



Briefing Paper
on the DHSSPS draft Guidelines
*“Guidance on the Termination of Pregnancy
in Northern Ireland”*

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**Dedicated to my unborn child and to unborn children everywhere.
"THOU SHALT NOT KILL"**

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Overview

On 16th January 2007, the *Department of Health, Social Services and Public Safety (DHSSPS)* issued draft Guidelines on performing abortions in Northern Ireland. This was as a result of legal action brought by the *Family Planning Association of Northern Ireland (fpaNI)* - a pro-abortion group funded by the *DHSSPS*.

HISTORY

2001 - Court case begins

fpaNI issue a **Judicial Review** against the *DHSSPS* to 'force' them to issue guidelines on abortion. *Precious Life*, along with two other pro-life groups and the *Northern Catholic Bishops* intervene in the proceedings and resist the application saying that there is no need for Guidelines, and make submissions on behalf of unborn children.

2003 - Case dismissed

Lord Justice Kerr agrees with pro-life interveners that there is no need for Guidelines. He dismisses the *fpaNI* application.

2004 - fpaNI Appeal

fpaNI appeal the decision to the Appeal Court. Again, the *DHSSPS* defend the proceedings. However, they have **already begun** the process of investigating Guidelines. Again, the four pro-life interveners defend the right to life of unborn children.

The Appeal Court Judges allow the Appeal and say that the Department should investigate issuing Guidelines on the basis that they should be trying to **reduce** the number of abortions in Northern Ireland.

2005 - DHSSPS set up a 'Working Group' to draw up Guidelines

The Department holds the first in a series of meetings on drawing up Guidelines. Despite the declaration made by the court that guidance should only be issued "...**after appropriate consultation with concerned organisations**" none of the interested parties in the case are included in the 'Working Group'.

2007 - DHSSPS issue their draft Guidelines

In January, "**GUIDANCE ON THE TERMINATION OF PREGNANCY IN NORTHERN IRELAND**" is issued for consultation by the Department [see www.dhsspsni.gov.uk/guidance-termination-of-pregnancy-ni-draft-jan07.pdf]. Initially the Guidelines are issued only to "health professionals and interested organisations." *Precious Life* make the process known to the public by launching the "**Not In My Name**" Campaign. The deadline for the consultation is extended from March to April.

Mr Jeffery Donaldson MP, writes to the [then] Health Minister Mr Paul Goggins and has the matter put back so that it will be dealt with by the new Stormont Health Minister and not the Direct Rule Minister.

As an 'interested organisation' *Precious Life* present their Legal Submission to the *DHSSPS*. They also present **50,000 petitions signatures** collected during the '*Not In My Name Campaign*' from the Northern Ireland public calling on the *DHSSPS* to protect unborn babies and their mothers from abortion.

Senior midwife, Breda Hughes - a member of the *DHSSPS* 'Working Group' - is reported to the police for Child Destruction and Illegal Abortions following her admissions to *The Times* newspaper.

The matter is currently in limbo. No time plan has been issued by the *DHSSPS*.

Summary of main concerns

The main points of Precious Life's Legal Submission to the DHSSPS were:

1. The Guidelines GET THE BASIC LAW WRONG. The second part of the statute dealing with Child Destruction is missed out completely and the WRONG advice is given.
2. The Guidelines are based on the DEFENCE to the criminal offences of Child Destruction and abortion.
3. The Guidelines MISREPRESENT the law by including in the defence the idea that SUICIDE THREAT will automatically be a ground for abortion. This is NOT substantiated in Criminal Law.
4. The Guidelines imply there are legal grounds for the proposals from four cases dealt with in the High Court. These cases were never meant to be used as precedent in this manner.
4. The Guidelines have OMITTED CRIMINAL CASES which are relevant to the issues around Child Destruction.
5. The Guidelines REQUIRE every doctor to be able to perform abortions in each of the three gestation bands. Abortion to FULL TERM is a requirement.

Effect of the Guidelines

In effect, the DHSSPS Guidelines on abortions will:

- **allow abortion on demand, right up to birth;**
- **create an 'abortion resort' in Northern Ireland;**
- **increase the number of abortions;**
- **be a financial drain on the DHSSPS** - abortions cost money and if we are entertaining abortion seekers from other jurisdictions, along with training doctors and nurses, this will become a costly enterprise;
- **result in mothers and babies being alienated by the system;**
- **alienate doctors with a conscientious objection to abortion;**
- **result in repeated applications for Judicial Reviews;**
- **result in demands for the 1967 Abortion Act to be extended to Northern Ireland to 'resolve' the problems outlined above.**

Main concerns about the Guidelines

1. THE GUIDELINES WILL CHANGE HOW THE LAW IS 'INTERPRETED'

The DHSSPS' Guidelines cannot change the Statute Law or the Case Law pertaining to abortion in Northern Ireland. However, a change in the law is not necessary for there to be **a change in the interpretation of the law** regarding the practice of abortion in Northern Ireland.

2. THERE ARE SERIOUS LEGAL ERRORS IN GUIDELINES

Section 25(2) of the *Criminal Justice Act (Northern Ireland) 1945* is **omitted**. This section of the Act gives a statutory presumption that all babies of 28 weeks gestation are "capable of being born alive". It states:

"(2) ...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." [see page 11]

However, Section 2.9 of the Guidelines states **in error** :

...The 1945 Act does not prescribe a time limit beyond which a child is 'capable of being born alive'.

How can the medical profession be expected to trust this guidance when an error of such magnitude has been made in a fundamental principle of the law? What are the implications for the rest of the commentary when this erroneous advice has been given? It should not be forgotten that Child Destruction carries a maximum life sentence.

This error alone should justify the abandonment of these Guidelines.

3. RELEVANT LAW NOT CONSIDERED

No in-depth analysis of the criminal law and legal precedents exists in the Guidelines. No explanation or 'clarification' of the law is even attempted.

For instance, the recent criminal case of **R v McDonald Crown Court (1999) NI 150** is omitted, even though it is very relevant; is a Northern Ireland case; and deals with the offence of Child Destruction.

4. THE LAW IS NOT CLARIFIED BUT DISTORTED BY THESE GUIDELINES

As the law here is based on an EXCEPTION to the rule against abortion, hitherto there have been few cases (although more than we realised) of doctors using the exception for the proper fear of being prosecuted.

These Guidelines have the effect of grossly exaggerating the exception, and in fact making it the rule.

Main concerns about the Guidelines

5. ADVERTISING THE DEFENCE TO A SERIOUS CRIME WILL INCREASE THE CRIME

It must be remembered that the exception is a legal DEFENCE to the Criminal Offence. Therefore it should be seen in the same way as the defence of 'self defence' when a person enters your house and you may use physical force if reasonable. No one would dream of issuing guidelines to householders exaggerating the defence and concocting ways around the law, e.g. if someone breaks into your house you can kill them if they make you feel suicidal.

These Guidelines effectively exaggerate a legal loophole and then the Department will 'advertise it' in information leaflets placed in GP surgeries, pharmacies, etc. This is hardly going to **reduce** abortion as the judgment of Lord Justice Nicholson required [see page 9; point 17].

6. CASE AUTHORITIES LIMITED TO FOUR CIVIL CASES

Four cases have been cited in the Guidelines. All are cases involving the Health Service taking proceedings in the Civil Court in relation to getting directions from a High Court judge on a question of abortion. These cases are NOT BINDING on a Criminal Court. They did not deal with the issues of FORCED ABORTION [see page 8; point 9] and in each case the judge was ONLY CONSIDERING THE PARTICULAR MATTERS BEFORE HIM. In none of the cases did the judge ORDER that an abortion should take place. These cases were never meant to be used as precedent in this manner.

It is not known if this list of four cases is exhaustive. Were there no other cases of this nature ever taken before the High Courts? Were there no cases where the judge ordered that an abortion **should not** go ahead? The DHSSPS should have a record of its own court proceedings.

7. ABORTION ON THE GROUNDS OF SUICIDE / MENTAL HEALTH

These Guidelines effectively advertise the concept that there is a general legal precedent for abortion on mental health/suicide grounds. This is not strictly true as there is no criminal legal precedent and in the Civil High Court cases cited in the Guidelines, judges were dealing with the facts before them, not setting precedents for all similar cases.

Archbold is the leading criminal test, and on the subject of the defence to abortion it states:

“a person ...will have a defence, if the act which caused the death of the child was done in good faith for the purpose of preserving he life of the mother or, possibly her health”. R v Bourne (Archbold 2006 at 19-136 refers)

There is no way of regulating the abuses that will flow from the overuse of this ground. How can it be proven that someone is not suicidal?

It is anticipated that this ground will be used to cover all abortions for 'foetal abnormality' and social abortions.

Main concerns about the Guidelines

8. NUMEROUS CRIMINAL PROSECUTIONS FOR ILLEGAL ABORTION AND CHILD DESTRUCTION HAVE BEEN IGNORED

Since 1975 there have been **69 Criminal Prosecutions for Illegal Abortions in the UK**. [These statistics are held by the Office for Criminal Justice Reform. Ref: IOS 273–05]. NONE of these cases are referred to in the Guidelines. Many of these cases deal with interesting issues surrounding evidential questions and directions to the jury, etc, during trials for Illegal Abortions. There are also a number of cases predating 1975 which are still binding in Northern Ireland. There are also cases of Child Destruction.

9. FORCED ABORTION PRESENTED AS LEGAL

Section 2.13 of the Guidelines - under the heading “Consent” - provides that underage girls may be forced to have an abortion against their will. It states:

2.13 The Department ... provides guidance on the law relating to consent. Practitioners are strongly advised to read this guidance before carrying out any termination procedure ... These chapters explain ... the circumstances in which it may be appropriate to apply to the court to over-ride the refusal of consent by a young person.

The case law used DOES NOT allow for abortion without consent. In the cases cited in the Guidelines the women consented, the issue was legality. There is no legal foundation for forcing an abortion on a woman.

10. LATE TERM ABORTIONS

Abortions are illegal in Northern Ireland unless they fall within the defence that the abortion was done only for the purpose of “*preserving the life of the mother*”. As there is no time limit to the defence, there is no time limit to abortions performed using this defence. If the defence is exaggerated then the propensity for late term abortions is increased.

11. PARTIAL-BIRTH ABORTION

With no time limit, partial-birth abortion would be permitted. This most cruel and wicked abortion technique (recently outlawed to a degree in America) is used to abort a child as it is being born [see www.nrlc.org/abortion/pba/index.html]. The *Partial Birth Abortion Ban Act (USA) 2003* states in its first paragraph:

“(1) A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion — an abortion in which a physician delivers an unborn child’s body until only the head remains inside the womb, punctures the back of the child’s skull with a sharp instrument, and sucks the child’s brains out before completing delivery of the dead infant — is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.”

12. OBLIGATORY FOR DOCTORS TO BE ABLE TO PERFORM ABORTION TO FULL TERM

‘Annex C’ of the Guidelines states:

*2. Termination procedures
2.1 As a minimum, clinicians should be able to provide a termination of pregnancy by one of the recommended methods for each gestation band.*

thus requiring that clinicians should as a matter of course be able to provide for abortion to full term.

Main concerns about the Guidelines

13. NO REAL CONSCIENTIOUS OBJECTION ALLOWED

The Guidelines state that the conscientious objection clause is limited and in certain circumstances doctors **MUST** abort.

Section 4.1 of the Guidelines states:

...the right to object on grounds of conscience should be recognised and respected except in circumstances where the woman's life is in immediate danger and emergency action needs to be taken.

14. OTHER RELEVANT OFFENCES NOT CONSIDERED

There are other criminal offences surrounding the area of abortion which are not included in these Guidelines. Full information has been given to the DHSSPS in the Legal Submission presented by Precious Life [[contact Precious Life for further details](#)].

15. ILLEGALITY OF ABORTIFACIENTS NOT DEALT WITH

It is illegal to procure an abortion once the embryo is implanted in the womb. Therefore the distribution of abortifacient such as the 'morning-after-pill' should be closely monitored.

16. ILLEGALITY OF REFERRALS TO ENGLAND NOT DEALT WITH

It is illegal to refer to England for an abortion which would not be legal here, and yet the Department's own information shows that this is common practice in our hospitals. If the Department does not address this, it may be complicit in this offence.

17. NO CONSIDERATION IS GIVEN TO THE JUDGES REASON FOR ISSUING JUDGEMENT.

The Appeal Court said the Department should investigate issuing Guidelines on the basis that they should be trying to **reduce** the number of abortions.

Paragraph 117 of the judgement of Lord Justice Nicholson states:

"This judgment is written in the hope that the department will seek to reduce the number of women and girls going away to seek an abortion and to encourage those seeking an abortion in Northern Ireland to make a different choice. It must surely be the concern of all right-thinking persons in the United Kingdom that the number of abortions which are carried out is so high."

This is not addressed or even mentioned in the Guidelines. Considering the judge's clear expression of his wishes in asking for an investigation, the fact that these wishes have been so blatantly ignored is a great cause for concern.

18. JUDGE'S NUMEROUS QUESTIONS IGNORED

The judge raised numerous questions of law which he supposed would be addressed by the Guidelines. These questions were not exhaustive. None of them are addressed in the Guidelines.

Main concerns about the Guidelines

19. APPEAL COURT JUDGES LEGAL SUMMARY IGNORED

Lord Justice Nicholson expressed an opinion that the offences should be presented in a manner more fitting to a Criminal matter. The Guidelines ignore this.

20. DEPARTMENT'S OWN 'WORKING GROUP' DEALING WITH THE GUIDELINES IS TAINTED

The Department also knows that one of the members of its 'Working Group' is a self confessed illegal abortionist. Breda Hughes, secretary of the Northern Ireland branch of the Royal College of Midwives, went public with her claim to *The Times* newspaper in 2004 [see "MIDWIFE ADMITS ILLEGAL ABORTIONS" - http://www.timesonline.co.uk/tol/newspapers/sunday_times/ireland/article430524.ece]. Despite this, and a subsequent complaint to the police regarding her activities, she has not been removed from the Working Group.

Also, the intervening parties in the Judicial Review case were not invited to join the Working Group or take part in their meetings. This is contrary to the judges' decision in the case. This means the Department is in breach of the judges' order.

21. NO CONSIDERATION IS GIVEN TO THE DIFFERENCE BETWEEN 'DIRECT' AND 'INDIRECT' ABORTION

'Indirect' abortion is that which happens as a 'secondary effect' of necessary medical treatment being given to the pregnant mother. The doctor's intention is not to abort the child but administer to the mother. This is not ethically wrong and is accepted practice among all pro-life practitioners.

'Direct' abortion is the direct intentional killing of the child. This is always ethically wrong and is unacceptable to pro-life practitioners.

[see page 13]

22. DISABLED BABIES WILL BE TARGETED

Disabled babies should be fully protected by our laws. However, we now know that most abortions performed in Northern Ireland are for "foetal abnormality". These Guidelines will allow abortion on the ground for mental health /suicide to be advertised and used to cover for the abortion of babies with 'abnormalities'.

The DHSSPS already hands out a booklet to all pregnant women in Northern Ireland called *The Pregnancy Guide*. Page 105 of the booklet states:

"If tests show that your baby has a serious abnormality you may consider whether or not to end your pregnancy."

This is clearly illegal and distressing for most expectant mothers to have to read.

23. THE PREGNANT MOTHER WHO IS OPPOSED TO ABORTION IS NOT CONSIDERED

24. THE WORD 'BABY' IS NOT MENTIONED ONCE IN THE GUIDELINES

Legal Position on Abortion in N. Ireland

The following statutes contain the offences concerning abortion in Northern Ireland:

CHILD DESTRUCTION

The crime of 'Child Destruction' is contained in the **Criminal Justice Act (Northern Ireland) 1945**. The provisions of s. 25(1) and (2) of this Act — adopted from the English *Infant Life (Preservation) Act 1929* — provide as follows:

Criminal Justice Act (Northern Ireland) 1945

25. —

(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 penal servitude for life:

Provided that no person should 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. [*writer's note: this is the defence*]

(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.

ILLEGAL ABORTION

The crime of 'Illegal Abortion' is contained in the **Offences Against The Person Act 1861**. The provisions of s. 58 and s. 59 of this Act provide as follows:

Offences Against The Person Act 1861

58. Administering drugs or using instruments to procure abortion

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 be not 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 [...] to be kept in penal servitude for life [...]

59. Procuring drugs, etc, to cause abortion

Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanour, and being convicted thereof shall be liable [...] to be kept in penal servitude [...]

These statutes overlap and make it an offence to abort a child from conception to birth (including the duration of the birth). The crime is punishable by the maximum sentence of life imprisonment.

Legal Position on Abortion in N. Ireland

THE 'BOURNE' CASE

A case came before the English courts in 1938 called **R v Bourne** in which a judge stated that the defence, in the *Infant Life (Preservation) Act 1929*, of “...done in good faith for the purpose only of preserving the life of the mother” [later adopted by the *Criminal Justice Act (Northern Ireland) 1945*] might be extended to mean 'the health' of the mother .

What happened in the *Bourne Case* was that the notions of 'direct' and 'indirect' abortion [see page 13] became confused by the judge and after *Bourne* it seemed that 'direct' abortion, as happened in *Bourne*, might be acceptable in some cases. So that, previously, where the purpose of the doctor's action was **only** to preserve the life of the mother, now it might be that the action could be to directly abort the child. In *Bourne*, the doctor was not carrying out standard medical treatment to save the mothers life, or even health. He deliberately killed the child in utero. This is of course objectionable to the pro-life argument.

Ever since this case, the pro-abortion lobby have been pressing more and more to widen the defence to abortion by concentrating on the phrase “*health or mental state of the mother*”. The DHSSPS Guidelines include the concept that if a woman says she is **suicidal** because she is pregnant, then a doctor who aborts her baby may be covered by the defence.

However there is no criminal precedent for this.

The most recent version of *Archbold (Criminal Practitioners text)* reads:

“A person ...will have a defence, if the act which caused the death of the child was done in good faith for the purpose of preserving the life of the mother or, possibly her health.”

Archbold is one of the main criminal texts used by prosecutors and defence lawyers. There is a vast difference between the phrase “*possibly her health*” in this text and the concept in the Guidelines that abortion for mental health reasons is definitely a ground for abortion within the law.

THE 'BOURNE' CASE IS NOT SET IN STONE

The *Bourne Case* is what is called, *a case at first instance*. This means it was never tested in a higher court, and therefore it could be overturned by a subsequent case. Many lawyers think that *Bourne* is a weak judgement based on a misunderstanding by the judge of the real meaning of the defence. Certainly we should not be assuming, as the promoters of abortion would have us think, that the position set out by *Bourne* is set in stone. Quite the opposite, it is very vulnerable, and a test case against an abortionist here could signal the end to all abortion practice in Northern Ireland.

'Direct' and 'Indirect' Abortion

It is worth noting the difference between '*direct*' and '*indirect*' abortion. It is important to understand this difference because pro-abortion advocates confuse the discussion on abortion by merging these two concepts when suggesting that abortion is required to save a mother's life.

"**Abortion**" is any premature termination (end) of pregnancy resulting in the death of the unborn child. However, the death of the child can be caused intentionally or unintentionally. For example: in medical terms, a miscarriage is properly called a '*spontaneous abortion*'. However, this is obviously different from an '*induced abortion*' (*elective* or *therapeutic*) which is deliberately caused.

Abortion can also be categorized as '*direct*' or '*indirect*' — but there is a fundamental difference between them.

DIRECT ABORTION is when a doctor commits the act with the specific and deliberate intent to kill the child. No attempt is made to save the life of the child.

INDIRECT ABORTION is when a doctor treats a pregnant woman for a life-threatening medical condition and her child dies as an unintentional side effect. Every attempt is made to save the life of the child.

The difference is similar to the following analogy: a doctor treating a patient with a serious illness gives medication which carries an adverse risk. Unfortunately the patient dies after the treatment. The doctor did not intend to kill the patient but to save his life. However, if the doctor, knowing that the patient is seriously ill, gives medication with the sole intention of killing the patient, then this would be murder.

Doctors in Northern Ireland are not prevented from providing treatment to pregnant mothers which may result in an '*indirect abortion*', e.g. delivering a child early in a case of pre-eclampsia but the child tragically dies.

It has never been illegal to act to save a mother's life. It is a constant myth and misunderstanding of abortion law to suggest that it might be illegal for a doctor to act to save a mother's life, even if it means the baby might die.

So long as it is NOT THE INTENTION of the doctor to kill the baby, there is no crime committed, nor was there ever under the statutes concerning abortion in Northern Ireland [see page 11].

To commit any criminal offence there must be intention (*mens rea*) as well as action (*actus reus*). If the doctor's intention was to carry out standard medical care to treat a pregnant

'Direct' and 'Indirect' Abortion

woman, and the child died as a **side effect**, then no crime would be committed.

This again requires an understanding of the difference between 'direct' and 'indirect' abortion.

Indeed, giving life-saving treatment to a pregnant mother which results in the unavoidable death of her unborn child was the original intention of the defence contained in the **Criminal Justice Act (Northern Ireland) 1945** if one reads it carefully:

*"...any person who ...causes a child to die ...shall be guilty ...of child destruction ...
Provided that no person should be found guilty 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**" [see page 11].*

All the methods of abortion described in the DHSSPS' Guidelines are 'direct abortion' methods. However, there are no medical conditions requiring a 'direct abortion'.

A group of Ireland's top obstetricians and gynaecologists have stated:

"...we affirm that there are no medical circumstances justifying direct abortion, that is circumstances in which the life of a mother may only be saved by directly terminating the life of her unborn child."

The DHSSPS' Guidelines do not mention any medical conditions requiring a 'direct abortion'. In fact, when questioned at a meeting, in the presence of the writer, a Senior Medical Officer for the DHSSPS could not give one instance of when a 'direct abortion' is required to treat a pregnancy complication.

Abortion issues internationally

PORTUGAL

Guidelines were being put in place in Portugal for two years before their abortion law was liberalised.

Abortion 'guidelines' are only a means to an end. The fpaNI have never made any attempt to disguise their desire to have the 1967 Abortion Act extended to N. Ireland.

REPUBLIC OF IRELAND

The same year that the fpaNI took the Judicial Review case to “clarify” the law in Northern Ireland, the *Irish Medical Council* was prevailed upon by *Doctors for Choice*, backed by the *Irish Family Planning Association (IFPA)* to change their guidelines from an absolute ban on direct abortion.

The *Irish Medical Council* guidelines used to state:

*“The deliberate and intentional destruction of the unborn child is professional misconduct. Should a child in utero lose its life as a **side-effect** of standard medical treatment of the mother, then this is not unethical. Refusal by a doctor to treat a woman with a serious illness because she is pregnant would be grounds for complaint and could be considered to be professional misconduct.”*

The new wording replaces the old and states termination of pregnancy can occur where there is a **“real and substantive risk to the life of the mother.”** (s.24.6 *IMC Guide to Ethical Conduct and Behaviour*)

This is the same basis around which the DHSSPS Guidelines are based — **“(1) a threat to the life of the mother, or (2) a risk of real and serious adverse harm to her long term or permanent health.”** (Section 2.6)

The Irish Medical Council have recently announced their intention to review their guidelines and there is a fear that the IFPA with the assistance of Mary Harney will attempt to liberalise this section of the ethical guidelines in a copycat move of the draft Guidelines in the North.

POLAND

Poland has clearly identified the threat to its anti-abortion stance as a nation and has sought to protect its unborn babies and their mothers by legislating against the threat.

Likewise, the Northern Ireland Assembly must clearly identify the threat contained in the DHSSPS' Abortion Guidelines and act to protect unborn children.

Additional Information

1. Because the offence of Child Destruction refers to a prima facie assumption that an offence is automatically committed after 28 weeks, this sometimes leads to the idea that there is a time limit in Northern Ireland of 28 weeks.

To be clear, it is illegal to abort at any stage from conception to full term under the Illegal Abortion offence. The 28 weeks refers specifically to the offence of Child Destruction meaning that there is a presumption that a child can be born alive at 28 weeks. However this does not mean that the defence cannot be applied.

So, if a child is over 28 weeks gestation it is automatically presumed it is capable of being born alive. Therefore if it were to be killed the perpetrator would be charged with Child Destruction. However if it dies as a result of the doctor acting to save the life of the mother then the defence referred to above applies.

To exaggerate the defence to include suicide threats leaves the situation open to grave abuse and abortion to full term on demand.

2. The offences apply equally to the mother of the unborn child as well as the abortionist.

For example, in *R v Maisha Mohammed*, Manchester Crown Court, May 2007, a woman was found guilty of destroying her unborn baby. The writer has seen the full transcript of Mr Justice McKinnons' summing up in this matter and there are very interesting matters raised regarding the trial of such cases. One particular issue in this case is that the medical consultants' opinions (of which there were more than one) were dismissed by the jury as they were shown to be erroneous in the trial. Doctors should be aware of the weakness of medical notes when subjected to cross examination in a Criminal Trial setting.

This case, and other Crown Court trials of Illegal Abortion and Child Destruction, are legally binding on Northern Irish courts.

3. There have been over 69 prosecutions for Illegal Abortion in England and Wales since the Abortion Act 1967 was introduced [these statistics are held by the Office for Criminal Justice Reform. Ref: IOS 273-05. The question was also asked of Ms Caroline Flint MP by Mr David Amis MP in Westminster]. This writer can find no cases in Northern Ireland for Illegal Abortion. This gives lie to the common claim that legislating for abortion stops Illegal Abortion. Also it shows that 'abortion begets abortion'. In places where it is introduced, it will increase the likelihood of Illegal Abortion.
4. The writer is currently undertaking a work to deal with the flaws in the Bourne case and also to fully publish the current state of the Criminal Law taking into account all the criminal prosecutions in England and Wales. A matter which seems to have never been correlated or addressed to date.
5. It is this writers opinion from research into this area that there has been an ongoing campaign of strategic litigation undertaken to effect a liberalisation of the law on abortion in this country. It is a method which is being simultaneously used in the Republic of Ireland and has previously been used in other countries such as America.
6. The writer is keen that the law is clearly understood and is only too obliged to address any questions which may occur from the above.