

Submissions to the Secondary Legislation Scrutiny Committee on the Abortion (Northern Ireland) Regulations 2021

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CARE NI SUBMISSION TO THE SECONDARY LEGISLATION SCRUTINY COMMITTEE ABORTION (NORTHERN IRELAND) REGULATIONS 2021

1. This submission sets out the views of CARE NI on the Regulations on the basis of the following terms of reference of the Committee a, b, d and f.

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

2. Abortion is a very sensitive political issue in Northern Ireland which developed a distinct approach to abortion from 1967 until its imposition through Section 9 of the Executive Formation Act 2019. Independently verified research suggested that in 2017 approximately 100,000 people were living in Northern Ireland who would not have been had Northern Ireland embraced the 1967 Abortion.¹ This meant that the abortion regime that the 2019 Act overturned was of huge importance to many people in Northern Ireland. In this context it is notable that this Northern Ireland only law, addressing a devolved policy area, was imposed by MPs from England, Wales and Scotland in the face of 100% of Northern Ireland MPs who took their seats in Westminster voting against.
3. It is not possible to understand the political importance of the 2021 Regulations without looking at the 2020 regulations to which the Explanatory Memorandum on the 2021 Regulations says the 2021 Regulations relate. This is worth close consideration because the 2020 Regulations now have attached to them additional issues that did not exist when the SLSC considered those Regulations last year. In terms of the political importance of the 2020 regulations (wholly) before and (partly) after 2 June 2020, they are hugely controversial because: i) they are Regulations made on the basis of Section 9, the legitimacy of which rests on a vote in which 100% of Northern Ireland MPs who take their seats in Westminster were overruled by the votes of the far more numerous English, Welsh and Scottish MPs and ii) they impose abortion on Northern Ireland on a more permissive basis than in the rest of Great Britain, allowing abortion on request for any reason, and thus including the sex of the baby, until 12 weeks, abortion on demand to 24 weeks (the terms of NI Regs to 24 weeks are almost identical to those of the 1967 Abortion Act) and then abortion up to birth in cases of disability. In terms of the political importance of the 2020 regulations after 2 June 2020, on the 2 June, the sitting Northern Ireland Assembly voted to reject the regulations,² while an amendment seeking to reject them narrowly on the basis of non-fatal fetal disability failed.³ Of real importance, this vote was dismissed by the Government on the basis of an argument it now rejects, see paras 6 and 7.
4. The Secretary of States is now seeking to use these new 2021 Section 9 regulations to impose abortion commissioning on the permissive basis of the 2020 regulations. These regulations are politically extremely controversial not just because their legitimacy rests on Section 9 and also pertain to the 2020 regulations, but because the powers that the Secretary of State assumes in the 2021 Regulations are very sweeping.

Issue (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act

5. There has been a material change of circumstances since the passage of the Northern Ireland (Executive Formation etc) Act 2019 (referred to as “the 2019 Act”). In January 2020, the Northern Ireland Executive was restored and the Assembly came back into operation. Law and policy pertaining to abortion is within the devolved competence of the Assembly. In this context an abortion Bill is actually before the Assembly, as we write, at its Committee Stage. Given the

¹ <https://bothlivesmatter.org/wp-content/uploads/2017/01/Both-Lives-Matter-report-January-2017-Web.pdf>

² <http://aims.niassembly.gov.uk/plenary/details.aspx?&ses=1&doc=301351&pn=0&sid=vd>

³ <http://aims.niassembly.gov.uk/plenary/details.aspx?&ses=1&doc=301573&pn=0&sid=vd>

restoration of Stormont, and the fact that abortion is devolved, rather than introducing additional Section 9 regulations, the UK Government should instead be asking Parliament to repeal section 9 so that Northern Ireland can determine its own abortion law without interference.

6. It was argued at the time that section 9 was introduced that it was necessary to meet international obligations.⁴ Indeed, the Government gave this as the reason why MPs and Peers should ignore the vote of the Northern Ireland Assembly on 2 June 2020 and vote for the 2020 regulations.⁵ In the Explanatory Memorandum to these 2021 regulations, however, the Government has now acknowledged that paras 85 and 86 of the CEDAW Report do not have the standing of being international law. For this reason, the Secretary of State cannot give a direction under section 26 of the Northern Ireland Act 1998: “*The section 26 power cannot be relied on by the Secretary of State to ensure that the recommendations in paragraphs 85 and 86 of the CEDAW Report are implemented. In particular, those recommendations are not binding and do not constitute international obligations.*”⁶ (highlight added). There is thus no Section 26 NIA precedent for the powers in these 2021 Regulations.
7. In addition, the precedent that does exist for the Secretary of State to take powers of direction under section 26 NIA, only applies to Ministers and Northern Ireland departments. The 2021 Regulations, by contrast, also make provision for directions to public sector health care organisations. This will enable the Secretary of State to circumvent NI Executive ministers.

Issue (d) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation

8. There is also a logical difficulty with the NIO assertion that “Nor is this instrument dealing with the manner in which the recommendations in the CEDAW Report should be implemented.” It will not be clear until a direction is given whether this statement is correct. However, the wording in Regulation 2(1) is that ‘if the Secretary of State considers that **any action** capable of being taken by a relevant person is required for the purpose of implementing the recommendations in paragraphs 85 and 86 of the CEDAW report, the Secretary of State may direct **that the action must be taken.**’

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

9. The NIO has argued that there is no need for a consultation process on these new regulations because it consulted on abortion law reform in November/December 2019.⁷ This, however, is not credible. In the first instance, as the Committee said last March that the consultation was “*too short*” and did not conform with “*best practice*” (para 43).⁸ It was plainly not appropriate to justify the previous regulations on the basis of a consultation process that was inadequate. To now seek to justify these different regulations that give the Secretary of State sweeping new powers that were not consulted on in the previous consultation, on the basis of that consultation, that was in any event inadequate, is shocking. Moreover, the presenting difficulty is greatly compounded by the fact that these regulations give the Secretary of State sweeping new powers, beyond abortion - the scope of the original consultation - in the field of education and the role of women in society. The difficulty surrounding the lack of public consultation in relation to these deeply controversial regulations is stark in a context where - as “made affirmative” - these Regulations have also come into effect without the input of Parliament.

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⁴ House of Commons Hansard, 9 July 2019: New Clause 10 listed in col 163 and 230, Stella Creasy MP at col 180
<https://hansard.parliament.uk/pdf/commons/2019-07-09>

⁵ For example the Secretary of State, Brandon Lewis MP argued that it was necessary to pass the 2020 Regulations to meet our Convention obligations, see <https://www.bbc.co.uk/news/uk-northern-ireland-52922082> n

⁶ Explanatory Memorandum, *Op Cit*, paragraph 7.7

⁷ *Ibid*, paragraph 10.1

⁸ 11th Report, Published 23 April 2020, <https://committees.parliament.uk/publications/744/documents/4395/default/>

My Lords and Ladies,

I wish to make the strongest possible assertions in regard to proposals put forward by the Secretary of State for Northern Ireland, Brandon Lewis MP. In summary these proposals are utterly at odds with democratic government and should be consigned to oblivion with the utmost dispatch, as they are already by any fair-minded person. It is shameful that a member of Her Majesty's Government could seek in such a shabby way to take such powers to himself in the Queen's name! And this only for the purpose of furthering policies regarding abortion, sex education and related matters, which have, over decades, wreaked moral, emotional and physical havoc amongst the population of Great Britain. There is ample statistical evidence of the truth of this claim in the increases in family break up, in sexually transmitted diseases, in the prevalence of mental illness experienced by those who have suffered the trauma of abortion.

Mr Lewis's proposals, if approved, would give him complete control of policies related to abortion and education in Northern Ireland, which are devolved matters. They will take away from the people of Northern Ireland any power to affect any abortion policy the Westminster government choose to impose. It is well known that the Northern Ireland population has, by a clear majority, from all sides of the political spectrum, consistently rejected abortion for decades. Finally, but perhaps most significantly, given the current unrest in the province, these measures could do untold damage to the already fragile Northern Ireland Assembly and the Good Friday Agreement.

I ask you, my Lords and Ladies, to exercise the responsibility invested in you as Peers of the Realm, in the name of good governance, to do all possible to stop these proposals from being enacted.

Yours respectfully,

Christopher Langley

DUP SUBMISSION TO THE SECONDARY LEGISLATION SCRUTINY

CONCERNS ABOUT ABORTION (NORTHERN IRELAND) REGULATIONS 2021

This submission sets out the concerns of the Democratic Unionist Party (DUP) on the [Abortion \(Northern Ireland\) Regulations 2021](#), which were laid before Parliament on 23 March and came into force on 31st March 2021. These Regulations were made under the powers in [section 9](#) of the Northern Ireland (Executive Formation etc) Act 2019.

Our concerns below relate to paras a), b) and f) of the Committee's Terms of Reference.

Concern 1: These Regulations make unexpected use of powers by the Secretary of State and will be of interest to the House and are inappropriate in view of the changed circumstances since the enactment of the parent Act

1. Our Party's views of the process by which [section 9](#) was enacted and imposed on Northern Ireland is well known. Essentially, abortion is a devolved issue to Northern Ireland. As such it should be for the Executive to determine how to implement the requirements of the [Abortion \(Northern Ireland\) \(No. 2\) Regulations](#).
2. These Regulations make unexpected use of the [section 9](#) powers given that Stormont has been functioning for fifteen months. The powers taken by the Secretary of State in these Regulations imply that the Government in Westminster wishes to override devolution on an ongoing basis even though the Assembly is functioning. The DUP considers that the level of intervention here is a significant overreach of powers, as the [Explanatory Memorandum](#) recognises that the conferral of a function on the Secretary of State is a reserved matter (paragraph 3.2).
3. These Regulations grant the Secretary of State very wide-ranging powers and across a spectrum of issues that extends well beyond abortion, which the title of these Regulations suggest is their remit.
4. The [Explanatory Memorandum](#) (para 3.2) states "A power of direction demonstrably is a provision which could be made by an Act of the Assembly." It is **far from clear that Parliament intended such wide-ranging powers to be created or indeed to continue to reside** with the Secretary of State after the restoration of the Northern Ireland Assembly.
5. In paragraph 7.7 of the Explanatory Memorandum, the powers of direction are described as being "similar" to those under [section 26 of the Northern Ireland Act 1998](#) where there is a power for the Secretary of State to give a direction to a Minister or Northern Ireland department in several discrete categories: "for the purpose of giving effect to any international obligations, of safeguarding the interests of defence or national security or of protecting public safety or public order." However, the Explanatory Memorandum also acknowledges in the same paragraph that this

Regulation has been laid with its wide-ranging powers of direction precisely because the Secretary of State is unable to give a direction under section 26 because “the recommendations in paragraphs 85 and 86 of the CEDAW report” which are the subject of Regulation 2(1) “are not binding and do not constitute international obligations.” In other words, the Regulations are actually fundamentally different from the S 26 and so do not provide a relevant precedent.

6. This admission in the explanatory notes, is of huge political significance, which should be brought to the attention of the House, because in July 2019 when [section 9](#) was passed, it was argued by Stella Creasy MP that such action was necessary to meet international obligations. Moreover, in June 2020 after the Northern Ireland Assembly voted on 2 June to reject the regulations, but before either the Commons or Lords had voted on the Regulations, the Secretary of State said that the Assembly vote was irrelevant because of both the Assembly and Parliaments Convention obligations.¹ On that basis he encouraged both Houses to vote in violation of devolution to pass the 2020 Regulations, when it is now acknowledged that there were no such Convention obligations. Indeed, the CEDAW Convention does not even mention the word abortion. It was, therefore, a vote secured on false pretences.
7. Moreover, the precedent that does exist for the Secretary of State to take powers of direction in a limited number of circumstances in the Northern Ireland Act 1998 - section 26 - applies to **Ministers and Northern Ireland departments only**. The 2021 Regulations allow directions to public sector health care organisations as well as Ministers and Northern Ireland departments. **It is far from clear that Parliament intended to allow such wide-ranging powers to be created as a result of [section 9](#).**

Concern 2. There has been insufficient consultation on these Regulations.

8. Last year, the Committee made a number of comments about the administrative processes that went with the previous Section 9 Regulations, which we would have hoped the NIO would have taken into consideration in developing these Section 9 Regulations. The Committee stated: ‘Public consultation began on 4 November 2019 and lasted for a period of six weeks. In our view this is too short for so sensitive a topic. Added to which, it took place during the General Election period and in the run up to Christmas, neither of which conforms with best practice. Of the over 21,000 responses received, 79% registered general opposition to any change to the established position in Northern Ireland.’ Notwithstanding these observations which plainly meant that the 2020 Regulations rested on an inadequate foundation, there has been no consultation on the 2021 Regulations whatsoever. This failure becomes extraordinary when one notes that while the 2020 Regulations applied solely to abortion, the 2021 Regulations engage many other matters – see the list under paragraph 86 of the CEDAW report which includes sex education – are also within the scope of the powers of direction.

¹ ‘But Parliament has committed to regulations that must comply with a UN convention., said the NI Secretary.’ See <https://www.bbc.co.uk/news/uk-northern-ireland-52922082>

9. The Committee further stated: “we find it 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” (paragraph 46, 11th Report, 23 April 2020, [HL Paper 49](#)). The DUP is disappointed that a similar pattern of laying the Regulations just before Parliament rose for the Easter recess and just days ahead of it coming into effect has re-occurred.

10. There has been no public consultation on whether this approach to implementing elements of [section 9](#) is either appropriate or proportionate on matters that are devolved to another jurisdiction, especially when the relevant matters are not, as the Government have acknowledged, binding international law. It should be further noted by the Committee that the 2020 Regulations applied solely to abortion. This is not the case with the 2021 Regulations where other controversial matters – see the list under paragraph 86 of the [CEDAW report](#) which includes sex education – are also within the scope of the powers of direction.

SIR JEFFREY DONALDSON MP – PARLIAENTARY LEADER

CARLA LOCKHART MP - LEAD

SAMMY WILSON MP – CHIEF WHIP

GREGORY CAMPBELL MP

IAN PAISLEY MP

JIM SHANNON MP

GAVIN ROBINSON MP

PAUL GIRVAN MP

**SUBMISSION FROM THE COUNCIL FOR PUBLIC AFFAIRS OF THE
PRESBYTERIAN CHURCH IN IRELAND TO THE
HOUSE OF LORDS SECONDARY LEGISLATION SCRUTINY
COMMITTEE CONSIDERATION OF THE
ABORTION (NORTHERN IRELAND) REGULATIONS 2021**

APRIL 2021

Introduction

1. The Presbyterian Church in Ireland (PCI) has over 217,000 members belonging to 535 congregations across 19 Presbyteries throughout Ireland, north and south. The Council for Public Affairs is authorised by the General Assembly of the Presbyterian Church in Ireland to speak on behalf of PCI on matters of public policy, and following consultation with members made a submission to the Northern Ireland Office on its proposals for a new abortion framework for Northern Ireland. Included in our membership are many medical and health professionals, educationalists and others who are directly impacted by the Abortion (Northern Ireland) (No.2) Regulations 2020 passed by Parliament last year.
2. PCI, along with other Churches and organisations alarmed by this legislation, made representation to the House of Lords Secondary Legislation Scrutiny a year ago to aid its scrutiny of these regulations.
3. The Abortion (Northern Ireland) Regulations 2021, laid before Parliament by the Secretary of State for Northern Ireland on 23rd March 2021, are shortly due for consideration by the House of Lords Secondary Legislation Scrutiny Committee. In its Report¹ the SLSC drew the 2020 Regulations “to the special attention of the House on the ground they are politically or legally important and give rise to issues of public policy likely to be of interest to the House”. The Committee encouraged the House to press the Minister for further clarity and explanation on a number of issues including:
 - a. the interpretation of provisions relating to conscientious objection;
 - b. why certain decisions were made in light of the overwhelmingly negative response to the consultation exercise; and,
 - c. how provisions on severe foetal impairment might be interpreted.
4. The Committee Report also questioned the process of public consultation describing it as “too short for so sensitive a topic” and not conforming to best practice. Additionally, the Committee suggested that there was merit in asking the Minister for a response to the constitutional issues raised by the tabling of the legislation, not least the restoration of the devolved institutions. It is unfortunate that the Minister who took this legislation through Parliament did not adequately address the matters raised by the Committee.

¹ [House of Lords - Eleventh Report - Secondary Legislation Scrutiny Committee \(parliament.uk\)](https://www.parliament.uk/houseoflords/eleventh-report-secondary-legislation-scrutiny-committee)

5. In the year since the 2020 Regulations were passed by the UK Parliament, legislators in Northern Ireland, like their counterparts across the UK and wider world, have been focused on addressing the challenges and risks presented by the global pandemic. This includes the Minister of Health who has faced the added complexity of steering pandemic-related legislation through a multi-party Executive. This challenge should not be underestimated, and it seems peculiar that the Secretary of State for Northern Ireland should now introduce new legislation, to give him power to direct not only the Health Minister, but all Executive Ministers, at a time when energy and resources have all been focused on one common threat. Therefore a year after making representation to the SLSC on the 2020 Regulations, PCI would like to take this opportunity to draw the Committee's attention to a number of issues pertaining to the recently laid Abortion (Northern Ireland) Regulations 2021.

The Abortion (Northern Ireland) Regulations 2021

6. PCI suggests that the special attention of the House should be drawn to the following:

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

Abortion is a sensitive matter throughout the United Kingdom, but no more so than in Northern Ireland to which the Abortion Act 1967 was never extended. The Abortion (Northern Ireland) (No.2) Regulations 2020 radically altered the framework for the delivery of abortion services in Northern Ireland, exceeding provisions already available elsewhere in the UK. For example, this includes the introduction of unconditional access to abortion where the "pregnancy has not exceeded its 12th week".

The 2021 Regulations, providing the Secretary of State for Northern Ireland to direct Ministers in the Northern Ireland Executive, and other named statutory agencies, drives a coach and horses through Northern Ireland's hard won and finely devolved constitutional settlement. These powers not only devalue Northern Ireland's purposely unique system of negotiated government by giving the Secretary of State the freedom to interfere, directly and at will, with every single department of devolved government in Northern Ireland. This includes being able to unilaterally direct what should happen in Northern Ireland's schools, taking local power and decision making away from governors, teachers and parents on sensitive issues, therefore undermining the right of schools to embrace a particular ethos.

It is notable that during the period when the Northern Ireland Executive was not functioning (March 2017 – January 2020) neither the Secretary of State for Northern Ireland, nor the UK Government, deemed it necessary to pass legislation which would have allowed for governance from Westminster, even though in previous periods of suspension Direct Rule was invoked. It is therefore even more incredulous that while the NI Executive and Assembly are both functioning, a UK Government would even contemplate, never mind implement, legislation to give direction on longstanding devolved matters.

No matter their views on the subject of the 2021 Regulations, those within Parliament who are supportive of devolution, both in the House of Commons and the House of Lords, cannot claim to be upholding Northern Ireland's fragile devolved settlement while at the same time giving their assent to such an ill-considered and irresponsible intervention which undermines that system.

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act

The parent Act of this legislation, the Northern Ireland (Executive Formation etc) Act 2019 became law in October 2019 during a time when the devolved institutions remained in abeyance. Indeed one of the main arguments of those asserting the necessity of including section 9 of the Act was that the Northern Ireland Executive and Assembly were no longer functioning.

However the Executive was restored in mid-January 2020, with the Northern Ireland Assembly once again able to undertake its legislative scrutiny role. It seems unconscionable that these radical sweeping powers would be introduced, thereby riding roughshod over local decision-making powers and devolution settlement which is often under enough internal pressure, without significant external pressure being exerted on it.

Secondly, the Severe Fetal Impairment Abortion (Amendment) Bill has been introduced to the Northern Ireland Assembly by a private member and has now reached Committee Stage. This Bill has been drafted to remove paragraph (1)(b) from section 7 of the 2020 Regulations, thereby removing the ground for abortion in cases of non-fatal disabilities. This would go some way to meet the objective of the CEDAW report (on which section 9 of the NIEF (2020) Act) is framed) that stereotypes towards persons with disabilities should not be perpetuated.

This bill demonstrates the vital importance of devolved institutions having the ability to frame and pass their own legislation taking account of the views and wishes of the citizens they represent. The Committee will recall that the proposals consulted on by the Northern Ireland Office in respect of the 2020 Regulations were rejected by almost 80% of those responding. And yet this breadth of feeling was not reflected in the legislation which subsequently ensued. This bill goes some way to begin to redress that democratic deficit.

By comparison the 2021 Regulations under consideration serve only to amplify the democratic deficit which has been created on matters relating to abortion, with the potential of that deficit leaking into other devolved matters.

All that notwithstanding the focus of the Northern Ireland Executive, the Northern Ireland Minister of Health and the associated statutory bodies has been firmly on addressing the exceptional challenges presented by the global pandemic emergency. To penalise devolved ministers and institutions by taking powers to impose what essentially amounts to direct rule for specific policy areas seems ill-judged and unreasonable.

(d) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation

The Explanatory Note accompanying the regulations makes a number of statements which may be open to dispute.

Paragraph 3.1 states that "this instrument confers on the Secretary of State the power to direct that certain public authorities take action. The instrument does not therefore impose duties on people that are significantly more onerous than before, or require them to adopt different patterns of behaviour..."

When the 2020 Regulations were introduced it was unclear if any impact assessment had been undertaken to identify the financial and resource implications of the introduction of such sweeping reforms. At least, if any was undertaken it was never made public.

The legislation under consideration by the Committee introduces powers to direct not only devolved ministers and departments, and other statutory departments in a way that is unprecedented but which has not been replicated in any of the other devolved settlements. It has also not been made clear how the Secretary of State intends to implement these new powers, particularly around education (part of the paragraph 86 recommendations of the CEDAW report) where the delivery of education relating to relationships and sexuality is linked to values of the school and integrated into the whole school ethos.

(e) that there appears to be inadequacies in the consultation process which relates to the instrument

The Explanatory Note highlights that a six-week consultation was conducted in advance of making the Abortion (Northern Ireland) Regulations 2020 and while noting that over 21,000 people responses were received fails to acknowledge that nearly 80% of those were not supportive of the proposals. This Committee previously suggested that this consultation exercise was too short for such a sensitive topic and did not conform to best practice. It therefore seems illogical to introduce more legislation on the basis of this flawed process.

While the Abortion (Northern Ireland) Regulations 2021 do not give effect to any new policies over those which are stated in the 2020 legislation, they again do not take account either of the consultation exercise or of legislative developments in the Northern Ireland Assembly through the introduction of the Severe Fetal Impairment Abortion (Amendment) Bill.



Rev Daniel Kane (Convener of the Council for Public Affairs)



Rev Trevor D Gribben (Clerk of the General Assembly)

Secondary Legislation Scrutiny Committee Legislation Office
House of Lords

1 April 2021

Dear Lord Hodgson and all Committee Members,

First and foremost, thank you for your previous work and report related to the Abortion (Northern Ireland) Regulations 2020. We write to you today to raise concerns (similar to those we raised in 2020) regarding the Abortion (Northern Ireland) Regulations 2021, laid 25 March 2021.¹

Background

Placing the Abortion (Northern Ireland) Regulations 2021 in context is vital. Firstly, the new powers granted to the Secretary of State for Northern Ireland are expansive and seek to implement highly controversial abortion regulations (for reasons we will outline below) on Northern Ireland. As the Committee reviews the Instrument according to the Terms of Reference, we would like to draw special attention to a few issues based on points (a), *that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House*; (b) *that it may be inappropriate in view of changed circumstances since the enactment of the parent Act*; (d) *that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation*; and (e) *that there appear to be inadequacies in the consultation process which relates to the instrument*.²

Regarding point (a), that these regulations are “politically or legally important or gives rise to issues of public policy likely to be of interest to the House”:

Allowing the Secretary of State for Northern Ireland the expansive powers set out in the 2021 Regulations sets a dangerous precedent. Specifically, they give the Secretary of State “. . . power to direct the First Minister, deputy First Minister, a Northern Ireland Minister, a Northern Ireland department, the Regional Health and Social Care Board, and the Regional Agency for Public Health and Social Well-being. The power to direct is exercisable where the Secretary of State considers that there is action those persons are capable of taking and that the action is required for the purpose of implementing the recommendations in paragraphs 85 and 86 of the CEDAW report.”³ Allowing the Secretary to direct the actions of officials in a devolved government, which has been functioning for over 15 months, on a devolved issue, is an extreme overreach of power and sets a very dangerous precedent.

Indeed, in the explanatory note to these regulations it is clear that such power would not normally be provided to the Secretary: “*The power conferred on the Secretary of State by this instrument is similar to the power conferred by section 26 of the Northern Ireland Act 1998 . . . The section 26 power cannot be relied on by the Secretary of State to ensure that the recommendations in paragraphs 85 and 86 of the CEDAW Report are implemented. In particular, those recommendations are not binding and do not constitute international obligations.*”⁴ This is ironic, given that originally one of the primary arguments made by those in favour of these regulations was to ensure that

¹ See: [The Abortion \(Northern Ireland\) Regulations 2021](#).

² See: [Secondary Legislative Scrutiny Committee: Terms of Reference](#).

³ See: [The Abortion \(Northern Ireland\) Regulations 2021](#), Section 2.

⁴ See: [The Abortion \(Northern Ireland\) Regulations 2021](#), p. 4.

Northern Ireland was meeting its international obligations (for example, referring to New Clause 10 as proposed to the Northern Ireland (Executive Formation) Bill 2019, requiring Northern Ireland to provide abortion services, Stella Creasy MP stated “*Section 26 of the Northern Ireland Act 1998 charges this place with upholding our international obligations for the whole United Kingdom, even when the Assembly is sitting . . .*”).⁵ Now however it is clearly acknowledged that there are no international obligations to implement paragraphs 85 and 86 of CEDAW,⁶ but rather this is a domestic issue - an issue that Westminster voted to impose on Northern Ireland, seemingly based on the false premise that there was an international obligation to do so. Notably, subsequently, every MP from Northern Ireland who takes their seat in Parliament voted *against* this provision.

Notably as well, the majority of people in Northern Ireland themselves are opposed to these extreme abortion regulations, as was demonstrated by a 2020 poll organised by the University of Liverpool and Britain’s Economic and Social Research Council.⁷

Furthermore, the 2020 regulations, that the Secretary is being given the power to implement under the 2021 regulations, were and remain extremely controversial, and are much more expansive than abortion laws in the rest of the United Kingdom. They, for example, allow abortion on demand to 12 weeks, which effectively permits the abhorrent practice of sex selective abortion, which violates the Equality Act 2010.⁸ Furthermore, the regulations are discriminatory, allowing abortion to birth for disability. As noted in our submission in 2020, such a provision is, in our view, a clear violation of the United Nations Convention on the Rights of Persons with Disabilities, specifically Article 10.⁹ This is especially concerning from a political and legal perspective, given that, according to Section 9 (9) of the Northern Ireland (Executive Formation etc) Act 2019, the Secretary may only implement regulations that the Assembly itself could, and specifically, the Assembly is limited in the laws it can pass by the Northern Ireland Act 1998, section 6 (2) of which says they cannot pass any law that would violate “any of the Convention rights.”¹⁰ It is also notable that the UK has been the subject of scrutiny from the UN Committee on the Rights of Persons with Disabilities, as said Committee has reported that portions of the Abortion Act (1967) should be amended.¹¹

⁵ See: [Hansard - Northern Ireland \(Executive Formation\) Bill, 9 July 2019 PARLIAMENTARY DEBATES](#) and comments from Secretary of State for Northern Ireland Brandon Lewis MP here: [BBC - Abortion: Brandon Lewis 'will not change NI regulations'](#).

⁶ Furthermore, according to paragraph 85 of the CEDAW report, the Act only required legislation to be adopted to expand abortion for three limited reasons. Specifically in paragraph 85, it notes that “legislation to provide for expanded grounds to legalise abortion at least in the following cases. . . threat to the 10 woman’s physical or mental health,” yet the regulations (section 4 (1)) allow for abortion if: “the continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman which is greater than if the pregnancy were terminated.” In this regulation, the word “risk” is unjustifiably more permissive than what CEDAW recommended (“threat”). There was no reason for the Government to go beyond what the CEDAW report recommended in this case, especially given that the same wording (“threat”) in the 1967 Abortion Act is currently quite widely interpreted to allow for (in England and Wales) de-facto abortion for any reason. Furthermore, the regulations allow abortion through to 24 weeks; yet there is no requirement in the CEDAW recommendations to introduce abortion through to that late of a gestation. See: [Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol](#) and [The Abortion \(Northern Ireland\) Regulations 2020](#).

⁷ See: [Poll shows majority of Sinn Fein and DUP voters reject Conservative Government's proposed abortion framework for Northern Ireland](#).

⁸ See: [Equality Act 2010](#).

⁹ Article 10 notes that “States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.” See: [Convention on the Rights of Persons with Disabilities](#). As the wording of the regulation is nearly identical to the wording in the UK Abortion Act (1967), which has allowed for abortion up to birth for club foot, cleft lip and Down Syndrome, the regulation clearly discriminates against those with disabilities.

¹⁰ See: [Northern Ireland Act 1998](#).

¹¹ See: [Committee on the Rights of Persons with Disabilities - Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#), “The Committee recommends that the State party amend its abortion law accordingly. Women’s rights to reproductive and sexual autonomy should be respected without legalizing selective abortion on the ground of fetal deficiency.”

Additionally, we believe it politically important to note that in June 2020, the Northern Ireland Assembly voted to *reject* the Abortion (Northern Ireland) Regulations (2020). Again, the fact that Westminster is continuing to impose its will on a devolved government - one which clearly opposes these regulations - is something that is likely to be of interest to the House, given the importance of the devolution settlement.

To point (b), that these regulations “*may be inappropriate in view of changed circumstances since the enactment of the parent Act*”:

As noted in our 2020 submission on this matter, as abortion is a devolved power¹² (and the Government has repeatedly noted that in light of the Devolution Settlement they wanted to honour devolution as much as possible¹³), implementing any regulations on abortion is inappropriate. It is important to note that the original Abortion (Northern Ireland) Regulations 2020 were equally inappropriate in view of the changed circumstances that took place between the 2019 Northern Ireland (Executive Formation etc) Act and the vote on the 2020 regulations - that is, Stormont was not sitting in 2019 but resumed functioning in 2020. That Stormont has been sitting for 15 months now simply heightens the offence these current regulations bring.

In other words, the UK Government should either vote to overturn Section 9 of the 2019 Act, now that Stormont has resumed sitting, or, at the least, allow Northern Ireland to ‘implement’ regulations on this devolved matter in their own time and place.

Furthermore, even now Northern Ireland is in the process of trying to regain control of this devolved matter - circumstances have changed again as a private member’s bill on abortion is making its way through the Assembly, another indication of the Assembly’s capacity to legislate for itself.

Regarding point (d), “*that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation*”:

It is concerning and confusing to note that the explanatory memorandum states: “*Nor is this instrument dealing with the manner in which the recommendations in the CEDAW Report should be implemented.*”¹⁴

Yet, that seems to be precisely the goal of the regulations, which allow the Secretary of State to direct any “*relevant person*” to take “any action” that they are capable of “***for the purpose of implementing the recommendations in paragraphs 85 and 86 of the CEDAW report***”¹⁵ (emphasis added). Indeed, the explanatory material presents a confusing scenario, stating the regulations do not deal with the manner in which the recommendations of the CEDAW Report are to be implemented, yet the regulations themselves give the Secretary of State power to direct individuals to take action to implement these recommendations.

It will remain to be seen how this is carried out in practice but, in sum, the explanatory memorandum seems at best confusing and at worst contradicts the very regulations that it seeks to clarify.

¹² See: [Devolution settlement: Northern Ireland](#). Note: Both health and justice are devolved to the Northern Irish Assembly which results in abortion being fully devolved.

¹³ For example, before becoming Prime Minister, The Rt. Hon. Boris Johnson MP argued, “*To risk sounding like a cracked record, I hope the government of Northern Ireland can be resumed as soon as possible so this issue [abortion] can be decided in the forum where it properly belongs, in other words at Stormont.*” See: [Northern Ireland bans on abortion and same-sex marriage will stay, say Boris Johnson and Jeremy Hunt](#).

¹⁴ See the Explanatory Memorandum to [The Abortion \(Northern Ireland\) Regulations 2021](#).

¹⁵ See: [The Abortion \(Northern Ireland\) Regulations 2021](#).

Regarding point (e) “. . .that there appear to be inadequacies in the consultation process which relates to the instrument”:

Straightforwardly, the inadequacy is that there has not been any consultation process. Yet, given the controversial and sweeping nature of these regulations - as outlined above - certainly, the regulations merit consultation. Indeed the new regulations go beyond the scope of the original consultation.

Furthermore, the main reason the Northern Ireland Office provides for justifying the lack of consultation rests on a flawed former consultation - the consultation on the Abortion (Northern Ireland) Regulations 2020.¹⁶ Indeed, as we noted in our last submission, there were several issues, including the limited time frame it was given of six rather than twelve weeks. It was also done at a busy time, in the midst of a general election. The consultation analysis did not mention any Government engagement with disability rights groups, which is concerning as the Government has allowed for abortion up to birth for disability. Finally and most notably: The Government did not appear to have addressed the concerns and views of the vast majority of respondents who expressed a desire that there would be no change to the abortion laws in Northern Ireland. Indeed it is concerning, given “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,” that the regulations went beyond the minimum legal requirements.¹⁷

Resting the argument for not holding a consultation on new regulations that confer expansive and sweeping powers to the Secretary of State on a consultation that took place on different regulations - which itself was poorly executed - is very poor practice.

Conclusion

In summary the 2021 Regulations appear to further violate the devolution settlement by granting the Secretary of State sweeping powers to force a devolved government to act on a devolved matter. Given Stormont has been sitting for 15 months, to properly respect the devolution settlement the Government should be requesting that Parliament repeal Section 9 of the 2019 Act and, at the least, simply leave Northern Ireland to implement the Abortion (Northern Ireland) Regulations 2020 as they see fit. Indeed, as noted above, they have already begun to address some of the more concerning aspects of this legislation as a private member’s bill on the issue of abortion in the cases of severe fetal impairment is making its way through the Assembly. Notably, if Northern Ireland had no intention of recognising the Abortion (Northern Ireland) Regulations 2020 they would not need to bother with such legislation. We would be thankful if the committee, upon considering them, brought the following points to the attention of the full House.

¹⁶ The Explanatory Memorandum on the 2021 regulations states “*We have not consulted on this instrument. However, a six-week public consultation titled ‘A new legal framework for abortion services in Northern Ireland’ was conducted in advance of the making of the Abortion (Northern Ireland) Regulations 2020. The consultation provided an opportunity for people and organisations in Northern Ireland to provide input and views on the question of how the Government could best deliver a framework consistent with the requirements in section 9 of the NIEF Act, being the implementation of the recommendations contained in the CEDAW Report. . . The Abortion (Northern Ireland) (No. 2) Regulations 2020 established a legal framework for access to abortion services, following that consultation. This instrument is not giving effect to any new policies relating to the conditions in which abortions can be lawfully accessed and provided in Northern Ireland . . .*” Ibid.

¹⁷ See: [A new legal framework for abortion services in Northern Ireland Implementation of the legal duty under section 9 of the Northern](#)