Submission to Department of Justice Consultation on Criminal Law on Abortion
Lethal Foetal Abnormality and Sexual Crime
INTRODUCTION

1. NIPSA is the largest trade union in Northern Ireland representing over 45,000 members employed across the whole of the public service in organisations such as the Northern Ireland Civil Service and its Agencies, Local Government, Education and Library Boards, the Health and Personal Social Services, the Northern Ireland Housing Executive as well as a host of Non-Departmental Public Bodies (NDPBs). NIPSA also represents a significant number of members in the voluntary sector.

2. We recognise the diversity of opinion amongst our membership. Policy expressed in this document, however, has been agreed through the well-established democratic procedures for making policy at the NIPSA Annual Delegate Conference.

3. NIPSA has a long and proud history of advancing the highest standards of equality and human rights issues. We believe that women in Northern Ireland should have the same rights accorded by Parliament as women in England, Scotland and Wales to a legal, safe abortion on the NHS. Access to free, safe, legal abortion services, without discrimination is crucial to women’s health, their personal autonomy and their economic, educational and social advancement. Barriers to reproductive rights are barriers to full social, economic, political and workplace equality.

GENERAL COMMENTS

4. We recognise that the present legal uncertainty ill-serves both the medical profession and women of Northern Ireland. This view is supported by research,
conducted at Middlesex University by Colin Francome\(^1\), which involved interviews with 37 out of the 42 practising gynaecologists in Northern Ireland, and revealed that 57% of those interviewed support liberalising current abortion law in the province, with many willing to carry out abortion under certain circumstances.

5. The results of the report demonstrate that the vast majority of gynaecologists in Northern Ireland believe the situation for women with an unwanted pregnancy, particularly one which involves lethal foetal abnormality or was the result of a sexual crime, is very unfair.

6. According to figures produced by the Family Planning Association (FPA) Northern Ireland 50,000 women have travelled from Northern Ireland seeking access to safe abortion since 1967 and 5 women have died from unsafe abortion practices since Northern Ireland was excluded from the 1967 Act.\(^2\)

7. Recent research, commissioned by Amnesty International, carried out by Millward Brown Ulster\(^3\) of 1,000 adults across Northern Ireland, shows that:

- 69% of people think the law in Northern Ireland should make access to abortion available where the pregnancy is the result of rape;
- 68% of people think the law in Northern Ireland should make access to abortion available where the pregnancy is the result of incest;
- 60% of people think the law in Northern Ireland should make access to abortion available where the foetus has a fatal abnormality.

8. Evidence gleaned from the Northern Ireland public would therefore concur with and support NIPSA’s view that the current law relating to the termination of pregnancy in Northern Ireland breaches core international human rights instruments and standards through the denial of women’s human rights to

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\(^{3}\)Attitudes to Abortion, Millward Brown, October 2014.
exercise control, freedom and choice in their sexual and reproductive lives. For too long the sexual rights of women in Northern Ireland have been neglected and denied. When faced with an unplanned or crisis pregnancy the women of Northern Ireland deserve the same rights as women in the rest of the UK to the protection of the law to enable equal access to safe and legal abortion services. Depriving individuals of their sexual and reproductive freedom denies them the capacity to live their lives according to their own internal values and belief systems.

9. NIPSA welcomes the publication of the Department of Justice (DOJ) ‘Consultation on the criminal law on abortion, lethal foetus abnormality and sexual crime’, and while we support the proposals contained therein we believe they do not go far enough to properly serve the people of Northern Ireland. In taking this position we wish to put on record our support for the Amnesty International campaign ‘My Body My Rights’ and their submission to this consultation. We would also endorse the submissions made by the Irish Congress of Trade Unions, the Committee for the Administration of Justice and the Royal College of Midwives.

10. Indeed, we note the Northern Ireland Human Rights Commission (NIHRC) has, since November 2013, repeatedly advised the DOJ that the existing law on abortion in Northern Ireland is a violation of human rights. As such, it has instigated legal proceedings against DOJ for their failure to adequately change the criminal law on abortion in Northern Ireland.

11. In a statement issued on 10 December 2014, International Human Rights Day, the NIHRC stated:

“Since April 2013 we have repeatedly advised the Department of Justice (DOJ) that the existing law violates the human rights of women and girls. The recent consultation published by the DOJ does not commit to making the changes that are necessary in law. It addresses cases of lethal foetal abnormality. It does not deal with serious malformation of foetus. It seeks
public opinion on cases of sexual crime including rape and incest without putting forward proposals to change the law.”

12. The NIHRC have taken this position based on the following human rights jurisprudence and other international standards.

13. In the 2008 Concluding Observations on the UK the UN Committee which oversees UK compliance with the UN Convention for the Elimination of all forms of Discrimination against Women (CEDAW) raised concerns about the detrimental consequences for women’s health in relation to the situation of abortion law in Northern Ireland.\(^5\)

14. In the CEDAW concluding observations of 2013 the Committee stated:

“\textit{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, paragraphs 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….}”\(^6\)

15. And further held that:

“\textit{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. The CEDAW Committee has invited the UK to report on developments with respect to this recommendation by July 2014.}”\(^7\)

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\(^4\) http://www.nihrc.org/news/detail/fact-sheet-on-termination-of-pregnancy

\(^5\) CEDAW UN doc A/63/38, page 142, para 288

\(^6\) Full list of Concluding Observations, paragraph 50

\(^7\) Concluding Observations on UK CEDAW, paragraph 51
16. This echoes the views of another key UN human rights treaty compliance body which oversees the UN International Covenant on Economic Social and Cultural Rights (ICESCR). In 2009 the ICESCR Committee called upon the UK to amend the abortion law in Northern Ireland and made specific reference to these three areas:

“The Committee calls upon the State party to amend the abortion law of Northern Ireland to bring it in line with the 1967 Abortion Act with a view to preventing clandestine and unsafe abortions in cases of rape, incest or foetal abnormality.”

17. Similarly when the UK was reviewed in 2012 under the 13th session of the Universal Periodic Review (UPR) led to a working group report recommendation that the State party should:

“Ensure by legislative and other measures that women in Northern Ireland are entitled to safe and legal abortion on equal basis with women living in other parts of the United Kingdom.”

18. NIPSA would remind the Department of its obligations under national and international human rights standards and law to uphold justice and rights for women and to ensure that this consultation will properly address the issues referred to by (among others) the NIHRC, CEDAW and the ICESCR Committee.

19. As previously stated NIPSA fully supports the submission made by the Royal College of Midwives (RCM), the trade union and professional organisation for midwives throughout the UK. In doing so we would like to draw the Department’s attention to the following key points contained in the RCM submission:

“We are concerned however that the proposed legislation is confined to the issue of ‘lethal’ foetal abnormality, and does not consider the possibility of abortion for

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8 Concluding Observations of CESCR, 2009, paragraph 25
9 Paragraph 110.77, page 99
cases of serious, but not immediately lethal, abnormalities. Given the advances in diagnostic techniques during the last decade, women are now able to be informed with a high degree of certainty of serious foetal abnormality when they present for an anomaly scan at approximately 20 weeks gestation. Many of these women read the same literature as women elsewhere in the UK and they access the same information on the internet. It is therefore reasonable for them to assume that if there is something seriously wrong with the foetus then they will be offered the same options for care and treatment as those women living in GB.

As stated previously, we do not feel that any proposed legislative change should be restricted only to cases of lethal foetal abnormality. It is our view that termination should also be available in Northern Ireland for those women with a diagnosis of serious foetal abnormality.”

20. Turning to the issue of conscientious objection NIPSA would support the RCM view that the ruling in the Supreme Court case of Doogan and Wood -v- NHS Greater Glasgow and Clyde Health Board gives extensive definition to complex clinical and other situations in regard to whether conscientious objection applies or not and the same principles should be applied in Northern Ireland.

CONCLUSION

21. NIPSA would like to make it clear, whether legislative change is brought about by the NIHRC legal challenge or otherwise, legislative change is essential to put an end to the daily attack on women’s reproductive rights in Northern Ireland.

22. NIPSA takes this opportunity to remind the Northern Ireland Department of Justice that restrictive abortion laws and practices and barriers to access to safe abortion to the full extent of the law are gender-discriminatory, denying women treatment only they need.10

10 See UN Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No.24: Article 12 of the Convention (women and health), paras.14 and 31(c).
23. NIPSA demands the full decriminalisation of voluntary abortion in all cases, subject only to such limitations as would be reasonable for another type of medical intervention, and further demands that States ensure access to safe and legal abortions in cases of risk to mental and physical health, or in circumstances where pregnancy is a result of sexual violence, rape or incest. This should also extend to include lethal foetal abnormality and serious malformation of foetus. This is in line with international human rights standards, and would be a critical step to ensure that women in Northern Ireland can access the most appropriate health care, and that health and social care professionals can provide that care, without the threat of prosecution.

24. The Parliamentary Assembly of the Council of Europe in affirming “the right of all human beings, in particular women, to respect for their physical integrity and to freedom to control their own bodies”, has stated that “the ultimate decision on whether or not to have an abortion should be a matter for the woman concerned, who should have the means of exercising this right in an effective way.”11 It has invited Member States of the Council of Europe to “allow women freedom of choice and offer the conditions for a free and enlightened choice without specifically promoting abortion.”12

25. CEDAW, in its General Recommendation No.24 (20th session, 1999) (article 12: women and health) requires all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice.13

26. Treaty monitoring bodies widely agree that abortion should be legal when a pregnancy results from rape and have repeatedly urged countries to amend their laws to this effect.14

13 http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24
14 See, e.g., CRC/C/ARG/CO/3-4, para. 59 (2010) (“The Committee recommends that the State party.. Take urgent measures to reduce maternal deaths related to abortions, in particular ensuring that the provision on non-punishable abortion, especially for girls and women victims of rape, is known and enforced by the medical profession without intervention by the courts and at their own request”); E/C.12/PER/CO/2-4.para. 21 (“it recommends that the criminal code be amended so that
27. They have also urged States to take measures to provide for implementation mechanisms to ensure availability and accessibility of abortion on rape and incest grounds and to also adopt relevant medical standards.\textsuperscript{15}

28. The World Health Organisation (WHO) has clearly indicated that women who become pregnant as a result of rape should have access to safe abortion services.\textsuperscript{16} To facilitate access to abortion services in such cases, the WHO advises that States should ensure standards and guidelines are elaborated, and appropriate training given to both police and healthcare providers, including referrals to abortion services.\textsuperscript{17}

29. Women should be provided safe, legal abortion services based on their complaint of the rape,\textsuperscript{18} and should not be compelled to undergo unnecessary administrative or judicial procedures, such as pressing charges against the perpetrator, identifying the rapist or providing forensic evidence of the rape.\textsuperscript{19}

30. The WHO has noted that such requirements can delay access to abortion services\textsuperscript{20} or may prevent access to services altogether, such as where there are gestational limits for the abortion and women cannot meet the requirements in time\textsuperscript{21} and in instances when women do not want to report the rape due to fear of stigma.\textsuperscript{22}

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\textsuperscript{15}CEDAW Committee, Concluding Observations: Kuwait, para. 43(d), U.N. Doc. CEDAW/C/KWT/CO/3-4 (2011).
\textsuperscript{16}WHO safe abortion guidance at 92 (“The protection of women from cruel, inhuman and degrading treatment requires that those who have become pregnant as the result of coerced or forced sexual acts can lawfully access safe abortion services.”)
\textsuperscript{17}WHO Safe Abortion Guidance, page. 69; WHO Safe Abortion Guidance, page. 92-93
\textsuperscript{18}WHO Safe Abortion Guidance, at 92-93
\textsuperscript{19}WHO Safe Abortion Guidance, at 69; WHO Safe Abortion Guidance, at 92-93
\textsuperscript{20}WHO Safe Abortion Guidance, at 92-93
\textsuperscript{21}WHO Safe Abortion Guidance, at 92-93
\textsuperscript{22}WHO Safe Abortion Guidance, at 92-93
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31. We endorse the RCM position in relation to the application of the Supreme Court ruling of *Doogan and Wood -v- NHS* being the basis for conscientious objection in Northern Ireland. We also support their call for the immediate publication of clear guidance for healthcare professionals by the DHSSPS in relation to the issue of abortion.

32. Finally, we reiterate our position that in circumstances where lethal foetal abnormality or sexual crime is involved we advocate a women’s right to end her pregnancy in Northern Ireland. However we also believe this should be extended to cover cases of serious malformation of the foetus in line with Human Rights standards, as cited above.