Written submission from Royal College of Nursing, Northern Ireland (ANI0313)

Introduction

1 The Royal College of Nursing [RCN] represents nurses and nursing, promotes excellence in practice and shapes health policy. In Northern Ireland, the RCN represents registered nurses, nursing students and health care assistants in all practice settings.

2 The RCN welcomes the opportunity to submit evidence to the House of Commons Women and Equalities Committee in respect of its inquiry into abortion law in Northern Ireland. Our response is structured in accordance with the terms of reference for the inquiry and the guidance published by the House of Commons in respect of such submissions. The RCN would be pleased to supply any additional information required by the Committee that it has not been possible to include within this submission.

3 Our submission has been informed by the professional views and judgment of RCN members in Northern Ireland, collated initially through an open member consultation meeting and via individual written submissions made by members in response to the consultation published by the Northern Ireland Executive Department of Justice in 2014. This current submission has subsequently been endorsed by the RCN Northern Ireland Board, the elected body responsible for the governance of the RCN in Northern Ireland.

4 The key elements of the RCN's submission are summarised below.

- The RCN endorses the need for the law in Northern Ireland to be amended in order to permit the termination of pregnancy in cases of fatal fetal abnormality.

- The RCN endorses the principle that women who are pregnant as a result of rape, sexual assault or familial sexual activity should have the...
legal right to access a termination of pregnancy. The RCN believes that the only viable way in which, for these purposes, the rape or sexual assault can be evidenced is on the basis of the woman’s own judgment and voluntary notification.

- The RCN believes that decriminalisation of termination of pregnancy should be based on evidence and in accordance with relevant professional standards. The RCN is currently considering at a UK level how best to ensure that the views of all our members, in collaboration with other organisations, influence any changes in the law to protect the rights of women and health care professionals and support the highest quality in care provision.

- The right of conscientious objection to involvement in a termination of pregnancy must be enshrined in law in Northern Ireland. This right should exist only in relation to direct participation in the act of termination itself and not in any circumstances whereby the life of the woman is in danger.

- The threat of imprisonment against nurses and midwives who choose not to breach their code of conduct by reporting to the police women who have accessed, or may be about to access, a termination of pregnancy in ways that may be unlawful in Northern Ireland is unacceptable and must be addressed in law.

- The RCN is currently engaged in work at a UK level that will explore the regulation and quality monitoring processes which must be in place to protect the rights of women to access free, safe and effective services and support best health care practice. We believe that the termination of a pregnancy should be treated in the same way as any other medical practice, remaining subject to the regulations that apply to all clinical procedures.

5 The RCN’s submission addresses the first of the three themes identified by the Women and Equalities Committee in its terms of reference for this inquiry. We believe that our primary role is to articulate the views of RCN
members in Northern Ireland. Other organisations will more appropriately be able to brief the Committee on the experiences of women in Northern Ireland who have been affected by the law on the termination of pregnancy, and the responsibilities of the UK Government under its international obligations for taking action to reform the law in Northern Ireland.

What are the views of the general public, women and medical and legal professionals in Northern Ireland about the law on abortion and whether it should be reformed? How have these views changed over time?

6 The RCN’s position in relation to the law governing the termination of pregnancy in Northern Ireland has been developed carefully and incrementally over a number of years, in consultation with our membership in Northern Ireland and through the governance of the RCN Northern Ireland Board. The principal determinants of this position have been, firstly, our responses to consultations undertaken by the (former) Department of Health, Social Services and Public Safety [DHSSPS] (now the Department of Health) in 2007, 2008, 2010 and 2013 on its draft guidance for health and social care professionals on the law and clinical practice in relation to the termination of pregnancy in Northern Ireland, and, secondly our response to a consultation document published by the Northern Ireland Executive Department of Justice in 2014. This consultation sought views on proposed changes to the law governing the termination of pregnancy in respect of fatal (or “lethal”) fetal abnormality and pregnancy deriving from sexual crime, including incest.

Termination of pregnancy: fatal fetal abnormality and sexual crime

7 In our response to the Department of Justice consultation, the RCN indicated its support for the third of four options related to the issue of fatal fetal abnormality. This stated an intention “… to legislate to allow for abortion in cases of lethal fetal abnormality, but provide no further definition in statute of ‘lethal’. Medical judgment would have to determine the limits
within which a condition could be said to be lethal and when to offer, or agree to, a termination.” The RCN noted and concurred with the stated view of the Department of Justice in relation to this option that: “… there is already much debate about the need for guidance to the medical profession on the current circumstances for a lawful termination of pregnancy, and it is probable that legislating in this way would cause further uncertainties and difficulties. It is likely that, in such a scenario, the court would eventually be asked for a ruling on a case, and this would then set a precedent by allowing case law to determine the exact meaning of ‘lethal’. This would not be an immediate solution and would take time to resolve.”

8 The RCN noted in our response to the consultation that, in England, Wales and Scotland, whilst termination is not accessible specifically on the grounds of rape or sexual assault, the law relies on “… the formulation that the continuance of the pregnancy has to involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the woman or her children”. Consequently, “… pregnancies as a result of [rape or] sexual assault can therefore be terminated lawfully under the formulation that to continue with the pregnancy under such circumstances would be a greater risk to the woman’s mental health than if it were terminated”. The same principle should apply under Northern Ireland law, with the same provision that it should not be necessary to have to “prove” that the woman is suffering from serious and intractable mental ill health before she is able to access a termination. The RCN does not believe that the determination of rape or sexual assault should be made by a medical practitioner. That being the case, the only way forward is to allow women to form this judgment for themselves and communicate it appropriately and accordingly.

9 The RCN believes that a woman who is pregnant as a consequence of a crime other than rape, or because of other forms of unwanted sexual activity, should be able to access a termination in the same way as a woman who has been the victim of rape. The RCN also believes that the law should allow for termination of pregnancy for victims of other sexual crime, such as sexual activity with a person under the age of 16, abuse of a position of trust, or unlawful sexual activity with a vulnerable adult. In
respect of pregnancy deriving from cases of familial sexual activity with a person under 16, the RCN believes that the right to access a termination should be available under the law in these circumstances. In respect of pregnancy deriving from consensual sex between adult relatives, the RCN has no specific view and believes that further information would need to be made available about the circumstances of the relationship and the inherent health risks before making an informed judgment on this matter.

Termination of pregnancy: conscientious objection

10 In our submissions to the various consultations undertaken by the former DHSSPS in 2007, 2008, 2010 and 2013 on its draft guidance for health and social care professionals on the law and clinical practice in relation to the termination of pregnancy in Northern Ireland, the RCN called on the Department to address the significant concerns that we, and others, had consistently raised in relation to conscientious objection.

11 In simple terms, some RCN members in Northern Ireland would not wish to participate in the termination of pregnancy, yet the law in Northern Ireland currently does not recognise or support this position and fails to provide them with any statutory defence or recourse. The argument that Northern Ireland law only currently permits termination in cases where the woman’s life is in danger and therefore, because the right of conscientious objection does not pertain to these circumstances in any eventuality, such a right does not need to be defined in law in Northern Ireland, is unsustainable.

12 The Department of Justice consultation paper rightly acknowledged that it is the 1967 Abortion Act that establishes in law the right of conscientious objection in England, Scotland and Wales. Because the Act does not extend to Northern Ireland, nurses, midwives and other health and social care professionals here, by definition, currently do not have the protection of the law if they object to participation in a termination procedure on the basis of their moral, ethical or religious code. This is acknowledged in the current Department of Health guidance for health and social care
professionals on termination of pregnancy in Northern Ireland. Whilst the guidance provides appropriate and measured advice under the current law, the RCN believes that a statutory right to exercise conscientious objection must be enshrined in statute.

13 In the current absence of such statutory protection in Northern Ireland, nurses and midwives must rely instead upon general guidance issued by the Nursing and Midwifery Council [NMC], the regulatory body for the nursing and midwifery professions across the United Kingdom. This states that nurses and midwives may exercise the right of conscientious objection in two areas only; firstly in relation to Article 38(2) of the Human Fertilisation and Embryology Act (2008) and, secondly, in relation to Article 4(2) of the Abortion Act 1967 (which, as already noted, does not apply in Northern Ireland).

14 The current legal position also places Northern Ireland at variance with Resolution 1763 of the Parliamentary Assembly of the Council of Europe. This states that: “No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human fetus or embryo, for any reason.”

15 The same Council of Europe Resolution addresses the potential problem of women being denied legitimate access to lawful termination services and care through what can best be termed mass conscientious objection, whereby HSC trusts might claim that there are no practitioners available to provide care because they all seek to exercise a right of conscientious objection. The Resolution makes it clear that it is the duty of the Member State to ensure that this does not happen. It notes: “The Parliamentary Assembly emphasises the need to affirm the right of conscientious objection together with the responsibility of the state to ensure that patients are able to access lawful medical care in a timely manner. The Assembly is concerned that the unregulated use of conscientious objection may
disproportionately affect women, notably those having low incomes or living in rural areas.”

16 Furthermore, the Resolution invites Member States to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services. It also requires member states to:
- guarantee the right to conscientious objection in relation to participation in termination procedures
- ensure that patients are informed of any objection in a timely manner and referred to another health care provider
- ensure that patients receive appropriate treatment, particularly in cases of emergency.

17 The RCN therefore endorses the inclusion of the right to conscientious objection in a revised legal framework relating to the termination of pregnancy in Northern Ireland.

Termination of pregnancy: other legal issues

18 In our responses to the Department of Justice consultation and the most recent (2013) consultation on the draft DHSSPS guidance for health and social care professionals, the RCN urged legislators and policy-makers to reflect on whether it is really acceptable, in the second decade of the twenty-first century, for the legal position on the termination of pregnancy in Northern Ireland to be almost entirely dependent upon two pieces of legislation dating back respectively 157 years and 73 years (specifically the Offences Against the Person Act 1861 and the Criminal Justice Act (Northern Ireland) 1945. The RCN believes that there is an obligation upon those charged by the people of Northern Ireland with creating and upholding the legal framework in which life is conducted here to ensure that it is modern, relevant and fit for purpose.
The current Department of Health guidance for health and social care professionals on the termination of pregnancy in Northern Ireland states (page 20, paragraph 6.1) that: “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.” The guidance then goes on to state, somewhat unhelpfully: “Professionals should be clear, however, that patient confidentiality is not a bar to reporting offences to the police.” More starkly, the guidance states: “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” and concludes by noting: “Failure to do so without a reasonable excuse is an offence which upon conviction carries a maximum penalty of ten years imprisonment.”

While this commentary represents a considerable improvement upon the confrontational tone and language deployed in the previous version of the Departmental guidance, it is still ambiguous in articulating how a registered nurse, midwife or other health care professional can balance their obligations under the current law in Northern Ireland with those defined in their professional code. This is wholly unacceptable to the RCN. It represents a serious violation of the inherent sanctity of the patient-client relationship that it is at the very heart of health care. The RCN can not and will not allow its members to be subjected to such threats and be placed in such an impossible dilemma. This wholly unacceptable state of affairs is the direct consequence of the enduring failure of the Northern Ireland Executive and Assembly to fulfil their statutory duties by legislating on this matter.

Throughout the years of the Troubles in Northern Ireland, nurses and midwives provided care to people from all sections of the community on the basis of clinical need, guided by the professional duty of confidentiality and
acting at all time in the interests of the patient. They did not ask questions about how the patient’s injuries had been acquired, or seek to make moral judgments about whether the patient was deserving of access to health care. The current legal position, by contrast, requires nurses and midwives to breach their professional code and, indeed, risks placing them in the position of not merely upholding the law but of interpreting and enforcing it. The RCN regards this as wholly unacceptable.

Decriminalisation of termination of pregnancy

22 The RCN is currently engaged in policy work at a UK level in relation to the decriminalisation of termination of pregnancy. In March 2018, the RCN launched a UK-wide survey of members on the principle of removing criminal sanctions from termination of pregnancy. The consultation focused solely on the principle of the decriminalisation of termination of pregnancy. Some 73.7% of respondents voted in favour of the decriminalisation of termination of pregnancy (almost 3,000 members). The overall response rate was 1% of our total UK membership of around 435,000. In Northern Ireland, 1.21% of RCN members voted, with 60% of those members supporting moves towards decriminalisation.

23 Taking account of our members’ response, the RCN is now committed to further work, based on the views of its members in Northern Ireland and across the UK. This work will explore regulation and quality monitoring processes which must be in place to protect the rights of women to access free, safe and effective services and support best health care practice. We believe the termination of a pregnancy should be treated in the same way as any other medical practice, remaining subject to the regulations that apply to all clinical procedures. Decriminalisation should be based on best evidence and in accordance with relevant professional standards. The RCN will now consider how best to ensure that the views of all our members, in collaboration with other organisations, influence any changes in the law to protect the rights of women and health care professionals, as well as supporting the highest quality in care provision.