Committee for Justice

OFFICIAL REPORT (Hansard)

Consultation on the Criminal Law on Abortion in Cases of Lethal Foetal Abnormality and Sexual Crime: DOJ Officials

8 October 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Paul Frew
Mr Alban Maginness
Mr Edwin Poots

Witnesses:

Ms Amanda Patterson	Department of Justice
Ms Karen Pearson	Department of Justice

The Chairperson (Mr Givan): I welcome Karen Pearson, deputy director of criminal justice policy and legislation division; and Amanda Patterson, who is from the same division in the Department. As usual, the meeting will be recorded and published by Hansard. Karen, I will hand over to you, and I am sure that members will then have some questions.

Ms Karen Pearson (Department of Justice): Chair, would it be helpful if we were very brief?

The Chairperson (Mr Givan): Yes. I am sure that members have had a look at the documents, so that is fine.

Ms Pearson: Thank you very much, Chair. As you said, Committee members have in front of them a paper from the Department, which summarises the draft consultation paper containing proposals to adjust, to a very limited degree, the criminal law on abortion. Members of the Committee are likely to be aware of the background to the paper, so I will just cover the main points very briefly.

The intention to consult on a change to the law was announced by the Justice Minister in December last year. His announcement followed the then Health Minister's conclusion, as I understand it, that the issue of abortion in cases of lethal foetal abnormality could not be addressed by guidelines; only by a change to the current criminal law. The Justice Minister, in his announcement and on occasions since, has emphasised that the proposals that he wishes to consult on are limited to two specific sets of circumstances.

The first is to enable a woman to choose to terminate a pregnancy when she has been told that the foetus has a lethal abnormality and cannot, therefore, survive independently after birth. The second is to provide women who have become pregnant as the result of a sexual crime with the choice to terminate such a pregnancy. In the draft consultation paper, the very first paragraph makes clear the

limits of the proposals and reminds readers that the debate is about neither the wider issues of abortion law nor the extension of the 1967 Abortion Act. It is confined solely to termination of pregnancy in the specific circumstances that I have just mentioned.

I could summarise them further, Chair, but, if you are content, I will stop at that point, save to say that it was the Minister's intention to launch the consultation this afternoon, and he has already done so.

The Chairperson (Mr Givan): If you are content, we will move into questions. I have looked at the document, and there are some areas that there will be concerns about. It is a very emotive issue, and it is important that we try to have the discussion without those emotions. The Health Minister's recent comments in the Republic of Ireland indicate that we need to try to have this debate without all of the emotion that is often put into it, while recognising that this affects people and their lives. We need to look at this from a legal point of view, and that requires us to try not to get caught up in the emotions of the argument one way or the other. That is the way that I would like the debate to be conducted, and I hope that we can do that this evening.

Throughout, the document refers to "foetal" and "foetuses". In the Department's view, at what point does the foetus become a baby? I just want to ask some basic questions initially because language is important in this. At what point is a foetus not a baby and when does it become a baby?

Ms Amanda Patterson (Department of Justice): On the advice of medical colleagues from the Department of Health, whom we consulted when drawing up the paper because we do not have the knowledge needed for this in the Department of Justice, "foetus" is used until birth; the term "baby" is used after birth.

The Chairperson (Mr Givan): How many people does the Department of Justice know who tell someone, "I am carrying a foetus", right up to the point of birth? Is that language that people use in the public domain? Will they tell their friends and their family, "I am expecting a baby; I am carrying a foetus" right up to the point of birth?

Ms Pearson: You are absolutely right, and I think that that is the language that people use about their personal circumstances, but, as Amanda said, that is the medical terminology that we were advised on.

Ms Patterson: I am conscious of the emotions involved, and I agree with what you said, Chair. We have tried to keep emotive terms out of it, and the paper stresses that.

The Chairperson (Mr Givan): Some would argue that only ever referring to an unborn child in the womb as a foetus is dehumanising. I regard it as a way to dehumanise. It makes it easier to talk about abortion when you dehumanise it. I just wanted to be clear on why the word "foetus" was used. You have taken advice from the Health Department on the language to be used.

Mr Poots: That is Latin, which is no longer used in other medical terms. Latin used to be the common language of medicine; it is no longer. It appears to have moved away from everywhere else in medicine except here, which means that you can get away from it being an unborn human being by using Latin terminology that clouds the issue.

The Chairperson (Mr Givan): At what point is the foetus, or the baby in the womb, regarded as having life?

Ms Pearson: Again, as Justice Department officials, we are not medically qualified to comment on that.

The Chairperson (Mr Givan): It is very difficult for us to engage in a document that will lead to a change in the law to determine whether the life of the unborn child can be taken away if you are not able to answer a question that is pretty basic and fundamental: when does life commence?

Ms Pearson: You say that it is a change in the law. We are in a consultation process now, Chair, and that is the document that we have in front of us. I have absolutely no doubt that a very broad range of views will come back to the Department of Justice, some raising exactly those points. We may get other views as well, but the purpose today is to share with you the contents of the consultation process.

The Chairperson (Mr Givan): Is there much point in my continuing with questions if the purpose of toady is only to take note of what you are doing? These are simple questions that, I think, the public would expect the Department to have considered before engaging in a public consultation.

Ms Pearson: We are here, and we will answer any questions that we can, Chair.

The Chairperson (Mr Givan): OK, but the document refers to this. Indeed, the Department's preferred proposal talks about giving the medical profession the powers to determine a "foetal condition" that is "incompatible with life". If you are not able to answer a basic question on when life commences —

Ms Patterson: In that context, it is incompatible with life independently after birth; it is incompatible with independent life. We use it in those terms.

The Chairperson (Mr Givan): So the Department's clear view is that life commences as soon as birth has taken place, but before that —

Ms Patterson: In this context, yes, absolutely. The change to the law would be to allow the choice of an abortion or termination to a woman who has been told that the foetus that she is carrying will not have an independent life if it goes to term and is born and that no medical intervention is possible to improve the chances of survival. It is on the basis that the foetus is alive until such times as it is not, whether that is at the time when the woman would miscarry, at birth or after birth.

The Chairperson (Mr Givan): I just want to be clear. The Department is able to say that as soon as a birth has taken place, there is life, but you will not get into a discussion about when life commences in the womb. There is obviously a debate: life starts from conception or the foetus does not really start life until it has developed neurological functions and so on at eight, nine, 10 or 11 weeks. Some people say that life begins at 20 weeks; others say that, under the law, which is not implemented here but is in England, you can have a termination up to 24 weeks, but it is worth protecting after 24 weeks. So, just so that I am clear on this, is the position of the Department that it will not engage in a discussion about what life is pre-birth?

Ms Patterson: No, I do not think that this consultation is about that.

The Chairperson (Mr Givan): Define for me what it is to be compatible with life.

Ms Patterson: All we can tell you is that, on the advice of the medical professionals to whom we talked, there is, as of now, a point in a woman's pregnancy, usually around the 20-week scan, at which they can determine and make a clinical judgement that there is a lethal abnormality that will prevent any child born having an independent life outside the womb. That decision is made as of now. The proposal is that, when a woman is told of that prognosis, it opens up the opportunity for her to choose to have a termination of her pregnancy in Northern Ireland rather than the situation now, which is that, if she wishes to choose that route, she will have to go somewhere else in the United Kingdom to have it. That is the difference, and that is what the consultation is about. It is not about a different procedure; it is just that we are trying to open up the opportunity for a woman to be allowed to have an abortion in Northern Ireland.

The Chairperson (Mr Givan): An assessment of whether independent life outside the womb is sustainable is subjective — it has to be. People could make the assessment based on one day, one month, one year, two years or 10 years. Where do you draw the line on the incompatibility with what someone's definition of life would be?

Ms Patterson: We have looked at different options. You will see in the paper a number of options, and one relates to the very question that you raise and the very difficulties that you imply exist in using that route. The Department has discarded that option as not being the safe way to go. It is, therefore, relying on the clinical judgement of the medical professionals, who make that judgement now, on whether there is any medical intervention available at the point of birth that could make any difference to the condition of the child, if it is born. If the decision is that there can be no medical intervention, that is the point at which, we suggest, the law should accept that and allow the opportunity of a termination.

The Chairperson (Mr Givan): The current position is post-birth. The Department is trying to say, "Let us bring that decision into pregnancy".

Ms Patterson: No, as of now, the decision is made at the 20-week scan. It is normally at that point that it becomes clear that there is an abnormality that will be lethal. The difference is that the only choice now is for the woman to continue with the pregnancy or go to another part of the United Kingdom if she wishes to terminate. We are saying that that option should be available to her in Northern Ireland rather than her having to travel.

The Chairperson (Mr Givan): Why should the medical profession be entrusted with the decision on what a life is and whether a life is worth keeping?

Ms Pearson: It is within their professional competence to give that advice to a woman at that point in her pregnancy. That is what they do.

The Chairperson (Mr Givan): Under this proposal, we say that it is for the medical profession to decide the incompatibility or otherwise with life.

Ms Patterson: No, I think that the medical profession will do what it does now. Medical professionals will make the decision on whether the condition is fatal or lethal and tell the woman the very sad news that there is nothing that can be done if the pregnancy goes to term and that they cannot intervene in any way to make any difference. That is what they do now and what they will continue to do. The difference is that we will look to change the law to allow a woman to choose whether she wants to continue with the pregnancy to term — some people will, undoubtedly, want to do that — or terminate it at that stage. It is exactly the same as the situation now except that the law would allow a woman to make that choice.

The Chairperson (Mr Givan): Do you accept that the position now is that the law protects the unborn child in this scenario?

Ms Pearson: Some women in that scenario have a termination but have to leave Northern Ireland to do so.

The Chairperson (Mr Givan): That is not the question, though. The question is whether, in Northern Ireland, the law protects the unborn child that has a lethal/fatal foetal abnormality.

Ms Pearson: The law prevents the woman having an abortion in Northern Ireland.

The Chairperson (Mr Givan): Yes. Have you looked at the legislation and asked for an assessment of whether what you seek to legislate for would mean discrimination? There is protection for people with disabilities. Is there not the potential that you are asking for legislation that would allow discrimination against unborn children with disabilities?

Ms Patterson: I think that the difference is that the change that we propose in the consultation would not affect a prognosis of having a child with disabilities. It is a very different set of circumstances to the way in which the law is formed in England, Wales and Scotland, where that can happen. Here, it would be only where there is a medical diagnosis of a fatal/lethal abnormality and life cannot be maintained outside the womb.

The Chairperson (Mr Givan): Does the medical profession ever get it wrong?

Ms Patterson: I cannot answer that question for you.

The Chairperson (Mr Givan): This year, a friend of mine was expecting twins and was advised in the Royal Victoria Hospital that she should terminate one of the twins to give the best chance of survival to the other one. She did not. Every time she was at the hospital, she was advised that she should, right up to the point at which she went into the delivery room, when her hand was taken and she was told, "You realise that this will be very bad news for you today". The twins are alive today. Throughout every step of the process, the medical profession told her that, by not terminating one, she could lose both and that she would definitely lose one. She was told that right up to the point of delivery. The child came out screaming. It had complications but is alive today and only a number of months old.

Ms Patterson: It is wonderful that that happened, but it is a different set of circumstances from what we are talking about here.

Ms Pearson: The consultation process will, hopefully, give us a good response. We are bound to have lots of different cases described to us as we go through the consultation process. We also propose that two medical opinions must be given in the circumstances that we outlined.

The Chairperson (Mr Givan): Does the Department of Justice believe that an unborn child, a foetus with a lethal/fatal abnormality, should have the protection, which the law in Northern Ireland currently affords it to be kept safe, withdrawn on the basis that it will live for a day or may live for only two days? Is the Department's clear position that such a life, even if it is only for one day, should not be protected?

Ms Patterson: This is a consultation paper, and I think that the Department's proposal is clear on what it expects to happen.

The Chairperson (Mr Givan): There have been cases in the media of people wanting to have the child. Others will use an abortion as a contraceptive — there is no doubt about that. Some people wanted to have the child; others had to travel and have an abortion. However, in all cases, there was grief. Has any research been done or assessment carried out on whether an abortion reduces the grief of losing a wanted child and compared that with those who get perinatal or palliative care?

I will give you another example. A friend of mine had a child whose organs were growing outside of its body in the womb, and she was told exactly what you are telling me now: the child would not be sustainable and was incompatible with life. I have never asked her, so I do not know whether she was offered a termination. Some would say that there has been a grey area in the guidance over the years, and I have never asked her. Sadly, the child lived for only a couple of hours. It was tragic. However, my friend found that, having gone through that, she was able to grieve in a way that she does not believe that she would have been able to grieve had she, in her view, accelerated that process through an abortion. Has any work been done to look at the best way of dealing with these tragic cases?

Ms Patterson: The fundamental issue is that there is no proposal or recommendation that a woman should have a termination at any particular stage. The issue here is choice, and, for women who prefer to do what your friend did, it will make no difference. This change to the law will have an impact or effect only on women who decide that carrying a pregnancy to term, in those circumstances, is more than they can cope with. That is why the Department produced the guidance. Nobody is saying that anybody should have a termination in that set of circumstances.

Mr Frew: All of us realise the gravity of the issue and the serious situation in which we find ourselves. None of us should make light of the trauma and tragedy of these cases. Human life is at the very heart of this, and, in some cases, it is at stake.

The consultation document states that you prefer option D, which is about what is compatible with life. Although the question has been asked and answered, I will ask it again in a different way to help my understanding. In any clinical judgement, there have to be thought processes and consultation. The document states that two judgements will be sought. That could take time. I know that the 20-week scan is an important aspect of this. In your mind, is that the correct time at which medical professionals should and could make a judgement? That is the first part of the question. The second part is this: what are the arguments for three, four or five judgements? In which other health practices are second and third opinions sought? Is only a second opinion sought in most cases?

Ms Patterson: In answer to the first part of your question, we are guided by what the medical profession can do. We have been told that the timing can differ. When it becomes obvious that there is a problem depends on the condition and its severity. As far as this consultation is concerned, our advice is that 20 weeks is when it is most likely that doctors can make a fairly accurate prognosis. However, we may hear something different during the consultation.

Mr Frew: Let us tease out that aspect — I am sorry for butting in, and I will not forget the second aspect of the question. Let us say that 20 weeks come and go, but complications arise or, for some other reason, further scans or investigations are needed or something new crops up. Will there be a deadline for when an abortion can or should take place?

Ms Patterson: Again, we have not got anything definitive on that in the consultation paper. The answer to that is probably not, simply because, if you have a diagnosis or prognosis that there will not and cannot be independent life after birth, it will make no difference if that is determined at 18 weeks, 20 weeks, 22 weeks or 24 weeks. There will never be a baby that will live at the end of it. I assume that you are talking about foetal viability and the 24 weeks at the minute in the 1967 Act. That does not play a role in this.

An obstetrician talked about this on the radio at one point. He said that, where it is a question of early delivery or delivery at term, it makes no difference to the outcome. Does that make it any —

Mr Frew: Yes, but let us tease that out even further. This may be an extreme case, and it may not happen — I am not educated in this field, and you will appreciate that I am asking questions for the purposes of understanding. I understand that clinical judgements will be made early, but, if there is no time limit, and those judgements are not made early for some reason, you could have a scenario in which a person could have an abortion a week before or even on the same day as her due date.

Ms Patterson: Would you call that an abortion? It is a —

Mr Poots: It is a termination of pregnancy.

Ms Patterson: It is a termination of pregnancy.

Mr Frew: That is the fine line, and it could have massive ramifications.

Ms Patterson: I appreciate what you are saying and think that people will probably want to talk about that. In the terms that I am trying to explain it — the way in which the obstetrician explained it — the outcome would be no different. The outcome would still not be a live birth at the end, whether that were done at 20 weeks or 30 weeks.

Mr Frew: You would still have a very unfortunate death. However, it could be a completely different scenario and experience.

Ms Patterson: Yes, absolutely. I think that it comes back to the point that what we are trying to put forward is a choice for a woman to make. That is all. All the difficulties that you raise are difficulties that happen now. The difference is that we are trying to say that a woman who was given that news at whatever point in her pregnancy can make the decision herself as to whether she wants to terminate the pregnancy. If she makes that decision now, she will have to go somewhere else to do it. We are asking whether she should be able to do it here.

It makes no difference to the outcome at what stage that happens. In those terms, it is very different from the abortion law in the 1967 Act, which deals with the termination of a pregnancy that would lead to a normal birth.

Mr Frew: OK. The second aspect of my question — I am sorry that there have been three supplementary questions since — was around clinical judgements, second opinions and whether there are cases in which a person would get a third, fourth or fifth opinion.

Ms Patterson: We have listened to medical opinion and have suggested that two doctors should agree on the prognosis to give reassurance to the woman. That would also give reassurance to the medical practitioners that they are in agreement, because nobody wants to make that decision and judgement without some element of reassurance. I am sure that that is something else that will crop in the consultation and that you will hear from key stakeholders on that.

Mr Frew: I have a final question, Chair. They are two very serious issues, and I can understand that Departments and Ministers would want to consult on them, and this may have a political answer, why have we put two serious issues together in one consultation? One is on abortion for sexual crime and one is on foetal abnormality. Why have they been placed together?

Ms Patterson: They are both about the criminal law on abortion. If you are asking why they cropped up at the same time, I think that the answer is that there was a lot of public debate a year ago about fatal foetal abnormality. At the same time, there was a degree of concern expressed to the Department from various stakeholders and individuals that there was also a need to look at the

availability of that choice for women who had been raped or were the subject of incest and had a pregnancy as a result. They were both elements to do with the criminal law on abortion, so the Department put them together.

Mr Frew: Although both are very serious, they are two very different scenarios.

Ms Patterson: When you look at the paper, you will see that, although we have made a recommendation and a proposal to deal with the law on termination of birth for fatal foetal abnormality, that is not the case for sexual crime, because there is an acknowledgement that it is a very complex and complicated area. Some of the issues are being opened up for discussion and consultation in the paper, because it is so complicated an area. It sounds quite an easy, straightforward thing to say that you make the choice available to women who have become pregnant as a result of rape and incest, but sexual crime is more than just that. There are elements on what particular offences and what type of sexual offending you include and how you gatekeep or create safeguards around that. The second part of the consultation paper looks for opinions and views on that.

Ms Pearson: It is probably in the Minister's mind that they should be put together so that people can see the totality of the issues that he is thinking about in one place and that a series of different consultations does not appear that might make people conclude that he was looking at the issues in a more rounded way. He is very clear that these are the only two issues that he is considering at the moment.

Mr Frew: You can understand — sorry, Chair, for going on — that there is a lot of emotive passion involved and that people will want to respond because of their experiences, but those experiences might be on one issue and not the other.

Ms Pearson: True.

Mr Frew: It could go some way towards emotionally distorting the way in which you might answer either of the consultations.

Ms Pearson: You may be right, but we will have to see what transpires. The paper itself is firmly in two parts, and we have used the questions raised as a guide to focus responses on those areas. The questions are in two separate parts as well, so people can respond purely to one part. They can respond to the part on fatal foetal abnormality and not to the other. We will just have to wait and see how it goes.

Mr McCartney: Thank you very much, Chair. Your opening remarks were about trying to keep this emotion-free. It is a very complex issue. It is certainly something that should be consulted on, and, in that respect, I welcome the announcement today. The consultation process is obviously open to the public, but do you have a list of statutory stakeholders that you —

Ms Patterson: Yes.

Mr McCartney: Will there be a public aspect to the consultation, or will it all be a dialogue between the Department and stakeholders?

Ms Patterson: We have asked for responses to the document that was launched this afternoon, but we will treat it as a dynamic process. If there is a need for a different sort of engagement, or if groups want to talk to us, we will be quite happy to accommodate that.

Mr McCartney: You are happy to do that. It does not have to be in the form of a written submission. Is the Department willing to meet, say —

Ms Patterson: Yes.

Mr McCartney: — the medical profession or individuals?

Ms Patterson: Absolutely.

Mr Poots: What, in your view, do most of the people who have a child with a foetal abnormality actually want?

Ms Patterson: What do most of them actually want —

Mr Poots: I suggest that most of them want a healthy baby.

Ms Patterson: Absolutely.

Mr Poots: By and large, none of those people really wanted a termination; rather, they wanted a healthy child.

Ms Patterson: Absolutely.

Mr Poots: Did any of your discussions with the Department of Health indicate to you that there is work in progress that is engaging the Scottish and Welsh Governments? The Department is putting pressure on the national Government as well, but I was looking at the Scottish Parliament and the Welsh and Northern Ireland Assemblies proceeding on their own to fortify flour with folic acid, which would actually eliminate the greater number of cases in which hydrocephalus and anencephaly result. Are you informed of that?

Ms Patterson: No.

Mr Poots: I am surprised — indeed, I am shocked — that, if due engagement was taking place between the Department of Justice and the Department of Health, officials did not inform other officials that that was the case.

Ms Patterson: That is probably because we were consulting with the Department of Health on a change to the criminal law, not on what are very much health issues and policies.

Mr Poots: Nonetheless —

Ms Patterson: That is obviously something of concern, but it does not take away from the need to look at how the criminal law operates in these circumstances.

Mr Poots: Nonetheless, if we are looking at the potential of dealing with perhaps as many as 70% of these cases to give the parents what they want, which is a healthy child, I am surprised that we have reached the point at which we are going out to consult on an issue in the absence of knowledge of all that is going on to deal with it. It is a significant step if that actually happens.

Ms Patterson: That is largely because it still would not completely do away with the fact that there will still be cases now. It will not deal with a problem that is here and now and current. Even with this, it is still a matter of choice, not a matter of women being expected to have a termination. It is to allow a woman to have the choice.

Mr Poots: On the issue of rape, do you recognise that we are not in the same place as the Republic of Ireland, for example?

Ms Patterson: In what regard?

Mr Poots: The availability of the morning-after pill and coil.

Ms Patterson: Yes.

Mr Poots: What is your understanding of, in those circumstances, the length of time that can transpire for those things to be effective?

Ms Patterson: The morning-after pill is provided within the first seven days. We are looking at the situation in which there may be cases in which women do not discover that they are pregnant until after that.

Mr Poots: If you are raped, you can avoid a pregnancy by taking action.

Ms Patterson: That is in the paper.

Mr Poots: I am not being judgemental about it.

Ms Patterson: It references all the other services that are offered by the Sexual Assault Referral Centre (SARC) as well.

Mr Poots: It is the worst possible circumstance for a woman who has been raped to find herself in. The incest one is more difficult to deal with.

Mr A Maginness: Thank you for your presentation. I want to understand where this comes from. Yes, there was a public issue last year, and media attention was given to it. However, by and large, that issue was not sustained in the public discourse. I wonder why the Department decided to move on fatal foetal abnormality.

Ms Patterson: It was as a result of a commitment made by the Minister last December. At that point, he said that he would consult on the criminal law on abortion for fatal foetal abnormality in response to a decision made by the then Health Minister that it was not something that could be addressed through guidelines surrounding the current law. Therefore, the commitment was made last December.

Mr A Maginness: I do not understand why. It was a media issue for a while, I accept that. There was a lot of talk about it, and so on. However, it died down, and there was no real public discourse following on from that, yet the Minister then chose to resurrect the issue and go out to public consultation.

Ms Patterson: No, I do not think that he resurrected it. The issue never really went away. The commitment was made last December, and that commitment was made public. Although there may not have been continuing discourse in the media, the issue is still there. There are still women facing those circumstances, and there are still women who have to travel to the United Kingdom to access termination. We have had —

Mr A Maginness: People are travelling to the United Kingdom to have terminations in cases of fatal foetal abnormality.

Ms Patterson: Yes. We have had letters —

Mr A Maginness: Have you the figures for that?

Ms Patterson: Sorry.

Mr A Maginness: Do you have figures for that?

Ms Patterson: I do not have figures for —

Mr A Maginness: On that specifically.

Ms Patterson: No, the figures supplied in the consultation document tell you the number of people who provide Northern Ireland addresses when they have an abortion in England, Wales or Scotland. You will find the figure there for the number of women who have gone to England after the gestation period of 20 weeks.

Mr A Maginness: Yes, but on this specific issue.

Ms Patterson: No. The figures are not collected on that specific issue.

Mr A Maginness: The other issue follows on from what Mr Frew said and relates to abortion consequent to sexual crime. Where did that come from?

Ms Patterson: That was also an issue that was being brought to the attention of the Department through various routes. The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) —

Mr A Maginness: When did that happen?

Ms Patterson: That was last year.

Mr A Maginness: Can you give us —

Ms Patterson: You will find it in the consultation paper. The Northern Ireland Human Rights Commission has also suggested that it is an area of law that requires some consideration, given that the —

Mr A Maginness: Are you saying that the Northern Ireland Human Rights Commission has a view on abortion?

Ms Patterson: Yes.

Mr A Maginness: What position does it adopt?

Ms Patterson: Again, you will find that in the consultation paper. It is saying that there is an element of concern that we would be open to challenge in the European Court because there is not a choice for women to have a termination in these two sets of circumstances. It is in the paper.

Mr A Maginness: And there is jurisprudence in relation to the European Court.

Ms Patterson: Yes

Mr A Maginness: In relation to sexual crime, it seems to me that there was no public discourse about this aspect and that this has been added to the fatal foetal abnormality issue. I do not understand why it has been added in the manner in which it has. There was some argument put forward that the Minister of Health said that fatal foetal abnormality was a matter for the Department of Health, or something of that nature. That was the reason why the Department of Justice sought to run with this issue. However, I do not understand how you come to a decision to consult on sexual crime.

Ms Pearson: Again, the consultation paper will reference that and set out why we did it.

Mr A Maginness: I have looked at that and I cannot find any real reasoning for it.

Ms Patterson: Sorry, the reasons are those I have just given you. Approaches were made to the Department and there was some public discussion about it and concerns about the fact that women were finding themselves in situations of being pregnant as a result of rape and incest and did not have the opportunity to access a termination other than by travelling to England. As I said, this is not a proposal or recommendation from the Department but is an opening up of the discussion about how the law should treat such cases.

Mr A Maginness: I have a final point. The introduction states:

> *"It is not a debate on the wider issues of abortion law – issues often labelled as 'pro-choice' and 'anti-abortion'."*

Why do you say "anti-abortion"? Why do you not say "pro-life"?

Ms Patterson: I think it says "pro-life".

Mr A Maginness: My copy says "anti-abortion".

Ms Patterson: In the introduction?

Mr A Maginness: In the introduction that I have got here. Maybe I have got a different copy.

Ms Patterson: We have changed the introduction. It is now "pro-choice" and "pro-life".

Mr A Maginness: What?

Ms Patterson: It is now "pro-choice" and "pro-life".

Mr A Maginness: Not in my copy.

Ms Patterson: No. That was an earlier copy that was sent out.

Mr A Maginness: I received it the other day.

Ms Patterson: Was that a week ago?

Mr A Maginness: You can check it if you want, if you do not believe me. It goes on to state:

> *"There is no part of this document which seeks to open up this conversation,"* —

of the wider issues of abortion law —

> *"and no response to this document which addresses these wider issues will be considered relevant to any proposed reform of the criminal law on abortion".*

However, it does open up the whole conversation in relation to abortion. That is the reality of this consultation document.

Ms Pearson: It is not the intention.

Mr A Maginness: Sorry?

Ms Pearson: It is not the intention.

Mr A Maginness: It is not the intention, but it is the effect of this consultation document to open wider issues in relation to abortion. Just finally, the Department takes a pro-abortion stance in relation to —

Ms Pearson: Pro-choice.

Ms Patterson: Pro-choice.

Mr A Maginness: There is talk about permitting abortion for mothers whose babies have a fatal foetal abnormality.

Ms Pearson: Yes.

Mr A Maginness: That is pro-abortion.

Ms Pearson: That is pro-choice. That is the way that we are framing this recommendation. I do not think that you will find anything in here where we would encourage or promote a particular act —

Mr A Maginness: I just go back to that interesting sentence that was changed:

> *"It is not a debate on the wider issues of abortion law – issues often labelled as 'pro-choice' and 'anti-abortion'."*

You did not say "pro-choice" and "pro-life" in the original; it was "anti-abortion".

Ms Patterson: It has now been changed. The document published today says "pro-life".

Mr A Maginness: Just hear me out. It seemed to reveal an attitude of mind on the part of the Department in relation to this issue; that you are actually pro-abortion in certain circumstances.

Ms Patterson: I think that the Minister will be interviewed on the media this evening and will be quite clear on what this consultation is about. He will make clear that his attitude, and this consultation paper, is not about the debate you are now saying; it is about changing the law in these very narrow set of circumstances.

Ms Pearson: Can I agree with you in one respect; I think it is inevitable that we will attract a very wide range of responses to this document that will go beyond these two issues. You are right; it is inevitable that there will be a lot of opinion coming our way on this. However, the Minister is very clear. He is interested in consulting on only these two issues. That is why he has put these words into this document. Anything else that comes in is not going to be relevant to his thinking during the consultation phase.

Mr A Maginness: I am not very convinced by that. Anyway, we will see.

The Chairperson (Mr Givan): Ronald Reagan said, when he signed off this law in Florida and once he had finished his presidency, that the biggest mistake in his life was when he changed the abortion law in Florida. He had the best intentions, as he saw it, and it opened the floodgates.

Those who drafted the 1967 Act may well say that it had the best intentions, yet it is abortion on demand. It is not an effective piece of legislation. Minister Ford can have, in his mind, the best intentions, but history has shown that that has never actually materialised. When you change the law, the courts will then also exercise their role, and it becomes abortion on demand. It is a very difficult issue to deal with and protect against. Parties in the Assembly have all decided that nobody wants the 1967 Act. When you start changing the law, you invite this to come your way, and I think that it is an incredibly complex issue to deal with.

I am concerned about even the proposal that you are recommending — "incompatibility with life". I do not see the safeguards that will protect that from becoming some kind of moveable observation of the medical profession. You are not recommending that we should codify and say, "anencephaly: abortions allowed", and other fatal forms of abnormality. That is not the recommendation from the Department. The Department wants the Assembly to legislate for a very broad recommendation, where we will not have any ability, as legislators, to guard against that. It will be for the medical profession to decide. For now, you are responsible for defining what is "incompatible with life". That is a dramatic change from the current criminal law on abortion that protects the unborn child, whether perfectly compatible with life, may have a disability or may have a fatal foetal abnormality. The law protects in those circumstances. To change that is going to be a very difficult ask for the Department to try and put through the Assembly. I have no doubt that Committee members will try and look at this, and we will do it as best we can; but, this is a very difficult issue that you are putting before the Committee to deal with. I have no doubt that the Committee will deal with it.

The expectation being made, and some of the language being used — that the Department of Justice does not know when life commences — shows that that is where a fundamental flaw is already visible. You cannot even say when life exists. Your defence, for the purposes of the Department of Justice, is going to be that it is only a matter for you after birth and that, for pre-birth, you are not able to define when life has commenced. That matter will be passed to the Department of Health.

Ms Pearson: What we have said, Chair, is that it is not in our competence, as two non-medical departmental officials, to give a view on that.

The Chairperson (Mr Givan): But you are asking us to change the law.

Ms Pearson: With respect, we are in a consultation phase. If it came to the point where we were bringing forward proposals on changing the law, everything you have said would have to be fully understood, worked through, put down as a proposal with safeguards and open to scrutiny and debate here. At the moment, we are asking whether option D would appear to be the right one in this context. The second half of the paper seeks opinions on sexual crime.

Ms Patterson: What I tried to say earlier was that, in the context of the consultation paper, the argument about when life commences is not part of the proposal or consultation. That is one of the

wider issues of the pro-choice/pro-life argument. It is not relevant to this particular consultation. That is what I meant. I am sorry if I was not clear.

The Chairperson (Mr Givan): I understand what you mean but I disagree with it fundamentally. I think it goes to the very heart of the issue: when does life commence and at what point should a state be protecting life, particularly those who are the most vulnerable? It is a difficult one to deal with. For people who are alive, in the sense of not in the womb, there is an abundance of legislation, and rightly so, to protect against discrimination, particularly for people with severe disabilities. Governments will put a huge amount of resource into giving them additional help to try to give them as much fulfilment in life as possible. The law currently protects unborn children with severe disabilities but the Department of Justice is sending out a message that the most vulnerable and severely disabled will not be afforded that protection under the law if we proceed with this. I think that, as a society, we should be able to do better than that. A progressive society should be able to do better than that.

Ms Pearson: As Amanda said earlier, it is not about disabilities. We are certainly not making a proposal about termination where there is disability and viability of life. It is just not in that territory.

The Chairperson (Mr Givan): But, it is all about a judgement as to the compatibility with life and to define what it is to be compatible with life. A child with anencephaly can breathe independently and does not need a ventilator for its lungs to function. It is not going to live for a very long time — there is no question about that — but should we, as a society, make a judgment to say that, for one hour, one day, two days or a week, that life is not worth protecting. This is what the consultation document is asking the public to engage in. I welcome the public debate that this will generate, and people will be able to give their views. However, ultimately, a change in the law would ask society to say that we are no longer going to protect life, even if it is only for one hour.

Ms Patterson: What the Department wants to consult on is whether women should be given an opportunity to decide, in their own particular circumstances, whether the circumstances that you have just outlined are something that they want to continue with until the point of natural delivery or whether they want to have a termination of pregnancy. The law will not change any of the clinical judgments or processes leading up to that. The change that the Department and the Minister are asking to be consulted on is whether the law should allow a woman to make the choice as to whether a termination of pregnancy is what she wants to do in her best interests.

The Chairperson (Mr Givan): I have put this question: does the law here protect? You have said that it does not, because people can get on a plane and go to England — I am paraphrasing and can be corrected if I am wrong — and that that is part of the rationale as to why we should do this. If you apply that logic, then the document does not even come close to dealing with those who are travelling outside this jurisdiction. If you apply that logic, and if it is all about preventing people from having to get on a plane to go across the water, we should extend the 1967 Act to Northern Ireland.

Ms Patterson: I think it is slightly different, because we are talking about women who, you said yourself earlier, want a healthy baby and are, in extremely distressing circumstances, having to make arrangements to go to England and pay for an abortion there, which adds to the stress and trauma of an already very seriously upsetting set of circumstances. So, I think that that is the difference in what the Department is consulting on.

Mr Frew: May I ask a wee supplementary question? Chair, you explored the incompatible with life aspect earlier. The Department of Justice does not really seem to know the definition of that phrase. Medical professionals will have varying degrees of judgement on that. Because of that looseness, is there a danger that "incompatible with life" could well become "incompatible with that lifestyle"?

Ms Patterson: I think that the paper goes into what that means in slightly more detail. It says that the proposal is to deal with a situation whereby:

> *"if the child were to be born at full term it would be unlikely to survive birth, or unlikely to be capable of maintaining vital functions after birth, and a clinical judgment is made ... that ... it is impossible"*

to intervene,

> *"to improve the chances of survival."*

This is a consultation document, a proposal based on our consultations with medical professionals. We have tried to make this law base itself on the circumstances already in place now, the procedures and processes — the clinical and medical procedures — for dealing with cases of fatal foetal abnormality. This is not based on something that does not happen now. The difference is that we would offer the opportunity to the woman to make a choice at that stage. This happens already; at the minute, this clinical judgement is made and the woman is told. The only difference is that she is not told that, if she wishes to terminate her pregnancy, it is something that she has to deal with separately. Everything else exists as of now.

Mr Frew: Yes, but that is a clinical judgement in order to inform someone of a condition. It becomes a completely different thing when you are giving that judgement and the outcome could be something different and when there could be an action at the end of it. It is a different thing.

Ms Pearson: The action is there already, if the woman chooses to go to England.

Mr Frew: Yes, but it is not on the medical professionals. It is not on them, if you know what I mean. There will be an immense pressure applied, even on the two professionals.

Ms Patterson: That is not what we were getting from the advisers. There was no indication that this would present an immense pressure, provided there is an ability for two independent practitioners to agree on the prognosis or diagnosis. In another part of the consultation document, there is also the right to conscientious objection, so that doctors and nurses who do not want to treat people in these circumstances will not have to do so. We were not getting the sense that you are talking about: of it being an added pressure.

The Chairperson (Mr Givan): Why has the Department not consulted on euthanasia as part of this? The same argument is completely applicable to the end of life. There is a campaign starting in the Province around that. This would have been an apt time to deal with it. Why not? It is the same issue around criminal law, protection of life and incompatibility with life, when you are told that there will have to be an intervention and your human dignity is going to be degraded. Rather than allow you to die naturally, and we will give you palliative care and try to comfort you at that time, why not consult on giving someone the right to choose to die?

Ms Pearson: It is just absolutely not part of this, not part of the Minister's thinking. I would say that it is a completely separate issue as well. He is not consulting on it because it is just not part of his thinking at all.

The Chairperson (Mr Givan): Why not? This start-of-life, end-of-life all goes to the sanctity of human life at the different stages of that development, so some people are going to ask why has he not taken this opportunity to consult on something that you can apply the exact same logic to as you have applied here.

Ms Pearson: If it comes up in the consultation, we will have to answer that. At the minute it has not come up, it is not part of this and I have not been looking at it.

The Chairperson (Mr Givan): Do you think it is wise that the Minister is going on to the Nolan programme to talk about this, given the reckless way in which the BBC has handled this issue? Do you think that that is the way to get a debate around this issue where it is not being driven through emotion? That is the way in which the BBC has decided to tackle this issue. It has clearly taken an editorial decision that it will be emotively driven. Is that really where Minister Ford should be?

Ms Pearson: That is absolutely not where he is. You will see that he is engaged with a number of outlets so that his views are properly understood across the widest range of outlets.

The Chairperson (Mr Givan): Given that the BBC has taken a view that it is pro-abortion — that is undeniable; it has done broadcasts from the Marie Stopes clinic; it has decided to drive this at an emotional level — is that really going to help generate an informed public debate on this issue driven at a legal level or is it going to be an emotionally driven argument? I accept that it is difficult to separate the two. That is a difficult thing to do, but to go on a programme that thrives on driving it at an emotional level as opposed to a more balanced approach is questionable, to say the least.

Ms Pearson: I think he felt that engaging with the widest range of outlets today would give him the opportunity to explain his thinking on this issue, abstract from that emotional debate. However people or outlets treat that — and that is not me commenting on the BBC at all — there will be a range of treatments of this issue in the media. The Minister will be consistent across all outlets today and he felt it was important to go across as many as possible.

Mr Dickson: Chair, you opened by saying that you hoped that this could be a debate in which everyone could feel comfortable and happy to contribute. It is a courageous move by the Department to open up this discussion. Whether we ever get to the point of placing law on the statute book remains to be seen in light of the public consultation. However, what has saddened me about this opening discussion has been a clear drawing of lines in the sand by some people, while others simply want to brush the subject under the carpet. Whatever our personal and emotive views about the two areas that are open for discussion, we need to have this discussion. This is an important and serious discussion.

All I wish to say today is that I welcome this and think it is courageous and important that legislators should hear the views of the public, on which we can then take informed decisions.

The Chairperson (Mr Givan): I am happy to sign off on that as the last word. Thank you both for coming to the Committee. It has been much appreciated.