



BRIEFING PAPER

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Abortion in Northern Ireland: recent changes to the legal framework

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Summary

The purpose of this briefing is to provide an overview of how the law on abortion in Northern Ireland has changed in recent years. It does not comment on, or add to, the debate on the ethics of abortion.

Abortion is a medical intervention through which a pregnancy is ended. It is sometimes referred to as a 'termination of a pregnancy'. A medical abortion involves taking 2 different medicines to end the pregnancy, usually 1 or 2 days apart, while a surgical abortion involves an operation to remove the pregnancy from the womb. There were 8 'terminations of pregnancy' in hospitals in Northern Ireland in 2018-19 under the existing law, while 1,053 women travelled to England from Northern Ireland in 2018 for an abortion procedure under a scheme funded by the UK Government.

Changes to the law on abortion in Northern Ireland were introduced by the UK Government through Section 9 of the [Northern Ireland \(Executive Formation etc\) Act 2019](#). The Act set out that Section 9 would come into force on 22 October 2019 if an Executive was not established by 21 October 2019. Since the Northern Ireland Executive was not in place by that date, the following changes to abortion law in Northern Ireland were made on 22 October 2019:

- sections 58 and 59 of the [Offences Against the Person Act 1861](#) in Northern Ireland (attempts to procure abortion) were immediately repealed;
- a moratorium on abortion-related criminal prosecutions came into effect;
- a duty was placed on the UK Government to introduce, by regulations, a new legal framework for abortion in Northern Ireland which ensured that the "recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland" by 31 March 2020. The [CEDAW report](#) is the "Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women".

A new legal framework for abortion services in Northern Ireland was introduced, by regulation, by the UK Government on 25 March 2020 following a [6 week consultation](#). [The Abortion \(Northern Ireland\) Regulations 2020](#) allow access to abortions up to 12 weeks gestation (11 weeks + 6 days), without conditionality, to be certified by one medical professional that the pregnancy has not exceeded its twelfth week. Abortions beyond 12 weeks gestation are lawful in specified instances, including when severe fetal impairment and fatal fetal abnormalities are detected.

1. Abortion law in Northern Ireland, prior to 22 October 2019

1.1 Overview

Abortion is a medical intervention through which a pregnancy is ended. It is sometimes referred to as a 'termination of a pregnancy'. A 'medical abortion' involves "taking 2 different medicines to end the pregnancy, usually 1 or 2 days apart", while a 'surgical abortion' involves an operation to "remove the pregnancy from the womb".¹

Prior to 22 October 2019, abortion was illegal in Northern Ireland under the [Offences Against the Person Act 1861](#), subject to very limited exceptions specified in the [Criminal Justice Act \(NI\) 1945](#) and application of case law (chiefly *R v Bourne* [1939] 1 KB 687).² The [Abortion Act 1967](#), which sets out the conditions under which a doctor may lawfully perform a termination in England, Wales and Scotland, was never extended to Northern Ireland.

There were 8 'terminations of pregnancy' in hospitals in Northern Ireland in 2018-19 under the existing law, while 1,053 women travelled to England from Northern Ireland in 2018 for an abortion procedure under a scheme funded by the UK Government.³

1.2 The Offences against the Person Act 1861

Section 58 of the [Offences Against the Person Act 1861](#) (OAPA) establishes that it is a criminal offence, subject to a maximum penalty of life imprisonment:

- For any woman to act with intent to procure a miscarriage; or
- For any person to act with intent to procure a miscarriage of any woman.

Section 59 of the same Act establishes that it is a criminal offence to supply or procure any poison or instrument knowing that it will be used with intent to procure a miscarriage of any woman.

The Act applies in England, Wales and Northern Ireland (though see section 2 below for reforms to this act in Northern Ireland in 2019)

1.3 Criminal Justice Act (NI) 1945

Section 58 of the OAPA was subsequently amended in England and Wales through the *Infant Life (Preservation) Act 1929*, and latterly in

¹ National Institute for Health and Social Care Excellence, [Abortion before 14 weeks: choosing between medical or surgical abortion Decision aid](#), September 2019

² This case established that a doctor will be protected from prosecution if his clinical judgment is that continuance of the pregnancy carries a real and grave risk to the mother's physical or mental health.

³ Department of Health, Northern Ireland, [Northern Ireland Termination of Pregnancy Statistics](#), 2018/19, 22 January 2020

Northern Ireland through the [Criminal Justice Act \(NI\) 1945](#) (the 1945 Act). Both Acts sought to establish the principle that abortions that were for the sole purpose of preserving the life of the woman were no longer an offence.

Section 25(1) of the 1945 Act does this by including an offence of causing the death of a child capable of being born alive *except* where the purpose of the abortion is to preserve the life of the woman and has been undertaken 'in good faith'. In practice, this has meant that abortion has only been allowed in Northern Ireland under limited circumstances, namely where the pregnancy threatens the life of the woman or where it would seriously affect her physical or mental health in a way that is permanent or long term.

Abortion Act 1967

The law in England, Scotland and Wales was further amended through the [Abortion Act 1967](#). The Act permits abortion in Great Britain by registered practitioners subject to certain conditions. All abortions other than those performed as an emergency require approval by two registered medical practitioners and must be performed in facilities registered for this purpose.

The grounds for permitting abortions under Section 1 of the *Abortion Act 1967*, as amended, are:

- (a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or
- (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
- (c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
- (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.⁴

[Section 37 of the Human Fertilisation and Embryology Act 1990](#) made changes to the *Abortion Act 1967*. It introduced two different time limits on abortions:

- For abortions undertaken on ground (a) of the Act, the time limit is 24 weeks gestation;
- For those undertaken under grounds (b),(c) or (d), there is no time limit. Abortion can be may be performed up until the end of pregnancy.

The Act contains a 'conscience clause' which allows doctors and other healthcare professionals to override any contractual obligations and opt out of performing abortions.

⁴ [The Abortion Act 1967](#)

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Please note that the Abortion Act 1967 was never extended to Northern Ireland.

2. Changes to the law on abortion in Northern Ireland since 22 October 2019

2.1 The Northern Ireland (Executive Formation etc) Act 2019

Changes to the law on abortion in Northern Ireland were introduced through the [Northern Ireland \(Executive Formation etc\) Act 2019](#) (the 2019 Act). The original Bill was initially a short piece of legislation that amended Section 1 of the [Northern Ireland \(Executive Formation and Exercise of Functions\) Act 2018](#). This extended the period provided in the [Northern Ireland Act 1998](#) for Northern Ireland Ministers to be appointed to 21 October 2019, following the Assembly election held on 2 March 2017.

An overview of the Bill, as it was introduced, can be found in the Library Briefing Paper on the [Northern Ireland \(Executive Formation\) Bill 2017-19](#).

Amendments to the Northern Ireland (Executive Formation etc) Bill 2017-19

During the Committee Stage of the Bill (which in this instance was a [Committee of the whole House](#)), the Labour MP Stella Creasy tabled an amendment to change the law on abortion in Northern Ireland. The amendment, as drafted, gave effect to the recommendations of the report of the [Committee on the Elimination of Discrimination Against Women \(CEDAW\)](#) as follows:

International obligations in respect of CEDAW

(1) In accordance with the requirements of section 26 of the Northern Ireland Act 1998 regarding international obligations, the Secretary of State must make regulations by statutory instrument to give effect to the recommendations of the Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

(2) Regulations under this section must come into force by 21 October 2019, subject to subsections (3) and (4).

(3) A statutory instrument containing regulations under subsection (1)—

(a) must be laid before both Houses of Parliament;

(b) is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) If a Northern Ireland Executive is formed before 21 October 2019, any extant obligations arising under subsection (1) shall cease to have effect.⁵

⁵ [HC Deb 9 July 2019, c163](#). The 'CEDAW' report is the "[Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of](#)

See Section 2.3 below for further details of the CEDAW report.

The Committee divided on whether New clause 10 should be added to the Bill, and agreed as follows: Ayes – 332, Noes – 99.⁶

New Clause 10 was subsequently amended in the House of Lords. The Liberal Democrat peer, Baroness Barker, tabled amendments to the Bill at Report Stage that were accepted by the Government. She noted that the wording of the amendment had been described as “deficient” and that there had been discussion on changing this:

An amendment was put forward, the substance of which was accepted by the Government—but it was said that the amendment was deficient. Since the addition to the Bill was made in the Commons, there has been a process of discussion between the Government and those who put forward that proposal about how the expressed will of the Commons should be carried forward—and, in particular, what regulation-making process should now being undertaken in Northern Ireland be to implement that Bill. That has resulted in the amendments before your Lordships this evening: Amendment 12 and the consequential amendment.⁷

2.2 Section 9 of the 2019 Act

Measures related to abortion law are now in Section 9 of the 2019 Act and are detailed in Box 1. The Act provided that Section 9 would come into force on 22 October 2019 if an Executive was not established by 21 October 2019.

Since the Northern Ireland Executive was not in place by that date, the following changes to abortion law in Northern Ireland were made under Section 9 of the 2019 Act on 22 October 2019:

- sections 58 and 59 of the *Offences Against the Person Act 1861* in Northern Ireland (attempts to procure abortion) were immediately repealed;
- a moratorium on abortion-related criminal prosecutions came into effect;
- a duty was placed on the UK Government to introduce, by regulations, a new legal framework for abortion in Northern Ireland which ensured that the “recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland” ([Section 9, subsection 1 of the 2019 Act](#)). Subsection 4 was also clear that the regulations must come into force by 31 March 2020.

[Discrimination against Women](#)” (CEDAW/C/OP.8/GBR/1) published on 6 March 2018

⁶ [HC](#) Deb 9 July 2019 c232-234

⁷ [HL](#) Deb 17 July 2019 c289

Box 1: Section 9 of the Northern Ireland (Executive Formation etc) Act 2019

Abortion etc: implementation of CEDAW recommendations

- (1) The Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland.
- (2) Sections 58 and 59 of the Offences Against the Person Act 1861 (attempts to procure abortion) are repealed under the law of Northern Ireland.
- (3) No investigation may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those sections under the law of Northern Ireland (whenever committed).
- (4) The Secretary of State must by regulations make whatever other changes to the law of Northern Ireland appear to the Secretary of State to be necessary or appropriate for the purpose of complying with subsection (1).
- (5) Regulations under subsection (4) must, in particular, make provision for the purposes of regulating abortions in Northern Ireland, including provision as to the circumstances in which an abortion may take place.
- (6) Regulations under subsection (4) must be made so as to come into force by 31 March 2020 (but this does not in any way limit the re-exercise of the power).
- (7) The Secretary of State must carry out the duties imposed by this section expeditiously, recognising the importance of doing so for protecting the human rights of women in Northern Ireland.
- (8) The Secretary of State may by regulations make any provision that appears to the Secretary of State to be appropriate in view of subsection (2) or (3).
- (9) Regulations under this section may make any provision that could be made by an Act of the Northern Ireland Assembly.
- (10) In this section “the CEDAW report” means the Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/OP.8/GBR/1) published on 6 March 2018.

The changes made to the OAPA in Northern Ireland were not extended to other UK nations. In response to an [Urgent Question](#) on the decriminalisation of abortion on 23 July 2019, the then junior health minister, Jackie Doyle-Price, stated that “the Government currently have no plans to amend sections 58 and 59 of the 1861 Act in England and Wales”.⁸

2.3 The CEDAW Report

The [Convention on the Elimination of all forms of Discrimination Against Women](#) (CEDAW) is a global treaty on women’s rights. It was adopted by the UN General Assembly in 1979. The UK signed CEDAW in 1981 and ratified it in 1986. The Committee on the Elimination of Discrimination Against Women monitors the treaty. It is a body of 23 experts on women’s human rights that looks at how those binding rights are respected and applied in the domestic context. The UK has also signed up to the ‘Optional Protocol’ which gives individual women and groups the right to complain directly to that Committee.

⁸ [HC Deb 23 July 2019 c 1222](#)

In 2010, an application was made under the Optional Protocol to CEDAW by Alliance for Choice, the Family Planning Association and Northern Ireland Women's European Platform (NIWEP) alleging that the UK was in violation of women and girls' rights under the Convention owing to the restrictive access to abortion in Northern Ireland. This resulted in an inquiry by the CEDAW Committee and a [report](#) published in March 2018.⁹

[Section 9 of the Northern Ireland \(Executive Formation etc\) Act 2019](#)

states that the Secretary of State "must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland." Paragraphs 85 and 86 of the 2018 CEDAW report are set out below:

85. The Committee recommends that the State party urgently:

(a) Repeal sections 58 and 59 of the Offences against the Person Act, 1861 so that no criminal charges can be brought against women and girls who undergo abortion or against qualified health care professionals and all others who provide and assist in the abortion;

(b) Adopt legislation to provide for expanded grounds to legalise abortion at least 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; and

(iii) Severe foetal impairment, including FFA, 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.

(c) Introduce, as an interim measure, a moratorium on the application of criminal laws concerning abortion, and cease all related arrests, investigations and criminal prosecutions, including of women seeking post-abortion care and healthcare professionals;

(d) Adopt evidence-based protocols for healthcare professionals on providing legal abortions particularly on the grounds of physical and mental health; and ensure continuous training on these protocols;

(e) Establish a mechanism to advance women's rights, including through monitoring authorities' compliance with international standards concerning access to sexual and reproductive health including access to safe abortions; and ensure enhanced coordination between this mechanism with the Department of Health, Social Services and Public Safety (DHSSPS) and the Northern Ireland Human Rights Commission; and

(f) Strengthen existing data collection and sharing systems between the DHSSPS and the PSNI to address the phenomenon of self-induced abortions.

B. Sexual and reproductive health rights and services

86. The Committee recommends that the State party:

⁹ [Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#), (CEDAW/C/OP.8/GBR/1), March 2018

- (a) Provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion;
- (b) Ensure accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral and emergency, long term or permanent and adopt a protocol to facilitate access at pharmacies, clinics and hospitals;
- (c) 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 this area;
- (d) Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory curriculum component for adolescents, covering early pregnancy prevention and access to abortion, and monitor its implementation;
- (e) Intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception;
- (f) Adopt a strategy to combat gender-based stereotypes regarding women's primary role as mothers; and
- (g) Protect women from harassment by anti-abortion protestors by investigating complaints, prosecuting and punishing perpetrators.¹⁰

Detailed information on the findings of the Committee on the Elimination of Discrimination Against Women (CEDAW) regarding human rights breaches related to abortion law in Northern Ireland is set out in the April 2019 [Women and Equalities Committee report on Abortion law in Northern Ireland](#).¹¹

2.4 The Interim Period: 22 October 2019 to 31 March 2020

Ahead of the development and implementation of a new abortion framework in Northern Ireland, the Westminster Government published [Guidance For Healthcare Professionals In Northern Ireland On Abortion Law And Terminations Of Pregnancy](#). The document provided information regarding the provision of termination services in Northern Ireland during the 'interim period', between 22 October 2019 and 31 March 2020.

It clarified that no abortion services would be routinely available in Northern Ireland before the 31 March 2020 and that the Government had amended an existing scheme, which enabled women resident in Northern Ireland to travel to England to access abortion services, to improve its accessibility:

¹⁰ [Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#), (CEDAW/C/OP.8/GBR/1), March 2018

¹¹ Women and Equalities Committee, [Abortion law in Northern Ireland](#), April 2019, HC 1584

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- Health professionals in Northern Ireland will be supplied with information about the funded services in England (summarised in Annex B) and, if approached by a woman considering a termination of pregnancy, they should provide her with the number for the Central Booking Service in England (0333 234 2184) or call the helpline on behalf of the woman. The CBS can arrange for advice, support and counselling to be made available for women who are uncertain or unsure of their decision. Those with a conscientious objection to abortion should direct women to where information about services is available including Gov.uk.
- From 22 October 2019, women should be informed that all travel, and where needed accommodation, will be funded and the current criteria in relation to low income or receipt of benefits will no longer be applied.¹²

The scheme in England would, according to the guidance, “remain in place after 31 March 2020 until [...] service provision in Northern Ireland is available to meet women’s needs”.¹³

The guidance also stated that, in the interim period, healthcare professionals with a conscientious objection to abortion should follow guidance from their professional body, such as the General Medical Council, and may wish to raise this with their employer.

Time limits on abortion

In both the [Infant Life \(Preservation\) Act 1929](#), and the [Criminal Justice Act \(NI\) 1945](#), a fetus is automatically deemed as being capable of being born alive at 28 weeks gestation.¹⁴ This does not, however, prevent evidence being provided of a fetus being shown to be capable of being born alive at an earlier gestational age. The Medical law book, *Medical Law and Ethics*, explains that under subsection (2) of the 1929 Act:

a foetus of twenty-eight weeks’ gestation or older is presumed to be capable of being born alive. This is only a presumption and could be rebutted if it could be shown that, for example, an older foetus was not actually capable of being born alive or that a younger one was.¹⁵

The issue of the definition of being ‘capable of being born alive’ has been looked at by the Courts. In 1987, in [C v S](#), the Court of Appeal held that to be ‘capable of being born alive’, a fetus must be able, on delivery, to breathe either naturally or with mechanical aid.¹⁶

Section 37 of the [Human Fertilisation and Embryology Act 1990](#) amended the *Abortion Act 1967* to introduce a time limit of 24 weeks

¹² Northern Ireland Office, [Guidance For Healthcare Professionals In Northern Ireland On Abortion Law And Terminations Of Pregnancy In The Period 22 October 2019 To 31 March 2020 In Relation To The Northern Ireland \(Executive Formation Etc\) Act 2019](#), October 2019. Please note that this document was withdrawn following the 2020 regulations being laid.

¹³ *ibid* p4-5

¹⁴ Section 25(2) of the [Criminal Justice \(NI\) Act 1945](#) & Section 1(2) of the [Infant Life Preservation Act 1929](#)

¹⁵ Herring, *Medical law and Ethics*, (7th Edition) 2018

¹⁶ M Brazier, E Cave, *Medicines Patients and the Law*, 2016 (6th edition) (13.12); [C. v S](#), Court of Appeal (Civil Division), 24 February 1987, 1987 WL 1455036

for those abortions (in England and Wales) taking place under the grounds laid out in section 1(1)(a) of the 1967 Act. Terminations carried out on the following grounds, as set out in section 1(1)(b-d) of the 1967 Act, are permitted at any gestational age where:

- it is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
- there is a risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
- there is substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

The *Abortion Act 1967*, however, does not apply in Northern Ireland.

The Government responded to questions about abortion time limits in Northern Ireland during the Report Stage of the *Northern Ireland (Executive Formation) Bill* in the House of Lords. The then junior Northern Ireland Minister, Lord Duncan, explained that the 1945 Act would remain in place after the repeal of sections 58 and 59 of the *Offences Against the Person Act 1861* and while the new regime was implemented. This would mean it was a criminal offence to end the life of any “child capable of being born”:

It is important to stress that, although we are looking at the 1861 Act and the elements we shall remove from it, during this limbo period the Criminal Justice Act (Northern Ireland) 1945 will still apply. Section 25 will still apply; this makes it a criminal offence to destroy any life of a child capable of being born. That will apply during that limbo period, until we have got to the stage where we have the newly functioning regime.¹⁷

Lord Duncan went on to clarify that no abortions would be carried out over 24 weeks and that this would be an offence under the *Criminal Justice (Northern Ireland) Act 1945*. He also added that the Government was *not* seeking to introduce legislation that would allow later abortions than in England and Wales:

I was asked a question about abortions at 24 weeks. We can guarantee that no abortions will be carried out over 24 weeks. In this limbo period, it would be an offence under the 1945 Act as these would indeed be deemed to be viable, and would be children. I say that in response to the noble Lord, Lord McCrea. After the new regime, we would not introduce legislation that allowed later abortions than are taken in England or Wales. We would seek harmony.¹⁸

¹⁷ [Report Stage, Northern Ireland \(Executive Formation\) Bill, 17 July 2019 c310](#)

¹⁸ [Report Stage, Northern Ireland \(Executive Formation\) Bill, 17 July 2019 c313](#)

3. Establishing abortion services in Northern Ireland

3.1 UK Government consultation

The UK Government published a consultation paper, [A legal framework for abortion services in Northern Ireland](#) on 4 November 2019, with the consultation running for six weeks, until 16 December 2019.¹⁹ The stated [aim of the consultation](#) was to:

inform a new framework for access to abortion services in Northern Ireland that is consistent with the recommendations of the 2018 United Nations Committee on the Elimination of Discrimination Against Women Report, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.²⁰

The consultation document set out a number of proposals that covered:

1. Early Terminations of pregnancy
2. Gestations beyond 12 or 14 weeks
3. Fetal Abnormality
4. Risk to the woman or girl's life or risk of grave permanent injury
5. Who can perform a termination of pregnancy
6. Where procedures can take place
7. Certificate of opinion and notification requirements
8. Conscientious objection
9. Exclusion zones²¹

In some instances, more than one proposal was put forward in the consultation (eg whether the gestational time limit for unrestricted early terminations of pregnancy should be up to 12 weeks, or up to 14 weeks). There was an opportunity for those answering the consultation questions using the *pro forma* to disagree with the proposal(s) and to set out an alternative approach.

On 16 January 2020, the Government was asked in a [Parliamentary Question](#) what steps it was "taking to ensure that the new abortion regulations for Northern Ireland do not go further than those laid out in section 9 of the Northern Ireland (Executive Formation etc) Act 2019". The then Secretary of State for Northern Ireland, Julian Smith, replied that:

¹⁹ HM Government, [A new legal framework for abortion services in Northern Ireland, Implementation of the legal duty under section 9 of the Northern Ireland \(Executive Formation etc\) Act 2019](#), Government consultation, 4 November 2019

²⁰ A new legal framework for abortion services in Northern Ireland, "[Consultation description](#)", gov.uk, 4 November 2019

²¹ HM Government, [A new legal framework for abortion services in Northern Ireland, Implementation of the legal duty under section 9 of the Northern Ireland \(Executive Formation etc\) Act 2019](#), Government consultation, 4 November 2019

We have now finished a six-week consultation on the proposals for the new framework that would provide lawful access to abortion services in Northern Ireland, consistent with what is required under section 9 of the Northern Ireland (Executive Formation etc.) Act 2019 - and the recommendations of the 2018 UN CEDAW Report [...] We will now be carefully analysing the submissions received, and ensuring that the views received are reflected in the Government's response, and inform the final framework that will be provided for in the regulations.²²

The [Government Response](#) to the Consultation, published on 25 March 2020, (discussed below), clarified that officials from the Northern Ireland Office had spoken to a range of stakeholders as part of the consultation, including:

the Northern Ireland Department of Health, healthcare professionals, Royal Colleges, the all-Ireland church leaders group, abortion service providers, trade unions and civil society organisations [as well as] individuals with lived experience.²³

Restoration of the Northern Ireland Executive and Assembly

In early January 2020, the Executive and Assembly in Northern Ireland were restored. The immediate priorities of the Executive were set out in the document [The New Decade, New Approach Deal](#). The document did not make an explicit reference to abortion law in Northern Ireland.

The restoration of the Executive and Assembly did not have any immediate impact on abortion law in Northern Ireland: sections 58 and 59 of the *Offences Against the Person Act 1861* remain repealed in Northern Ireland. The [UK Government](#) was also clear that it continued to have a legal duty under section 9 of the *Northern Ireland (Executive Formation etc) Act 2019* to reform the law on abortion and to bring forward regulations to introduce a new legal framework for abortion in Northern Ireland by 31 March 2020.

Speaking in a [debate](#) on the *Northern Ireland (Executive Formation etc) Act 2019* on 8 January 2020, the Northern Ireland Minister, Robin Walker, stated that:

We have to recognise that we are under a legal duty under section 9 of the Northern Ireland (Executive Formation) Act 2019, and we will be continuing to work to put in place the regulations by 31 March, providing access to abortion consistent with the CEDAW report.

The hon. Member for Rochdale asked what we could do if the Executive were restored. If that were to happen before 31 March, we would welcome discussions on the regulations that will be made, and questions on implementation, which of course will be taken forward by the Northern Ireland Department of Health.²⁴

Mr Walker also indicated that, once the law has been changed, the devolved institutions could choose to repeal or alter the law (since health and social services, equal opportunities, and justice and policing -

²² [PO 4331](#) [Abortion: Northern Ireland] 21 January 2020

²³ HM Government, [A new legal framework for abortion services in Northern Ireland Implementation of the legal duty under section 9 of the Northern Ireland \(Executive Formation etc\) Act 2019](#), UK Government consultation response, March 2020, p8

²⁴ [HC Deb. 8 Jan 2020. c 573](#)

which are relevant to the provision of abortion services - are devolved matters):

As these are devolved matters, any reform after March 2020 can of course be considered by the Executive and the Assembly, subject to such legislation complying with convention rights and the usual Assembly procedures. This is yet another of those issues where, if we want the concerns and views of people in Northern Ireland to be properly heard, we must ensure that the institutions are in place.²⁵

3.2 Government response to the consultation

The Abortion (Northern Ireland) Regulations 2020

The Government published its [response](#) to the consultation on 25 March 2020; the same day as it laid [The Abortion \(Northern Ireland\) Regulations 2020](#). Under section 12, subsection 3 of the [Northern Ireland \(Executive Formation etc\) Act 2019](#), the regulations must be “laid before Parliament after being made”. This means that the regulations come into effect immediately but require subsequent approval to remain in force. In this instance, under subsection 4, they must be approved “by a resolution of each House of Parliament” within 28 days of being laid. The 28 days excludes those periods when the House was “dissolved or prorogued or during which both Houses are adjourned for more than four days”. The 28 days ends on 17 May 2020.²⁶

In its introduction to the new framework, the Government was clear that a “fundamental requirement” of the new measures was that they must be in accordance with the recommendations made in the CEDAW Report. It added that the Government had also taken into account the need to:

- ensure that the framework protects and promotes the health and safety of women and girls and provides clarity and certainty for the medical profession; and
- is responsive and sensitive to the Northern Ireland Executive and Assembly being back up and running.²⁷

The Government noted that the majority of the submissions it received in response to the consultation opposed changing the law on abortion in Northern Ireland:

Of all submissions received, 79% of those expressed a view registering their general opposition to any abortion provision in Northern Ireland beyond that which is currently permitted. These views were carefully assessed and noted, recognising the strength of feeling expressed by many. However, the Government remains

²⁵ [HC Deb, 8 Jan 2020, c 573](#)

²⁶ UK Parliament, Statutory Instruments, [Abortion \(Northern Ireland\) Regulations 2020, Statutory Instrument SI 2020/345](#), made on 25 March 2020, last accessed 27 April 2020

²⁷ HM Government, [A new legal framework for abortion services in Northern Ireland Implementation of the legal duty under section 9 of the Northern Ireland \(Executive Formation etc\) Act 2019](#), UK Government consultation response, March 2020, p10

under a legal obligation to introduce a framework in a way that implements the recommendations of the CEDAW Report.²⁸

A high level overview of the new provisions is provided in chapter 2 of the Government Response, with extracts included in Box 2 below.

Box 2: Overview of the new abortion framework for Northern Ireland

The regulations make provision for:

1. **Early termination of pregnancy** - access without conditionality to abortion services up to 12 weeks gestation (11 weeks + 6 days).
2. **Termination of pregnancy up 24 weeks** - access to abortion services up to 24 weeks gestation (23 + 6 days) in cases where the continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman or girl, greater than the risk of terminating the pregnancy.
3. **Fetal abnormality** - access to abortion services in cases of severe fetal impairment (SFI) and fatal fetal abnormalities (FFA) with no gestational time limit. This is where there is a substantial risk that the condition of the fetus is such that the death of the fetus is likely before, during or shortly after birth; or if the child were born, it would suffer from such physical or mental impairment as to be seriously disabled.
4. **Risk to the woman or girl's life or risk of grave permanent injury** - access to abortion services with no gestational time limit where there is a risk to the life of the woman or girl, greater than if the pregnancy were terminated, or where necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman or girl, including in cases of immediate necessity.²⁹

The Regulations place a duty on the medical professional to give notice of the termination and submit this with relevant data (as specified in the Regulations) to the Chief Medical Officer at the Northern Ireland Department of Health. The Department of Health in Northern Ireland is responsible for the annual publication of relevant data.³⁰

The Regulations specify that procedures can be carried out in:

General Practitioners premises, clinics provided by a Health and Social Care (HSC) trust, and HSC hospitals, operating under the overall Northern Ireland HSC framework and women's homes where the second stage of early medical terminations may be carried out.³¹

There is also provision for the Northern Ireland Health Minister to approve additional places where abortions can be performed. The Department of Health in Northern Ireland is responsible for overseeing the commissioning of abortion services in Northern Ireland, consistent with the framework.³²

²⁸ HM Government, [A new legal framework for abortion services in Northern Ireland Implementation of the legal duty under section 9 of the Northern Ireland \(Executive Formation etc\) Act 2019](#), UK Government consultation response, March 2020, p9

²⁹ *ibid* p10

³⁰ *ibid* p11

³¹ *ibid* p11

³² Northern Ireland Office, [Changes to the law in Northern Ireland: updated information](#), 25 March 2020

Conscientious Objection

Under [Part 7](#) of the Regulations, no person has a duty to “participate in any treatment authorised by the Regulations to which the person has a conscientious objection”. The only exception is where the participation in treatment “is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman or girl”. The consultation response stated that this approach mirrors the same statutory protection provided under the *Abortion Act 1967*.³³

3.3 Response to the new regulations

Responses to the new regulations were mixed. The [Belfast Telegraph](#) reported that the Health Committee of the Northern Ireland Assembly was looking into whether it was possible for the Assembly to challenge and review Northern Ireland’s new abortion laws. DUP MLA Alex Easton was reported as saying:

We want to see whether the Assembly can do something to challenge what Westminster are doing, what powers we have to change things now the law is in place.³⁴

In response to Mr Easton’s comments, Paula Bradshaw, Alliance Party health spokesperson, said:

access to safe abortion services is a requirement arising from legislation initially passed in the UK Parliament last summer, with the date of April 1 set in consequent regulations agreed by the UK Government three months ago. The requirement for services and information for pregnant women, particularly those enduring crisis pregnancies, has never been more profound than during the current health emergency in which pregnant women are an at-risk group.³⁵

House of Lords Secondary Legislation Scrutiny Committee

The House of Lords Secondary Legislation Scrutiny Committee published its report analysing the *Abortion (Northern Ireland) Regulations 2020* on 23 April 2020. It raised several concerns about the Regulations including that:

- “interpretive guidance” was not yet available (in draft form or otherwise) alongside the Regulations;³⁶
- the reasons for specific policy choices made should have been “explained in more detail” in the Explanatory Memorandum,

³³ HM Government, [A new legal framework for abortion services in Northern Ireland Implementation of the legal duty under section 9 of the Northern Ireland \(Executive Formation etc\) Act 2019](#), UK Government consultation response, March 2020, p11

³⁴ [Health committee looks at possibility of challenging Northern Ireland's new laws on abortion](#), *The Belfast Telegraph*, 30 March 2020

³⁵ [Health committee looks at possibility of challenging Northern Ireland's new laws on abortion](#), *The Belfast Telegraph*, 30 March 2020

³⁶ House of Lords, Secondary Legislation Scrutiny Committee, [Proposed Negative Statutory Instrument under the European Union \(Withdrawal\) Act 2018 Drawn to the special attention of the House: Abortion \(Northern Ireland\) Regulations 2020](#), 23 April 2020, HL Paper 49, 2019–21, para 33

given the “overwhelmingly negative response to the consultation exercise”;³⁷

- the public consultation was open for six weeks which, the Committee stated, was “too short for so sensitive a topic”. It added that holding the Consultation during the General Election period, and “in the run up to Christmas”, did not conform with best practice.³⁸

In addition, the Committee concluded that it was:

regrettable that the Government chose to lay so controversial an instrument just as a recess started and, more importantly, so close to the implementation date set out in the 2019 Act, thereby denying Parliament an opportunity for scrutiny before the instrument came into effect.³⁹

The Committee identified three areas where the House may wish to ask the Minister for further information and / or clarification:

- Conscientious objection – namely the “scope of the [conscientious objection] policy and how it will be interpreted”;
- Disability – submissions to the Committee identified a “dichotomy” in the CEDAW recommendation which “requires the provision of termination for ‘severe foetal impairment’ but ‘without perpetuating stereotypes towards persons with disabilities’”. The Committee suggested that the “House may wish to press the Minister about how these provisions will be interpreted”;⁴⁰
- Sexual and reproductive health rights and services – the Committee notes that section 9(1) of the *Northern Ireland (Executive Formation etc) Act 2019* requires the Government to implement paragraph 86 of the CEDAW Report. This paragraph covers the provision of ‘sexual and reproductive health rights and services’ in Northern Ireland, including sex education and contraception which, the Committee states, are not “mentioned in these Regulations”.⁴¹ The Committee suggests that “The House may wish [...] to ask the Minister how the Government intend to comply with those requirements”.⁴²

Covid-19

Temporary measures to enable women and girls to take both pills for early medical abortion in their own homes, without the need to first attend a hospital or clinic (though with the same medical consultation requirements provided via video link, telephone conference or other electronic means), are in place in [England](#), [Scotland](#) and [Wales](#) during the Covid-19 outbreak.⁴³ No such measures are in place in Northern

³⁷ *ibid*, para 34

³⁸ *ibid*, para 43

³⁹ *ibid*, para 46

⁴⁰ *ibid*, para 34

⁴¹ *ibid*, para 36

⁴² *ibid*, para 36

⁴³ Department of Health and Social Care, [Decision: Temporary approval of home use for both stages of early medical abortion](#), 30 March 2020; Letter from the Chief Medical Officer (Scotland), [Abortion – Covid-19 – Approval For Mifepristone To Be](#)

Ireland. Under the new regulations, women in Northern Ireland must take the first pill in Health and Social Care premises. The second pill may be taken at home.⁴⁴

Concerns were raised in early April 2020, however, that since abortion services had yet to become operational in Northern Ireland, women continued to be reliant on the existing scheme of travelling to England to access such services. Information published by the Northern Ireland Office stated that this scheme would “remain in place after 31 March 2020” until it was “confident that service provision in Northern Ireland is available to meet women’s needs”.⁴⁵

The abortion provider and charity Marie Stopes UK welcomed the introduction of the regulations, but questioned when services in Northern Ireland would be in place, particularly since travel to England was restricted under the current social distancing measures:

We are extremely pleased to see the long-awaited legal framework for accessing abortion care in Northern Ireland - for too long, women in the region have been treated as second class citizens and this day would not have arrived were it not for brave and resilient abortion reform campaigners. However, while the legal framework is a significant step in the right direction, abortion care cannot be delivered without services in place, and with travel to Marie Stopes' clinics in England restricted due to the COVID-19 crisis, thousands of women and girls will be held in limbo, forced to continue an unwanted pregnancy or to buy abortion pills illegally online.⁴⁶

Richard Bentley, Managing Director of Marie Stopes UK, [advocated](#) for allowing “women in Northern Ireland to take both sets of early medical abortion pills at home, as is now the case in England”.⁴⁷ Dr Edward Morris, President of the Royal College of Obstetricians and Gynaecologists (RCOG) similarly welcomed the regulations permitting abortion services in Northern Ireland. He also noted that the change had come in the middle of a pandemic which, he stated, increased the need:

to establish care for women in Northern Ireland to reduce the spread of COVID-19. The health minister must temporarily permit the home-use of mifepristone to ensure access to early medical abortion remotely. This is safe, effective and recognised best practice.⁴⁸

[Taken At Home And Other Contingency Measures](#), 31 March 2020; Welsh Government, [Legislation: Temporary approval of home use for both stages of early medical abortion](#), 1 April 2020

⁴⁴ [Women in Northern Ireland 'will be able to have early abortions' amid coronavirus lockdown](#), *The Independent* [online], 15 April 2020

⁴⁵ Northern Ireland Office, [Changes to the law in Northern Ireland: updated information](#), 25 March 2020

⁴⁶ [New abortion regulations come into effect in Northern Ireland](#), Marie Stopes UK, 31 March 2020

⁴⁷ [New abortion regulations come into effect in Northern Ireland](#), Marie Stopes UK, 31 March 2020

⁴⁸ [RCOG/FSRH respond to new regulations on abortion care in Northern Ireland](#), Royal College of Obstetricians and Gynaecologists, 27 March 2020

Commissioning abortion services in Northern Ireland

The Department of Health in Northern Ireland is responsible for overseeing the commissioning of abortion services in Northern Ireland, consistent with the regulations.⁴⁹ [BBC News Online](#) reported on 9 April 2020 that health trusts in Northern Ireland had been “stopped from carrying out early abortion services”⁵⁰ and specifically that the Belfast, South Eastern and Northern health trusts had “had been instructed not to proceed” with their “temporary plan to provide services in Northern Ireland”, “pending the issue being discussed by the Northern Ireland Executive”.⁵¹

[The Guardian](#) subsequently reported that Department of Health in Northern Ireland had confirmed late on 9 April 2020 that, having received legal advice, “registered medical professionals in Northern Ireland may now terminate pregnancies lawfully” on Health and Social Care premises.⁵² The news agency [Reuters](#) noted that the Department “did not provide details [in its statement] on where and how women could access abortion services” in Northern Ireland.⁵³

⁴⁹ Northern Ireland Office, [Changes to the law in Northern Ireland: updated information](#), 25 March 2020

⁵⁰ [NI health trusts 'stopped from carrying out early abortions'](#), *BBC News Online*, 9 April 2020

⁵¹ [Abortions 'can now be carried out' in Northern Ireland](#), *BBC News Online*, 9 April 2020

⁵² [Northern Ireland confirms abortions can now be carried out](#), *The Guardian*, 9 April 2020

⁵³ [Northern Ireland authorities give green light to abortion services](#), *Reuters*, 9 April 2020

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