

**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 Report²⁴ 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.

²⁴ [House of Lords - Eleventh Report - Secondary Legislation Scrutiny Committee \(parliament.uk\)](https://www.parliament.uk/houseoflords/eleventh-report-secondary-legislation-scrutiny-committee/)

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.
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:

(b) 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.

(c) 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)