.uk/make-a-complaint-against-the-health-service>

8. ACCOUNTABILITY AND INFORMATION COLLECTION

- **Trusts are required to have appropriate governance arrangements in place to ensure ongoing compliance with the law that governs termination of pregnancy in Northern Ireland.**
- **A data collection system has been developed to provide information on terminations of pregnancy carried out in Northern Ireland.**

8.1 Health and Social Care Trusts have a statutory duty to deliver services that meet their local population's health and social needs. It is no different for treatments delivered to pregnant women that may lead to a termination of pregnancy.

8.2 Under existing accountability arrangements, Trusts are required to have appropriate governance arrangements in place to ensure ongoing compliance with the law that governs termination of pregnancy in Northern Ireland.

8.3 A data collection system has been developed to provide information on terminations of pregnancy carried out in Northern Ireland. The system collects information on whether a termination of pregnancy has taken place on physical or mental health grounds, and can be used to inform future service provision.

8.4 The development of the data collection system has been informed throughout by the need to protect personal data and it recognises the right of confidentiality for patients.

9. PENALTIES UNDER CRIMINAL LAW

- **Failure to comply with the law may lead to criminal prosecution.**
- **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.**
- **In the event of a prosecution, the prosecutor would have to prove beyond reasonable doubt that the health professional did not act in good faith for the purpose only of preserving the woman's life or health.**

9.1 Failure to comply with the law may lead to prosecution. It is therefore important for practitioners to appreciate that anyone who performs a termination of pregnancy that does not meet the requirements of the law in Northern Ireland is liable if convicted to a maximum penalty of life imprisonment.

9.2 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 assists another person in carrying out an unlawful termination of pregnancy.

9.3 If a health professional was prosecuted for a relevant offence under the Criminal Justice Act (Northern Ireland) 1945, the prosecutor would have to prove beyond reasonable doubt that the health professional did not act in good faith for the purpose only of preserving the woman's life or health.

9.4 A health and social care professional has a legal duty to refuse to participate in any procedure leading to termination of pregnancy if it would be an offence under the law of Northern Ireland. Under Section 5 of the Criminal Law Act (NI) 1967, if they know or believe that such an offence has been committed and have information which is likely to be of material assistance in securing

the apprehension, prosecution, or conviction of the person who committed it, then they are under a duty to give that information within a reasonable time to the police. Failure to do so without a reasonable excuse is an offence which upon conviction carries a maximum penalty of ten years imprisonment.

ANNEX A - ADDITIONAL INFORMATION

The way in which a medical abortion is defined has been amended for the 2013/14 year, following an update to the National Clinical Coding Standards on termination of pregnancy.

The National Clinical Coding Standards ICD-10 4th Edition reference book provides specific national clinical coding standards to reduce ambiguity and differences in any interpretation. It incorporates all changes notified in the National Clinical Coding Standards ICD-10 4th Edition Addendum 2013. This was published in August 2013 following a public consultation on the changes (carried out by the Health and Social Care Information Centre, England), which closed in January 2013.

Definitions applicable throughout the UK from 1st April 2013 are detailed below.

All HSC Trusts in Northern Ireland have confirmed that the below definitions have been applied from 1st April 2013 in the identification of medical abortions and terminations of pregnancy during 2013/14.

Medical Abortion

Within the confines of ICD-10 code O04, this refers to the interruption of a live pregnancy for legally acceptable, medically approved indications. It also includes readmission with retained products of conception following a previous medical termination of pregnancy.

Termination of pregnancy (medical)

This is defined by any patient who has a live pregnancy terminated for indications that are legally acceptable and medically approved in Northern Ireland. Medical termination of pregnancy is a subset of medical abortion.

Definitions applicable throughout the UK prior to 1st April 2013 are detailed below.

All HSC Trusts used the below definitions to identify medical abortions and terminations of pregnancy during the period 2006/07 to 2012/13.

Medical Abortion

Within the confines of ICD-10 code O04, this refers to the interruption of a live pregnancy for legally acceptable, medically approved conditions. It also includes readmissions with retained products of conception following a previous termination of pregnancy, a missed miscarriage or a spontaneous abortion that had been treated in the first admission with an evacuation of the products of conception and a patient who had a termination of pregnancy and had retained products of conception in the same episode that required surgical treatment.

Termination of pregnancy (medical)

This is defined by any patient who has a live pregnancy terminated for indications that are legally acceptable and medically approved in Northern Ireland. Medical termination of pregnancy is a subset of medical abortion.

Summary of definitional changes from 1st April 2013

- Readmissions with retained products of conception following a missed miscarriage or a spontaneous abortion that had been treated in the first admission with an evacuation of the products of conception are no longer part of the definition of medical abortion.
- Retained products of conception in the same episode as the termination that required surgical treatment be considered a complete termination of pregnancy.

Direct or indirect abortion

In clinical management, the terms direct and indirect abortion are not used. A termination of pregnancy can only occur in Northern Ireland if it is necessary to preserve the life of the woman, or there is a risk of real and serious adverse effect on her physical or mental health, which is either long term or permanent.

In an emergency situation a clinician may assess that a woman's life is at immediate risk and a termination of pregnancy is immediately required. However, there are occasions when a termination may be required where a clinician makes an assessment that it is recommended to protect the woman's long term physical or mental health. In such situations a clinician will discuss with the woman the options for treatment that may be available to her and the likely consequences of such treatment.

ANNEX B - RELATED POLICIES AND GUIDANCE

This guidance should be read in conjunction with other policies and procedures with which health professionals and organisations are expected to comply when delivering care. The following list is not intended to be exhaustive but highlights some of the policies most relevant.

Sexual Offences – Adult and Child Protection Arrangements

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 to question whether a sexual offence has been committed. Organisations must ensure that they have in place guidance and procedures for dealing with such situations should they arise.

Staff should be aware of their responsibilities under the Criminal Law Act 1967, as amended by the Sexual Offences (Northern Ireland) Order 2008, to report to the police information that a serious sexual offence may have been committed.

www.dhsspsni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland

www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/acpcregionalstrategy.pdf

www.rqia.org.uk/what_we_do/registration_inspection_and_reviews/safeguarding_vulnerable_groups.cfm

www.nidirect.gov.uk/articles/reporting-child-abuse-and-neglect

Patient Confidentiality

Patients have a right to expect that health and social care professionals will not disclose any personal health information 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. Health 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, accessible at:

www.dhsspsni.gov.uk/publications/code-practice-protecting-confidentiality-service-user-information

Obtaining Consent

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. The Department has produced A Reference Guide to Consent for Examination, Treatment or Care (March 2003). All health professionals are advised to be familiar this guidance before carrying out any termination of pregnancy procedure. www.dhsspsni.gov.uk/articles/consent-examination-treatment-or-care

HSC Complaints Policy

Should a patient have a complaint about their experience of the service they receive, existing processes are in place to deal with complaint resolution. Further information can be accessed at:

www.nidirect.gov.uk/make-a-complaint-against-the-health-service

www.ni-ombudsman.org.uk/

www.dhsspsni.gov.uk/publications/hsc-complaints-standards-and-guidelines

Integrated Perinatal Mental Health Care Pathway

A regional care pathway has been developed for all health professionals who come into contact with pregnant women for detection and treatment of perinatal mental health. It can be accessed at:

http://www.publichealth.hscni.net/sites/default/files/FINAL%20PERINATAL%20MENTAL%20HEALTH%20CARE%20PATHWAY_20DEC2012.pdf

Code of Conduct for Healthcare Chaplains

Women should have access to support services which meet their personal beliefs and requirements. A code of conduct has been developed for Healthcare Chaplains. It is accessible at:

www.dhsspsni.gov.uk/publications/code-conduct-healthcare-chaplains

Professional Guidance

A range of relevant guidance is available from professional bodies representing medical colleges.

General Medical Council - Good Medical Practice – (2013)

http://www.gmc-uk.org/guidance/good_medical_practice.asp

General Medical Council - Personal beliefs and Medical Practice – (2013)

www.gmc-uk.org/guidance/ethical_guidance/21171.asp

General Medical Council - Consent: Patients and Doctors making decisions together

(2008) www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp

General Medical Council - Confidentiality (2009)

www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp

General Medical Council - 0-18 years – Guidance for All Doctors (2007)

http://www.gmc-uk.org/guidance/ethical_guidance/children_guidance_index.asp

Nursing & Midwifery Council - The Code – Professional Standards of practice and behaviour for nurses and midwives

<http://www.nmc.org.uk/standards/code/>

British Association for Counselling and Psychotherapy - Professional Conduct

Procedure - (2013) http://www.bacp.co.uk/prof_conduct/

International Statistical Classification of Diseases and Related Problems, 10th

Revision' – World Health Organisation 2010

<http://www.who.int/classifications/icd/en/>

ANNEX C – RELEVANT LAW AND COURT CASES

The Offences Against the Person Act 1861

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 on conviction to life imprisonment...”

“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 on conviction to life imprisonment...”

Criminal Justice Act (Northern Ireland) 1945

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

Criminal Law Act (Northern Ireland) 1967

(Extracts from Sections 4 and 5)

4 Penalties for assisting offenders N.I.

(1) Where a person has committed a relevant offence, any other person who, knowing or believing him to be guilty of the offence or of some other relevant offence, does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution, shall be guilty of an offence.

(1A)In this section and section 5, “relevant offence” means—

(a)an offence for which the sentence is fixed by law,

(b)an offence for which a person of 21 years or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or might be so sentenced but for the restrictions imposed by Article 46(4) of the Magistrates' Courts (Northern Ireland) Order 1981).

but in section 5(1) “relevant offence” does not include an offence under Article 20 of the Sexual Offences (Northern Ireland) Order 2008.

(4)...no proceedings shall be instituted for an offence under subsection (1) except by or with the consent of the Attorney-General.

5 Penalties for concealing offences etc. N.I.

(1) Subject to the succeeding provisions of this section, where a person has committed a relevant offence, it shall be the duty of every other person, who knows or believes—

(a) that the offence or some other relevant offence has been committed; and

(b) that he has information which is likely to secure, or to be of material assistance in securing, the apprehension, prosecution or conviction of any person for that offence;

to give that information, within a reasonable time, to a constable and if, without reasonable excuse, he fails to do so he shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment according to the gravity of the offence about which he does not give that information...

(4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Attorney-General.

The Bourne case 1939

The Bourne case, R v Bourne [1939] KB 687, concerned 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.

In his directions 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.”

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.

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 High Court came to its decision after detailed consideration of medical reports by consultant psychiatrists and obstetricians.

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.

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.

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.

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.

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.

In the case of *R v McDonald* in 1999, in a decision during a criminal trial of a person accused of serious violence against a pregnant woman, 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.

European Court of Human Rights

The issue of termination of pregnancy has also been considered by the European Court of Human Rights. Relevant cases include:

- Open Door & Well Woman v Ireland, European Court of Human Rights (1992)
- Tysiac v Poland, European Court of Human Rights (2007)
- P and S versus Poland (2013)
- Grand Chamber decision in A, B and C v Ireland [2010]

Other Legislation

As with all aspects of care there are other areas of legislation of which professionals should be aware. These include:

- **The Sexual Offences (Northern Ireland) Order 2008** makes provision about sexual offences in Northern Ireland, including offences against children and people with a mental disorder.
- **Mental Health (Northern Ireland) Order 1986** provides a framework for the care, treatment and protection of all persons with a mental disorder and establishes systems through which the statutory rights of individuals and their relatives are protected and the duties, responsibilities and powers of professionals regulated.
- **Data Protection Act 1998** ([Data Protection Act](#)) controls how personal information is used by organisations, businesses or the government. They must make sure the information is:
 - used fairly and lawfully
 - used for limited, specifically stated purposes
 - used in a way that is adequate, relevant and not excessive
 - accurate
 - kept for no longer than is absolutely necessary
 - handled according to people's data protection rights
 - kept safe and secure
 - not transferred outside the [European Economic Area](#) without adequate protection

There is stronger legal protection for more sensitive information, such as:

- ethnic background
- political opinions
- religious beliefs
- health
- sexual health
- criminal records