Response to the consultation on a new legal framework for abortion services in Northern Ireland.

Introduction

Who we are

The Evangelical Alliance represents and joins together hundreds of organisations, thousands of churches and tens of thousands of individuals to make Jesus known.

Representing our members since 1846, the Evangelical Alliance is the oldest and largest evangelical unity movement in the UK. United in mission and voice, we exist to serve and strengthen the work of the church in our communities and throughout society.

We have been working in Northern Ireland for over 30 years and engage across a wide range of policy issues from poverty to reconciliation and issues of human dignity.

How we respond

As an umbrella organisation we represent people with a range of views and approaches on this issue. In preparing our response to this consultation we held a series of events engaging with around 200 local Church leaders and members across the evangelical community. Our key points outlining our approach has been circulated widely and we have received no comments to the effect that it has been too 'conservative'. Indeed it is important to note that some of those who we represent will not respond to many of the questions in this consultation as framed, beyond stating their opposition to abortion, because they believe that to do so would breach their conscience and implicate them in endorsing or supporting abortion in particular circumstances. We respect this approach. We would encourage the NIO not to dismiss responses which do not fully engage with their proposals and at the very least to weigh them fairly.

While we acknowledge the reality that the law has changed, we do not agree with, support or endorse abortion in these situations. Neither do we agree with abortion in many of the proposals contained in this consultation, which go far beyond the minimal requirements of the new legislation. We opposed the introduction of section 9 of the NIEF Act 2019 before it passed, continue to do so and will consider working with others towards it's effective repeal.

Engagement does not mean endorsement

We do not accept much of the framing of this consultation, nor many of the assumptions on which it is based. However, because the government has proceeded down this line, we believe it is important for Christians, alongside warning, to work to mitigate the impact of this legislation on the most vulnerable. This has been a difficult process for us to wrestle with and will be for many others. Nothing in this response is to be considered as the Evangelical Alliance Northern Ireland legitimising or agreeing with abortion as outlined in the proposals.

We care for women and unborn children

This consultation deals with the very sensitive issue of abortion and within that, the issues of sexual crime and babies who die before or shortly after birth. These are among the most difficult of human experiences and a consultation response is not the place to give full consideration to these issues. However, we are very aware that this public conversation has raised the issue of abortion for many people again personally in their own lives, their churches and communities.

As we call upon the government to turn away from this course of action, we call upon the Church to turn towards those in need. To be a place of refuge and redemption for women in pregnancy crisis, domestic or sexual violence, those who are suffering from abortion-regret, families struggling with disabled children, and children with experience of the care system. Churches and Christian charities are already offering a wide variety of help and practical support from befriending to debt counselling. We encourage the Church to continue to develop these counter-cultural relationships of care and support.

We believe that every human life has inherent worth and value. Laws which allow for abortion as a matter of personal choice cannot undo the dignity intrinsic to humanity. We remain committed to the good and flourishing of both lives, longing and working for the day to come when sickness, sin, death and abortion will be no more (Revelation 21). We warn starkly against the devastating impacts of these proposals to facilitate the deliberate ending of human life in the immediate term and in the years to come. We point to a better story of hope and life and humanity even in the most difficult of circumstances.

New legal duty

We acknowledge that on 22 October 2019, the Northern Ireland (Executive Formation etc.) Act 2019 became law. The previous law on abortion was repealed and under section 9 of the new Act the Secretary of State is now required to legislate for abortion in the following cases: -

(i) *Threat to the pregnant woman's physical or mental health, without conditionality of "long-term or permanent" effects;*

(ii) *Rape and incest;*

(ii) *Severe fetal impairment, including fatal fetal abnormality, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term.*

Introductory points

Maximalist rather than minimalist - We note that many of the proposals contained in this consultation go far beyond the new legal requirements. It is our view that this consultation proposes a maximalist approach to abortion provision through the new regulations rather than a minimalist approach.

This is interesting, given the highly unusual circumstances through which the legislation was suddenly passed at Westminster on this sensitive devolved matter. It is worth noting again that 57% of people do not support the changes in abortion legislation voted for at Westminster (Lucid Talk poll). A minimalist approach would be more fitting to the medical and legal culture in Northern Ireland.

A minimalist approach would be more in line with much of the recent polling on abortion in Northern Ireland:-

- 93% of people believe that both lives are important in pregnancy (Savanta ComRes poll).
- Research from the Northern Ireland Life and Times Survey shows that public opposition to abortion remains very high beyond what are often termed the 'hard cases'. There is extremely limited support for abortion on social grounds, or 'unrestricted access', as proposed in this consultation.

Research from Both Lives Matter, which was thoroughly investigated by the Advertising Standards Authority shows that over 100,000 people are alive today in Northern Ireland because legislation similar to the 1967 Act was not passed here. This figure has been cited in the Daíl, Houses of Parliament and in the Supreme Court to show something of the distinctive in our culture and the impact of legislation.

A minimalist approach would also accord more appropriately within the wide margin of appreciation accorded to each EU member state to legislate for abortion (A, B & C v Ireland and Vo v France).

In short these maximalist proposals are not appropriate for Northern Ireland and there is no statutory requirement for many of them. The law could be implemented in a much more minimalist way that would respect the Westminster legislation but more closely reflect Northern Irish culture.

Barriers rather than safeguards - At almost every available opportunity, it is proposed that safeguards be stripped away and wider access to abortion opened up. What the NIO and the pro-choice movement consider as 'barriers' to abortion access are considered by many others as safeguards designed to protect medical staff, women and unborn children, at least in some limited way. Some specific examples include proposals not to record reasons for early abortions, one 'healthcare professional' signing off an abortion, flexibility as to location etc. **Can the NIO explain why there are no meaningful safeguards to contain abortion provision?**

Pro-choice/pro-abortion activism – These proposals were not accidentally arrived at in a vacuum. They include proposed 'unrestricted access' to abortion, loosely-defined health grounds, high gestational limits, abortion up to birth in a wide range of circumstances, flexibility on who can perform abortions and where. These proposals go far beyond any international or domestic legal requirements. While not apparent to the casual observer, taken together it is obvious that these proposals have been shaped by the direction and demands of global pro-abortion activism. **The NIO must transparently show why and how it has arrived at such extreme proposals.**

Exclusion of views - It is unfair and potentially discriminatory to seek to exclude views on the ethics of abortion.

'This consultation is not seeking views on whether the SOS should be exercising this duty in the first place, the ethics of the matter of abortion, nor the framework in England, Scotland and Wales.' p.6

The Secretary of State himself acknowledges in his foreword that 'this is a highly sensitive and complex matter'. The ethical nature of abortion cannot be excluded from the practicalities by which it is executed. The framing of the consultation in this way, so as to discourage or exclude views on these matters, could disproportionately affect those with a religious belief or a political opinion which would lead them to an ethical objection to abortion and/or this framework. **This was not properly considered in the Equality Impact Assessment and could be a justiciable matter. In the meantime please confirm that responses which engage with 'the ethics of the matter of abortion' will not be disadvantaged.**

The document refers to the abortion framework in England on every page between 16–28. It is bizarre therefore to discourage views on the framework in England when the NIO themselves use it as a point of reference throughout the consultation. **Please confirm that responses which cite any perceived issues with the framework in England and Wales will not be disadvantaged.**

From child to fetus - The consultation document misquotes the 1945 Criminal Justice (NI) Act replacing the word child with 'fetus'. The crime the act refers to still exists and is called 'child destruction'. Language and accuracy are both important. **That this particular word has been changed, either deliberately or mistakenly, is deeply concerning and raises questions about the Department's objectivity, accuracy or both.**

Open to abuse – The only information required to complete this consultation is a name and email address. Groups of activists on either side of the debate can respond from anywhere in the world. People could also respond multiple times from different email addresses. This is a fundamental flaw in the consultation process around a sensitive and devolved issue. **How will the NIO mitigate against such abuse and create any confidence or transparency in the consultation process or outcome at this stage?**

Executive Summary of key points

- **Both women and unborn children have inherent worth and value.**
- **We oppose the new legislation. Any law on abortion should protect both lives as far as possible.**
- **We acknowledge that the law has changed and so engage to increase safeguards and protect women and unborn babies as far as possible.**
- **We care for both lives and will continue to advocate for them. Many of our members already provide services to vulnerable women and families and will continue to do so.**
- **Don't go beyond what the law requires. Adopt a minimal approach, not a maximalist one.**
- **Don't allow 'unrestricted access to abortion'.**
- **Make gestational limits as low as possible.**
- **Link every abortion to meaningful grounds of 'health'. Additional wording should be added before 'risk to health' to raise the bar for abortion on every 'health' related ground. Something like a risk of real and serious, immediate and specific harm to physical or mental health. Otherwise wide and vague 'health' grounds will become a back-door to abortion on request.**
- **Introduce a minimum statutory waiting period.**
- **Make the regulatory bar to end a human life as high as possible.**
- **Don't pave the way for high-street, back-street or DIY home abortions.**
- **Two doctors to certify abortions, not one undefined healthcare professional. Pre-signing forms before proper consultation should be a serious offence.**
- **Don't discriminate against babies with disability. Support families and stop stereotypes.**
- **Make detailed data collection compulsory and transparent.**
- **Protect conscience as robustly as possible and beyond GB. Don't create a glass ceiling or put people off entering the professions.**
- **Protect women from harassment but don't punish peaceful protesters or those offering help.**
- **Provide real alternative choices to abortion for women and their families including counselling and financial support.**
- **Err on the side of safeguarding human life at every stage.**
- **The wording of any regulations is vitally important. On such an important issue, the final draft of the legal text should be consulted upon before implementation.**

Questions 1a and 1b (Early terminations of pregnancy)

We answer "No" to both and make the following points and alternative suggestions:-

Key points

The NIO has a legal duty to legislate for abortions on the grounds of 'rape and incest'. (Section 9 of the Northern Ireland Executive Formation Act 2019 as per CEDAW Para 85 (b) ii.) The proposal is to allow 'unrestricted access' to abortion for any reason up to 12 or 14 weeks.

This raises at least three important issues: -

'Unrestricted Access'

- Obviously 'unrestricted access' goes far beyond what is actually required by the new legislation. It would allow abortion for any and no reason completely unrelated to the health or life of the woman. The value of every unborn human being is reduced to a solely private concern.
- When no reason is required for an abortion, victims of sexual crime, human trafficking or CSE may actually be more likely to go unnoticed, abuse may continue and other systematic failures like poverty remain unaddressed.
- 'Unrestricted access' is culturally inappropriate and disproportionate - ECHR member states like Northern Ireland, have a wide margin of appreciation in the application of abortion laws in line with their cultural values. It is also helpful to note that there is no 'unrestricted access' to abortion in the rest of GB.
- 60% of people in Northern Ireland do not think it should be legal for abortion where the woman does not want the child – *"The majority of people are opposed to abortion in cases such as where a woman wants an abortion because she does not want more children, has lost her job or wants an abortion because she has a new job."* (Research by ARK – a programme of Ulster and Queen's universities). Yet this is exactly what the proposed 'unrestricted access to abortion would permit.'
- Research from the Northern Ireland Life and Times survey shows that over half of people here do not agree with abortion being provided up to 12 weeks because of the woman is very distressed about the pregnancy. Abortion is not an appropriate 'solution' to distress.

Abortions in the case of 'rape and incest'

- These are obviously extremely sensitive issues often involving grave human rights abuses of women. It is important that steps are taken to address sexual crime and consent which focus on prevention of these abuses rather than ending the innocent human life conceived in these crimes. In this way abortion is not a 'solution' to sexual crime.
- In England and Wales, abortions on these grounds take place under the risk to mental health without officially being recorded on the basis of rape or incest.
- It is important to note that abortions have been permitted in Northern Ireland since 1939 under grounds like rape and incest through the Bourne judgement [1939] 1 KB 687. This case involved the gang rape of a 14 year old girl by a group of soldiers. The assessment is made not on the circumstances of conception alone but on the impact on the risk to the life and health of the woman or girl. This has been interpreted carefully and conservatively since then until now and should

continue to be so. The link between rape and incest and the risk to the woman's health is an important one that should not be lost in any new legislation.

- It is important to note that emergency contraception is offered routinely in Northern Ireland when sexual crime is reported within 72 hours of the alleged incident.

There are two main issues when it comes to legislating for abortion on the grounds of rape/incest/sexual crime in Northern Ireland: -

- One is how to sensitively but robustly evidence an allegation of sexual crime. By the time such a matter would be prosecuted and proved in court the baby would be born. Also, sexual crimes are among the most difficult to prosecute and prove. The consultation document states 'this is not an approach the government advocates' due to 'impact on victims and high risk of resulting in a legal framework which would exclude those who are unable to evidence the crime'. This issue is not particular to Northern Ireland and other jurisdictions including the Isle of Man have dealt with rape and incest by way of a sworn affidavit.
- The second difficulty is particular to Northern Ireland, where Article 5 of the Criminal Justice Act (NI) 1967 creates a specific legal duty to report a criminal offence. This could mean that medical professionals could be required to report sexual crimes to the PSNI. However a process already exists in the benefits system having been devised by this government to allow women to claim benefits for a third child conceived through sexual crime, where otherwise conceived they would not receive them. The wording in this clause deals with the issues around proving and reporting an alleged sexual offence in Northern Ireland so that the medical professional may not be required to report an alleged crime in the interests of patient confidentiality.

Gestational Limits

- 93.3 % of abortions take place up to 14 weeks and 90% of abortions happen in first 12 weeks. However, only 12.5 % of abortions take place at 6 weeks and 51% of abortions take place up to 8 weeks.
- The law does not require specific gestational limits to be set and any gestational limits should be set as low as possible.
- New non-invasive genetic testing methods mean that a baby's sex and various disabilities can be determined at around 10 weeks. If abortions were limited to before this gestation sex-selective abortions could not be facilitated so easily.

Alternative Suggestions

- There should not be 'unrestricted access' to abortion. This proposal should be rejected.
- The grounds should be as tight as possible and linked to the actual requirements of the legislation, namely 'rape and incest' and 'threat to…health'.
- Potential wording could be something like, where there is *a risk of real and serious, immediate and specific harm to a woman's physical or mental health, including circumstances of rape and incest.*
- When rape or incest is alleged, reference could be made to the longstanding case R v Bourne which already provided for abortion in Northern Ireland based on a real or serious risk to the life or health of the woman or girl. This continues to be case law in Northern Ireland and throughout GB.
- Additionally or alternatively, a system of certificate/affidavit could be developed similar to wording and practice which already exists in Northern Ireland (developed by a Conservative government in relation to benefit eligibility for a woman's third child conceived through sexual crime) to deal with issues arising from allegations of a crime and a duty to report offences.

- A scan should be required as a safeguard to date the gestation of the unborn child to make sure gestational limits are adhered to.
- There should be a statutory waiting period. Many other countries across the EU have a statutory waiting period of at least 3 days between consultation (which includes independent counselling) and any abortion procedure. Under EU law there must even be a 14 day 'cooling off period' for any purchase made. Abortion is a life-ending event for the unborn child and a profoundly life-changing event for a women. A waiting period is essential.

Question 2 (Early terminations of pregnancy – part 2)

We answer "Yes" - and make the following points:-

Key points and alternative approaches

- Abortion ends a human life. A very high bar should be set to certify that the abortion falls within the regulations – otherwise they are meaningless.
- Repeated sexual abuse, human trafficking, Child Sexual Exploitation could all go unnoticed if there is unrestricted access to abortion without any data recording. An opportunity to safeguard vulnerable women could be missed.
- The vast majority of abortions happen in these early stages. It would be extraordinary not to collect data to compile statistics and identify trends. It would make annual reporting, transparency, future policy assessments and decisions almost impossible. There would be no longitudinal data on the number of women seeking abortions because of domestic violence, poverty, sex selection, lack of relational support etc over time.
- If minimal data is collected, there would be no data on repeat abortions. In GB last year 39% of all abortions were repeat abortions for women who had at least one previous abortion.
- A detailed form of certification should be completed for every abortion.
- It should be verified and signed by two doctors and serious penalties for pre-signing of forms without consultation.
- The certification should include the reason(s) why abortion is being sought in every instance.
- The certificate should verify the gestation of the unborn child.
- Failure to collect data could contradict paragraph 85 d & f of the CEDAW agreement on which the Northern Ireland Executive Formation legislation is based.

Questions 3a and 3b (Gestations beyond 12 or 14 weeks)

We answer "No" to both - and make the following points:-

Key points and alternative provisions

The NIO has a legal duty to legislate for abortions on the grounds of "threat to the pregnant woman's physical or mental health, without conditionality of 'long term or permanent' effects" (Section 9 of the Northern Ireland Executive Formation Act 2019 as per CEDAW Para 85 (b) i.)

However, this proposal goes far beyond what is required by the new law. There are several concerning issues: -

- There is no legal requirement to permit abortions up to this gestational limit on the grounds proposed. This proposal should be rejected. Abortion could be provided where there is a real and serious, specific and immediate risk to health within the lowest possible gestational period referred to in our suggested response to question 1. Beyond that, where there is a threat to life or risk of grave permanent harm abortion would be permitted as per the proposals in question 5.
- The example given, 'delayed recognition of pregnancy' as a 'health' reason for an abortion is alarming and shows how widely this clause is designed to be interpreted from the beginning. To argue that delayed recognition of pregnancy should be considered a medical 'risk to health' sufficient to end the life of an unborn child at 24 weeks gestation is truly chilling.
- It is difficult to think of circumstances which would not qualify for an abortion under the breadth of this ground. This ground is seeking to establish a 'right' or strong presumption of choice for any reason up to 24 weeks under the guise of risk to health. Indeed, there is little or no evidence of abortions being refused in England and Wales where similar wording exists under ground C of the 1967 Act, and under which 98% of all abortions take place on the grounds of risk to mental health alone. The NIO has set out some very clear and wide circumstances where abortions could be permitted under this ground. For clarity, they should also set out a list of clear and wide circumstances where abortion would *not be permitted* under such a ground.
- <u>The bar to be crossed to end a human life should be as high as possible.</u> The test for abortion here is very low – a balance of probabilities test - *'the continuance of the pregnancy would cause risk of injury…. greater than the risk of terminating the pregnancy':* it could and has been argued that simply by virtue of being pregnant, a woman's health could be at greater risk than the risk of terminating. As above, the wording around risk of injury to physical or mental health should include terms like "real and serious, immediate and specific harm" referred to in our suggested response to question 1.
- Where the abortion is being sought on the ground of mental health –two doctors could sign off, one being a consultant in mental health.

Questions 4a and 4b (Fetal abnormality)

We answer "No" to both and make the following points:-

Key points and alternative provisions

The NIO has a legal duty to legislate for abortions on the grounds of *"Severe fetal impairment, including fatal fetal abnormality, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term;"* (Section 9 of the Northern Ireland Executive Formation Act 2019 as per CEDAW Para 85 (b) iii).

Once again, the proposal here goes much further than what is required by the new law and raises some extremely concerning issues: -

- Abortion should not be permitted solely on the basis of there being something perceived as deficient with any baby. This ground should be linked to and include a "risk of real and serious, immediate and specific harm to the woman's health" in line with our response to question 1.
- This proposal could well amount to discrimination, in light of UK's obligations under the UN Convention on the Rights of Disabled People.
- Yet, and incredibly, the Equality Impact Assessment carried out for this legislation is does not note any potential negative impact on the disabled community. The deficiency of the Equality Impact Assessment to even raise this issue could be grounds for legal action. This perpetuates stereotypes against disabled people, failing to meet even the requirements of the new legislation itself.
- Annual statistics from millions of abortions over fifty years in England and Wales are substantial proof that provisions like this are interpreted very liberally to include minor disabilities. For instance a diagnosis of a cleft lip arguably has significant impact on the quality of life of a baby girl – would this constitute a severe fetal impairment?
- The phrases from the consultation document, 'profound impact' on and 'significantly limit either the length or quality of a child's life' are very subjective, wide and open to abuse. Any assessment based on the 'quality of life' should be removed.
- While we do not agree entirely, the NI Assembly working group report 'on Fatal Fetal Abnormality' from 2016 would be a more local and appropriate basis to approach cases where the baby may not survive birth than what is proposed here. It also contains helpful content about alternative pathways of care for women who want to continue to term.
- Any medical assessments should include neonatologist and pediatricians in the assessment of the baby.
- There should be statutory provision and protection of services for women and families to continue the pregnancy including close working with NGOs and parents' groups in this space.

Questions 5a and 5b (Risk to the woman or girl's life or risk of grave permanent injury)

We answer "No" to 5a and "Yes" to 5b and making the following points:-

Key points and alternative provisions

- We acknowledge that the law should allow for terminations in some limited circumstances and emergency situations where it is deemed medically necessary to save the life of the woman.
- However, the wording under 5a should be amended. It is currently framed as a balance of probabilities where arguably any pregnancy could be ended because it presents a higher risk to life than an abortion. The wording should be amended to say something much closer to the previous law like, 'Abortion is deemed necessary because there is a real and serious/grave and immediate risk to the life of the woman.'
- Rather than abortion, every effort should be made in these circumstances to deliver the baby alive. This engages the principle of double effect where the intervention is to save and protect the women, not to deliberately end the life of the baby.
- The Bourne judgement [1939] 1 KB 687, interpreted the risk to the life of the woman as including a real and serious, permanent or long term risk to the woman's physical or mental health. This was interpreted conservatively by both law and medicine in Northern Ireland since that time. These new legal proposals should be interpreted within this existing high bar of legal and medical interpretation.

Question 6 (Who can perform an abortion?)

We are responding "No" - and make the following points:-

Key points and alternative approaches

- This provision is about making abortion easier to access and facilitate but in doing so lowers safeguards.
- Abortion ends a human life – We disagree with many of the proposed grounds for abortion. However, at the very least, the bar should be set as high as possible to place meaningful legal limits around the procedure.
- This proposal would set a potentially lower bar than two doctors in the rest of GB. Abortions should be signed off by two registered medical practitioner (doctors) rather than a single healthcare professional (undefined in these proposals) who has been trained.
- Where mental health being claimed as the ground, one of the doctors should be a mental health professional.

Question 7 (Where procedures can take place)

We are responding: "No" - and making the following points:-

Key points and alternative approaches

- This proposal goes beyond the legal requirements.
- Abortion ends a human life. It should not be so easy and flexible that it becomes normalised and indifferent to any other 'healthcare' procedure.
- The proposal is likely linked to paragraph 86 (c) of the CEDAW report which states,

  "Provide women with access to high-quality abortion and post-abortion care in ***all*** *public health facilities and adopt guidance on doctor-patient confidentiality in that area."*

- Similar to question 6, this is part of a wider trend to further normalise abortions and make them available like any other over-the-counter medicines, in independent abortion clinics, universities and potentially even schools. In England and Wales around 70% of all abortions take place in independent clinics.
- Moves were announced just in the past few weeks to permit abortions via 'Facetime' consultations with the medication being collected in pharmacies. This is deeply concerning and obviously part of the direction the NIO would like to travel towards.
- Any independent sector hospitals or clinics must obtain the Secretary of State's approval and agree to comply with the Required Standard Operating Procedures set out in the Procedures for the Approval of Independent Sector Places for the Termination of Pregnancy. In addition, in England, Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 provides that the termination of pregnancy is a regulated activity. All providers of regulated activities must be registered with the Care Quality Commission CQC and meet fundamental standards of quality and safety as set out in regulations. It is not clear that these same regulations and jurisdiction of the CQC will extend to Northern Ireland – can the NIO confirm that regulatory requirements would be at least as stringent as in GB?
- The NIO should urgently clarify that abortion 'services' are not required to be provided at 'all public health facilities' and define this terminology.
- Provision of abortion services should be restricted and regulated as far as possible as a regulated activity and subject to the highest levels of data collection and transparency.
- It should not be legal to make profit from providing abortion.
- Abortion should not be available in schools or universities or high street suppliers.
- Standards and safeguards should be as high as possible.
- Statutorily required inspections and reporting should be regular and thorough.

Question 8 (Where procedures can take place – part 2)

We are responding: "Yes" - and make the following points:-

Key points and alternative approaches

- All terminations after this stage should be carried out in acute sector hospitals and we propose this applies to all abortions outside of the lowest possible gestational limit as per our response to question 1.
- Late terms abortions carry more risks and potential for complications.
- There are awful instances of later stage abortions where babies have been left to die and women suffered severe complications following later abortions and poor treatment at independent clinics.

Questions 9a and 9b (Certificate of opinion and notification requirements)

We are responding: "Yes" to 9a and "No" to 9b - and make the following points:-

Key points and alternative provisions

- A process of certification by at least two doctors should be in place for every abortion deemed legal. This is a better way to protect: -
  - doctors;
  - women from medical misdiagnosis; and
  - unborn babies from abortions which should never have taken place.
- Abortion ends a human life. The bar should be set as high as possible. Second medical opinions are common, allowing one person to make such a significant and irreversible medical decision is not wise.
- This is in line with response to question 1 where we propose no period of 'unrestricted abortion' but always linked to a meaningful and medical risk to life or health.
- This proposal would leave no meaningful checks or balances. There are news stories of abuse by doctors in England pre-signing forms for abortions even with the two-doctor rule in place and stories of rogue abortion doctors at US clinics performing infanticide and storing aborted babies outside of clinics.
- It may be true that a more significant number of people will raise conscientious objections than in other parts of UK. It is concerning that conscience is seen as a problem and barrier to abortion and worrying that the proposed solution is to reduce the bar designed to protect doctors, women and babies.

Question 10 (Certificate of opinion and notification requirements – part 2)

We are responding: "Yes" - and make the following points:-

Key points and alternative provisions

- A compulsory statutory duty to collect data is essential.
- There should be similar data collection to England and Wales but more detailed reasons why women are choosing to abort. To actually deal with the systemic issues why a woman feels abortion is her only or best option it is important to capture details of alleged abuse, domestic violence, sexual crime, poverty, lack of relational support, failed contraception etc.
- Data should be collected on the number of abortions which have been refused and why women did not meet the grounds. If no abortions are refused then this should flag up that the regulations impose no meaningful restrictions or limits on abortion and serious reviews should follow.
- Data should be collected for every single abortion and again there should be no 'unrestricted access' up to 12 or 14 weeks. It would be strange not to collect data in what would likely amount to 90-95% of all abortions if these gestational limits are unfortunately adopted.
- Data must be anonymised but published annually.
- Data is vital for systemic change – to address underlying symptoms as to why abortion is chosen. However, data collection without any stated policy direction is meaningless. Can the NIO confirm that reducing recourse to abortion is a good and legitimate policy objective which they are pursuing?

Question 11 (Conscientious objection)

We are responding: "No" - and make the following point:-

Key points and alternative provisions

- We believe statutory protection of conscience is vital, but it should provide greater protection than in rest of UK – see alternative approach outlined in response to Q12 below.

Question 12 (Conscientious objection)

We are responding: “Yes” - and make the following points:-

Key points and alternative provisions

- It is vital that there is statutory provision for conscientious objection but it should provide wider protection than in the rest of the UK.
- This would be in line with devolution and the wide margin of appreciation given to member states around abortion.
- The NIO themselves acknowledge that it ‘is likely that there will be a more significant number of people raising conscientious objections than in other parts of the UK.’ (p.23) No reliable evidence is given for this. However, this is framed as a problem to be overcome by lowering the bar to allow one person to certify an abortion. Conscience is a positive asset in a diverse workplace. It is not a problem to be solved but a value to be celebrated.
- Conscience should be protected for the entire course of the procedure, referrals and booking for abortions, administration of abortifacient medication, ancillary, administrative or managerial tasks.
- If managerial tasks are not specifically protected, a ‘glass ceiling’ will effectively be created when it comes to management and career progression for people with a conscientious objection. This is discriminatory towards people who hold a conscientious objection. It could also amount to indirect or direct discrimination on the basis of religion or political belief under existing legislation.
- There is also the very real danger of those who hold conscience objections feeling silenced and unable to properly exercise their protective rights if they are not properly enacted, endorsed and modelled by senior staff.
- A ‘chilling effect’ could also be created which could affect those who are thinking of coming into particular medical professions where they might be expected to be part of abortions. It would be important to monitor recruitment to make sure that those who hold a conscientious objection to abortion do not feel barred or excluded from these professions.
- The freedom and protection of conscientious objection to abortion is under threat in many countries. Article 18 of the UN Declaration of Human Rights and Article 9 of the European Convention of Human Rights enshrine strong protections for freedom of thought, conscience and religion. The landmark case of Batatyan v Armeina [GC], no. 23459/03 for the first time expressly held a right to conscientious objection where there was a conviction or belief of ‘sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9’. It is clear that abortion would fall into this category.
- The recent narrowing of conscience is part of a wider trend, led by some abortion advocates in an attempt to silence dissenting voices from the field of healthcare. The ‘Scottish Midwives’ case appeared to narrow the previous interpretation of conscience protection under the 1967 Act. It is our understanding that Article 9 of the ECHR on freedom of thought, conscience and religion was not argued in this case. In Sweden midwives are currently not permitted conscientious objection on the grounds of religious belief though this may be appealed to the European Court of Human Rights. We would contend that a great deal of weight should be given at this stage to Article 9 and the specific medical and religious culture of Northern Ireland so as to afford the greatest possible protections for those who conscientiously object.
- Any statutory conscience objection protection should only add protection and not take it away. It must not undermine an employer’s obligation under existing fair employment legislation not to discriminate on the basis of religious belief or political opinion.
- We have been contacted by/are aware of medical staff who have already come under pressure to administer pills ‘sure you’re just setting them in front of her, you’re not forcing them down her throat, it’s her choice to take them’. With situations like this arising at this stage, it is clear that robust protections are required to protect conscience in the long term.

Question 13 (Exclusion zones)

We are responding: "No" - and make the following points:-

Key points and alternative approaches

Under the Act, the NIO is under a legal duty to *'protect women from harassment by anti-abortion protesters by investigating complaints and prosecuting and punishing perpetrators'.*

- We want to be very clear that the Evangelical Alliance does not support harassment. We do not want to see vulnerable women or health professionals accosted or harassed outside of hospitals or clinics.
- It is vital that protests do not stop healthcare workers and ambulances doing their jobs.
- Thankfully, the criminal justice system already allows for complaints to be investigated and for prosecutions and punishment to follow where a crime has been proved.
- Protests and strikes around healthcare issues are already part of our political landscape and they are accommodated for within the existing law and regulations. Health Trusts can presumably determine what happens on their property but the freedom to assemble and protest on a public street is vital to a plural democracy.
- The power to issue Public Space Protection Orders does not extend to Northern Ireland. They have only been used in a small number of occasions in England and Wales and should not be extended here to deal with this specific instance.
- This is still a live issue in England and an application has been made for permission to appeal Ealing Council's Public Space Protection Order that creates a buffer zone around a Marie Stopes clinic. Read more here.
- Northern Ireland is well used to public protests and there are sufficient protections in place. If these Exclusion zones are brought in we are concerned about the precedent it could set locally around many other contested political issues.
- The preferred alternative would be to deal with the individual who breaks the law. Don't punish peaceful protestors, those exercising their freedom of expression responsibly. There are important European Convention of Human Rights protections under articles 9, 10 and 11 around freedom of assembly, expression and protest. We do not consider that these have been given sufficient weight in this consultation.
- Don't ban alternative help close to the places where women might need it most. There are many stories of women changing their mind because of human encounters with people who have offered real and alternative support. It is unfair to ban help for vulnerable women, as long as that help is being offered responsibility and within the law.
- Using the word 'safe zone' implies that protestors are dangerous and have harmful and ill-intent. It is unfair and disproportionate.
- It is difficult to quantify exactly what would constitute unlawful behaviour within such a zone. Would a silent gathering be considered an act of 'harassment', would offering someone a flyer, an act of public prayer?
- If these exclusion zones are introduced there must be a meaningful right of appeal to an independent judicial body.
- This proposal for exclusion zones goes far beyond what the law requires and could prevent women accessing alternative help and support.

Question 14 (Exclusion zones)

We are responding: "Yes" - and make the following point.

Key points and alternative provisions

- We are not in favour of exclusion zones, however if the NIO introduces them then we believe there should also be a power to designate a separate zone for protest. However this would obviously be in addition to the freedom to protest in any other area not covered by the exclusion zone.
- It is vital that attempts are not made to limit protest to a single area with stringent conditions which seek to render the protest obsolete. The ability to make a meaningful protest and the ability to offer alternative support to the public other than state-sanctioned abortion services must be protected.

Question 15 (Further Comments)

1. Again we state our clear opposition to the introduction of this new abortion legislation. We warn against the effects on women, children and the entire community in the short term and for generations to come.
2. Nothing in this response is to be understood as support or legitimisation for abortion in the instances contained within the proposals. BECAUSE the government has decided to proceed down this line, THEN we are engaging in a bid to see the most minimal approach possible within the new legal requirements.
3. There is no mention of services to help women continue with pregnancy and support and raise their children. This should be match-funded at least in terms of the investment being made in abortion services and annual cost to the block grant.
4. There is no mention of counselling or post-abortive care. This should be funded and provided independently from the abortion provider. There is a clear and well-documented conflict of interest if the abortion provider is offering counselling and has a financial incentive to provide abortions.
5. There is no mention of education or many of the other proposals in paragraph 86 of the CEDAW agreement
6. There is no mention of adoption and making pathways towards adoption or fostering more straightforward.
7. There are no protections in these proposed regulations about coercive abortion – no protections for women or unborn children. Now that the offence of abortion has been decriminalised, what steps will be taken to prevent this abuse of vulnerable women and children? Will the NIO consider re-criminalisation of this offence.
8. There is no mention of polices which could reduce recourse to abortion.
9. The new law has effectively legalised back-street abortions. This arguably puts women and unborn children at greater risk that the previous law which protected both lives. What does the NIO propose happens when an abortion is found to have taken place outside of the parameters to be adopted? What would be the consequence for the doctor who carries out the abortion? What plans are there for re-criminalisation or partial re-criminalisation of abortions outside of the new legal parameters?
10. The case of R v MacDonald 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’*. It is important to note therefore that ‘capable of being born alive’ is not the same as viability which might be described as capable of surviving. Babies who have no chance of surviving in the long term, may well be capable of being born alive and live for a few hours, many weeks before viability. This is an important legal and medical distinction when it comes to the criminal offence of child destruction and abortion well before 22 or 24 weeks.
11. What happens when an abortion fails and a baby is born alive? What laws prevent infanticide at this stage? Will comfort care be given in hospitals or will babies be left to die in sluice rooms as has happened? On the face of it, a criminal offence would have been committed unless it was done to save the life of the woman – what procedures will be in place to prevent such offences being committed.
12. Can the NIO confirm that as a policy they will robustly defend and retain the criminal offence of child-destruction under section 25(1) of the Criminal Justice (NI) Act 1945. We are concerned that

given the very loose framing of these proposals and the lack of meaningful safeguards, this consultation is laying the ground for a future repeal of this law, effectively allowing for abortion up to birth.

13. Will the NIO confirm that it will expressly ban abortion on the grounds of sex selection?
14. Will the NIO ban abortion on the grounds of sex or a minor disability following a private or public health screening test? For example, abortion could be removed, banned and re-criminalised following a screening test, save on the basis to save the life of the woman. This makes sense if the sole purpose of screening is to help give women and unborn children the best medical care during pregnancy, preventing a decision of abortion on the basis of disability or sex.
15. What will happen to fetal remains if the baby is aborted at home? Is it still a crime not to notify under section 60 of the Offences Against the Person Act 1861?
16. Will fetal remains be incinerated to heat hospitals? Will this practice be banned? Link to Telegraph report.
17. Will pain relief be given to fetuses before the abortion procedure?
18. Will parental consent be required for a girl seeking an abortion? Will Gillick competency be applied?
19. What will happen in cases involving statutory rape and abortion? Can the child consent to the abortion procedure?
20. How will data be tracked longitudinally?
21. Will abortions appear on health records to help track potential causality and co-morbidity when it comes to other physical or mental health issues?
22. Will independent clinics providing publicly funded services be subject to judicial review and FIO legislation?

We would greatly welcome a meeting with the NIO to discuss these proposals and the points we have raised further.

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