

Christian Medical Fellowship (CMF) submission to the JOINT COMMITTEE ON STATUTORY INSTRUMENTS

ABORTION (NORTHERN IRELAND) REGULATIONS 2020

1. This submission refers to Grounds (2) (d) and (f) of the terms of reference of the Joint Committee on Statutory Instruments in drawing out why the Abortion (Northern Ireland) Regulations 2020 are of significance to both Houses. The Regulations arise from the requirements of section 9 of the Northern Ireland (Executive Formation etc) Act 2019 and were laid before Parliament on Wednesday 25th March and came into effect on Tuesday 31st March. In the interests of brevity, we restrict our comments, in the main, to Regulations 7 and 12.

Issue 2, Ground (d) that there appears to have been unjustifiable delay in the publication or in the laying of it before Parliament.

2. The provision of abortion in NI is very significantly changed by these Regulations. Given that the democratically elected NI Assembly had rejected any change to their abortion law as recently as 2016, and that all the elected NI MP's who were present on 22 October 2019 when Parliament made the decision to impose abortion legislation on NI voted against it, such changes were always going to be unwelcome and controversial. The provision of just three working days between the tabling of the regulations and their coming into effect is an unacceptably short period of notification.

Issue 2, Ground (f) that there appears to be a doubt whether it is intra vires or that it appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made

3. The UK Government could have repealed section 9 of the Northern Ireland (Executive Formation etc) Act 2019 in order to allow the newly reformed NI Assembly to decide upon its own abortion framework. This would have respected the devolved competency of the Assembly. We suggest that the imposition of the 2020 Regulations undermines the right that devolved jurisdictions have, to choose different legal provisions and services implementation, within areas of devolved competence.
4. Section 9 of the 2019 Northern Ireland Act requires compliance with the CEDAW report.¹ As we understand it, the requirements of the CEDAW report do not call for 'abortion on request' for any reason up to 12 weeks. Any reasonable reading of the CEDAW Report would not interpret it to recommend early abortion 'on demand', as is permitted in the Regulations. The Report recommends expansion of the scope of abortion law only to include rape and incest, fatal/severe foetal abnormalities, and threat to the pregnant woman's physical or mental health. In our view, the 2020 Regulations may be ultra vires in that they permit access to abortion significantly beyond that laid out in the CEDAW report. We suggest the use of wording that we believe would clarify both the scope and intent of the CEDAW Report, allowing access to abortion 'where continuation of the pregnancy poses

¹ <https://undocs.org/CEDAW/C/OP.8/GBR/1>, March 2018, paragraphs 85 and 86

a threat of **serious and substantial harm** to the mental or physical health of the pregnant woman.'

5. CMF suggests that Regulation 7, as stated, fails to safeguard the CEDAW Report recommendations that if abortion is permitted in cases of *'severe foetal impairment, including fatal foetal abnormality, [this should occur] without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women or girls who decide to carry such pregnancies to term'*. Regulation 7 fails to comply with CEDAW recommendations that legislation should do nothing to 'perpetuate negative stereotypes' and fails to give statutory support for women who decide to carry their pregnancies to term in the knowledge that their child may be disabled. Further, we believe the Regulations run contrary to provisions of the UN Convention on the Rights of Persons with Disabilities (UNCPRD), to which the UK is legally bound and which state that abortion should not be available purely on the grounds of disability. In addition, we note that the Supreme Court, in its 2018 NI abortion judgement,² did not argue that there was a right to abortion in cases where the disability of the child would not be fatal. A press summary of the judgment stated: 'A disabled child should be treated as having equal worth in human terms as a nondisabled child', referencing comments by Baroness Hale, Lord Mance and Lord Kerr. Taken together, CMF believes there is reason to suggest that Regulation 7, as it stands, may be ultra vires.
6. CMF also has concerns about Regulation 12, that limits freedom of conscience. That freedom is protected by Article 9 of the European Court of Human Rights (ECHR) that states everyone has the right to freedom of thought, conscience and religion.³ Similarly, the 2010 UK Equality Act⁴ also prohibits discrimination on the grounds of religion and belief. Conscience also has protection under Resolution 1763(2010) of The Parliamentary Assembly of the Council of Europe.⁵ Our understanding of section 6(2)(e) of the Northern Ireland Act 1998, is that the Assembly (and, in this case, the Secretary of State) does not have competence to introduce legislation that leads to discrimination on religious grounds. Regulation 12 states that *'a person is not under a duty to participate in any treatment authorised by these Regulations to which the person has a conscientious objection.'* The meaning of 'participation' for nurses and midwives has been tested in the courts⁶ and refers to 'taking part in a "hands-on" capacity'. As such it covers the whole course of medical treatment bringing about the termination of the pregnancy but does not apply to the host of ancillary, administrative and managerial tasks performed in association with it. Many ancillary staff hold their beliefs as conscientiously as doctors and nurses and are as conflicted when asked to participate, even indirectly, with abortion. This will be even more true in NI where religious faith is owned by a higher percentage of the population than in other parts of the UK. In our view, the Regulations should extend conscience protection to those indirectly involved in abortion.
7. It is posited that the Committee draw these flaws to the attention of the House.

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² <https://www.supremecourt.uk/cases/docs/uksc-2017-0131-judgment.pdf>

³ http://www.echr.coe.int/Documents/Convention_ENG.pdf, page 10

⁴ http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

⁵ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17909>

⁶ <https://www.supremecourt.uk/cases/uksc-2013-0124.html>

