

The Chairman, Lord Hodgson of Astley Abbotts

Re 11th Report of Session 2019-2021, Secondary Legislation Scrutiny Committee, HL Paper 49

I am writing to the Committee about its scrutiny of the Abortion (Northern Ireland) Regulations 2020 reported on 23 April. In particular I wish to respectfully suggest that the summary of the Northern Ireland Attorney General's submission in paragraph 28 on page 8 is erroneous.

In para. 28, the report suggests that the *'Attorney General for Northern Ireland... acknowledges that regulation 7 implements the requirement of paragraph 85(b)(iii) of the CEDAW Report. There therefore appears to be a question over which UN Convention should take priority. Several submissions also highlight that this possible conflict of conventions applies to abortion legislation throughout the UK.'*

However, it is clear from the Attorney General's submission published in addition to the above report, that the Attorney does not make such conclusions.

The Attorney General referred to the recommendation in CEDAW in the following places:

- 'I appreciate that the section 9 (1) duty in the primary Act is to ensure that the recommendation in paragraph 85(b)(iii) of the CEDAW report (specifying severe foetal impairment as a ground for legal abortion) is implemented.' (see page 6 of the Submissions document)
- 'Section 9 (4) provides that the Secretary 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), that is, that paragraphs 85 and 86 of the CEDAW report are implemented in Northern Ireland. If the Secretary of State has misdirected himself in respect of these recommendations in making these Regulations, he would, to the extent that he has done so, exceed his powers.' (page 5)

It is clear from the above, that the Attorney General recognised that the Secretary of State was required to implement CEDAW recommendation in paragraph 85(b)(iii). However, Attorney General does not say that Regulation 7 meets that recommendation. Indeed, much of his submission argues the reverse.

I urge the Committee to issue a correction to its report so that there is no confusion about the Attorney General's position on regulation 7.

I would also ask the Committee to refer back to the NIO for clarification about the quote included in the report at paragraph 30, which refers to a comment made by Lady Hale in the Supreme Court judgment [2018] UKSC 27. The quote attributes Lady Hale referring to the UNCRPD at paragraph 21 saying *"If Article 10 is to be read as suggested, then it would seem to suggest that abortion would never be lawful"*. This statement is not made in that judgment. Indeed, paragraph 21 says *"the community undoubtedly does have a moral interest in protecting the life, health and welfare of the unborn."*

It would be extremely helpful if the Committee were to publish the correspondence it has had with the NIO so that it may be publicly reviewed in the same way as the submissions received by the Committee. For instance, in paragraph 39, comparing the inspection regimes for abortion providers in England and Northern Ireland, it would be helpful to be able to read the full response to the issues raised, which the Committee summarised as, *"The NIO responded that the duties are equivalent, and the differences are a matter of choice in legal drafting."*

I look forward to hearing from you thereto.

Kind regards.

A handwritten signature in black ink, appearing to read 'Jeffrey Donaldson', written in a cursive style.

Rt Hon Sir Jeffrey Donaldson MP
Parliamentary leader – Democratic Unionist Party