

CARE NI SUBMISSION TO THE SECONDARY LEGISLATION SCRUTINY COMMITTEE ABORTION (NORTHERN IRELAND) REGULATIONS 2022

1. On 19 May the Abortion (Northern Ireland) Regulations 2021 were laid before Parliament¹ and came into effect on 20 May. These Regulations are laid under powers in section 9 of the Northern Ireland (Executive Formation etc) Act 2019.² Both Houses of Parliament must confirm their approval of the Regulations within 28 sitting days (23 June) for them to remain in force.³
2. CARE in Northern Ireland has previously commented on the 2020 Regulations⁴ and the 2021 Regulations.⁵ This submission sets out the views of CARE NI on the 2022 Regulations within the terms of reference of the Committee.

Issue (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House

3. Abortion is a sensitive political issue and this has proven to be especially the case in Northern Ireland. This issue has been the subject of political debate for decades. It is politically and ethically important for many citizens who live there as to how the Abortion (Northern Ireland) Regulations 2020 are implemented. Since abortion is a devolved issue to Northern Ireland, it should be for the Executive to determine how to implement the requirements of the 2020 Regulations.⁶
4. The Secretary of State has chosen to take additional powers in the 2022 Regulations.
 - 4.1. Regulation 2 of the 2022 Regulations amends Regulation 2 of the 2021 Regulations so that the Secretary of State (SofS) can give a direction under Regulation 2(1) of the 2021 Regulations and the fact that the action has not been agreed by the Executive is not a barrier to action.⁷
 - 4.2. Regulation 3 requires the Department of Health to fund abortion services once they are commissioned, regardless of the position of the Executive.⁸
 - 4.3. Regulation 4 gives the SofS the power to act as if he were a Northern Ireland Minister or department to ensure that the recommendations of the CEDAW report are implemented.⁹
 - 4.4. Regulation 5 gives the SofS the power to provide financial assistance to ensure that the recommendations of the CEDAW report are implemented.¹⁰
5. In taking a power to act as a Northern Ireland Minister in Regulation 4, the Secretary of State could act and not be answerable to the citizens of Northern Ireland.

¹ <https://www.legislation.gov.uk/ukxi/2021/365/made>

² <http://www.legislation.gov.uk/ukpga/2019/22/section/9>

³ <http://www.legislation.gov.uk/ukpga/2019/22/section/12>

⁴ Evidence to the Committee, April 2020, page 19

⁵ <https://committees.parliament.uk/publications/744/documents/4395/default/>

51st Report of the Committee, HL 264, April 2021 para 22, page 9 and para 29, page 10

⁶ <https://committees.parliament.uk/publications/5443/documents/54305/default/>

⁷ <http://www.legislation.gov.uk/ukxi/2020/503/contents/made>

⁸ Explanatory Memorandum 2022, paragraphs 7.4-7.5, https://www.legislation.gov.uk/ukxi/2022/554/pdfs/ukxiem_20220554_en.pdf

⁹ *Ibid*, paragraph 7.6

¹⁰ *Ibid*, paragraph 7.7

¹⁰ *Ibid*, paragraph 7.7

Issue (f) that there appear to be inadequacies in the consultation process which relates to the instrument

6. The NIO has argued that there is no need for a consultation process because it consulted on abortion law reform in December 2021.¹¹ The Committee said in April 2020 that the consultation was “*too short*” and did not conform with “*best practice*” (para 43).¹² CARE believes this remains the case.
7. The NIO is also arguing that “*Nor is this instrument dealing with the manner in which the recommendations in the CEDAW Report should be implemented.*”¹³ It will not be clear until this Regulation is implemented whether that is correct. Indeed, decisions on financial allocations by the Department of Health under Regulation 3 may impact other services which could lose funding since “*The exact [financial] impact will depend on decisions taken during the planning of commissioning.*”¹⁴
8. These Regulations are not limited to abortion law reform and focus on wide ranging powers to make directions that do not meet the section 26 test and the Secretary of State acting as either a Northern Ireland Minister or department. There has been no public consultation as to whether such wide-ranging powers are either appropriate given the devolution settlement nor (even if appropriate) such wide ranging powers are necessary nor how they might impact on other services.

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¹¹ Explanatory Memorandum 2022, *Op Cit*, paragraph 10.1

¹² 11th Report, Published 23 April 2020, <https://committees.parliament.uk/publications/744/documents/4395/default/>

¹³ Explanatory Memorandum 2022, *Op Cit*, paragraph 10.2

¹⁴ *Ibid*, paragraph 12.3