

**PROPOSED LEGISLATIVE TEXT**  
**FOR NEW REGULATORY FRAMEWORK: ABORTION IN NI**  
**ASSUMES THIS WILL BE MADE THROUGH ORDER IN COUNCIL**

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## PART 1 INTRODUCTORY

### **Title and commencement**

- 1.—(1) This Order may be cited as the Abortion (Northern Ireland) Order 2020.
- (2) This Order comes into effect on 31 March 2020.

### **Interpretation**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.
- (2) The following provisions of this Article apply for the purposes of this Order.
- (3) “Activity” includes supervising, support, preparing for and performing the administration of any abortifacient medication or surgical procedure which leads to the termination and the disposal of the remains of the foetus or child.
- (4) “Department” means the Department of Health.
- (5) “Electronic communication” has the same meaning as in section 15 of the Electronic Communications Act 2000.
- (6) “Practitioner” means a registered medical practitioner.
- (7) “Registered person” has the meaning in Article 2 of the Independent Health Care Regulations (Northern Ireland) 2005.
- (7) “Weeks of pregnancy” shall be construed in accordance with the medical principle that pregnancy is generally dated from the first day of a woman’s last menstrual period.

## PART 2 PROVISION OF ABORTION

### **Abortion: Conditions**

- 3.—(1) A termination of pregnancy may be carried out if one of the following conditions apply in the opinion, formed in good faith, of two practitioners.
- (2) The first two conditions are that during the first 12 weeks of pregnancy either—
  - (a) the pregnant woman provides evidence from an approved person that she has been in contact with that approved person or another approved person and her circumstances are consistent with the allegation of rape or incest; or
  - (b) there is a threat to the woman’s physical or mental health in continuing the pregnancy.
- (3) The third condition is that there is a diagnosis made that there is a substantial risk that the condition of the foetus is likely to cause death either before birth or, during birth, or in the early period after birth.
- (4) The fourth condition is that it is necessary to preserve to the life of the pregnant woman if the pregnancy continues.

(5) The fifth condition is that if the pregnancy continues, there is a risk of real and serious adverse effect to the pregnant woman's physical or mental health, which is either long term or permanent.

### **Abortion: Additional Provisions and Interpretation**

4.—(1) The following provisions apply for the purposes of Article 3.

(2) For the purposes of Article 3(2)(a)—

- (a) the Department must determine the manner of the pregnant woman providing evidence from an approved person;
- (b) The Attorney General for Northern Ireland must issue guidance pursuant to Section 8 of the Justice (Northern Ireland) Act 2004 on the application of section 5 of the Criminal Law Act (Northern Ireland) 1967 to the pregnant woman, the approved person and the practitioner.

(3) The requirement for the opinion of two practitioners shall not apply to a termination of pregnancy in a case where the practitioner is of the opinion, formed in good faith, that the termination is immediately necessary and either Article 3(4) or 3(5) applies.

(4) In Article 3—

“approved person” has the same meaning as in Schedule 12 of the Universal Credit Regulations (Northern Ireland) 2016.

“early period after birth” means a child could survive birth, but there is no medical treatment which could alter the child's condition to make the condition survivable; the only appropriate care is postnatal palliative care.

“rape” means an offence under either Article 5 or 12 of the Sexual Offences (Northern Ireland) Order 2008.

“incest” means an offence under either Article 32, 68 or 69 of the Sexual Offences (Northern Ireland) Order 2008.

“threat” means a health condition that presents imminent harm and is more likely than not to occur resulting in serious and substantial harm.

### **Abortion on the grounds of the sex of the foetus**

5. — (1) Nothing in Article 3 is to be construed as permitting a pregnancy to be terminated on the grounds of the gender of the foetus.

(2) For the avoidance of doubt, paragraph (1) does not prevent the termination of a foetus of a particular gender if there are reasonable grounds to believe that the foetus will suffer from a genetic disorder which is more likely to occur in a foetus of one gender than the other.

### **Abortion in a place approved by the Department**

6.—(1) Any termination of pregnancy must be carried out in a place approved by the Department for that purpose.

(2) Paragraph (1) shall not apply if Article 4(3) applies.

(3) The power under paragraph (1) of this Article to approve a place includes power, in relation to a termination of pregnancy consisting primarily in the use of such medicines as may be

specified in the approval and carried out in such manner as may be so specified, to approve a class of places

### **Criminal Justice Act (Northern Ireland) 1945**

7.—(1) No offence under the Criminal Justice Act (Northern Ireland) 1945 shall be committed by a practitioner who carries out a termination of pregnancy in accordance with this Order.

(2) The Criminal Justice Act (Northern Ireland) 1945 is amended as follows.

(3) In section 45(2), for “twenty-eight” substitute “twenty-two”.

### *Information, care and support*

### **Information and care to be provided to a woman for informed consent**

8.—Every woman, in the circumstances described in—

- (a) Article 3 must be offered—
  - (i) counselling;
  - (ii) full and accurate information on the complete range of available options and support in relation to the pregnancy;
  - (iii) the option of emergency contraception, where appropriate.
- (b) Article 3(3) must be given—
  - (i) a clinical assessment of the potential impact on her health of either continuing or terminating the pregnancy;
  - (ii) information on the provision of neonatal and postnatal palliative care in such circumstances;
  - (iii) the opportunity to decide whether to terminate the pregnancy or to continue to the point of natural delivery; and
  - (iv) suitable medical and nursing care to enable her to either terminate the pregnancy or continue to the point of natural delivery, with suitable care for the child.
- (c) For the purposes of paragraph (a), a private organisation that provides either termination of pregnancies or adoptions may not offer counselling or support to a woman seeking a termination of pregnancy if the organisation has any financial interest, either directly or indirectly, in the provision of—
  - (i) terminations of pregnancy; or
  - (ii) adoptions.

### **Post-abortion counselling and support**

9.—The Department must secure the availability of suitable and sufficient post-termination counselling and support for any woman who has undergone a termination in accordance with this Article.

## ADDITIONAL REQUIREMENTS

### *Certificates and Notifications*

#### **Certificate of opinion**

10.—(1) Any opinion to which Article 3 of this Order refers shall be certified in accordance with paragraph (2) unless Article 4(3) applies, in which case, in accordance with paragraph (4).

(2) For the purposes of paragraph (1), certification shall be in a certificate signed and dated by both practitioners jointly or in separate certificates signed and dated by each practitioner stating:—

- (a) the full name and address of each practitioner;
- (b) the full name and address of the pregnant woman; and
- (c) whether or not each practitioner has seen or examined, or seen and examined, the pregnant woman; and
- (d) that each practitioner is of the opinion formed in good faith that at least one and the same condition in Article 3 is fulfilled.

(3) Any certificate of an opinion referred to in paragraph (2) shall be given before the commencement of the termination of the pregnancy to which it relates.

(4) For the purposes of paragraph (1), if Article 4(3) applies, in a certificate giving the full name and address of the practitioner and containing the full name and address of the pregnant woman and stating that the practitioner is of the opinion formed in good faith that either Article 3(4) or 3(5) applies.

(5) Any certificate of an opinion referred to in paragraph (4) shall be given before the commencement of the termination of the pregnancy or, if that is not reasonably practicable, not later than 24 hours after such termination.

(6) Any such certificate as is referred to in this Article shall be preserved by the practitioner who carried out the termination to which it relates for a period of not less than three years beginning with the date of the termination.

(7) A certificate which is no longer to be preserved shall be destroyed by the person in whose custody it then is.

#### **Notice of abortion and information relating to the abortion**

11.— Where a termination of pregnancy is carried out in Northern Ireland, the practitioner who carried out the termination of pregnancy shall give to the Chief Medical Officer—

- (a) notice of the termination, and
- (b) such other information relating to the termination as is specified in Schedule 1 to this Order, and shall do so by sending the information required within 14 days of the termination either in a sealed envelope or by an electronic communication transmitted by an electronic communications system used solely for the transfer of confidential information.

#### **Publication of data collected from notifications**

12.—(1) Information collected under Article 11 must be published by the Department each year for the terminations of pregnancy carried out in the previous calendar year.

(2) The Minister shall exclude from the report under paragraph (1) information that identifies, or that could reasonably lead to the identification of a practitioner or pregnant woman.

### *Inspections and Requirements*

#### **Independent Health Care Regulations (Northern Ireland) 2005**

13.— (1) A registered person who provides termination of pregnancies and is subject to the Independent Health Care Regulations (Northern Ireland) 2005 must comply with the requirements set out in Schedule 2 of this Order.

(2) The Independent Health Care Regulations (Northern Ireland) 2005 are amended as follows.

(3) In Article 4, at the end of the paragraph (1), insert—

“(1A) For the purposes of Article 2 of the Order, “listed services” include activity for the termination of pregnancy.”

## **PART 4 OFFENCES**

#### **Offence of providing an abortion otherwise than in accordance with this Order**

14.—(1) A person commits an offence if they prescribe, administer, supply or procure any drug, substance, instrument, apparatus or other thing knowing that it is intended to be used or employed with intent to end the life of a foetus, or being reckless as to whether it is intended to be so used or employed, otherwise than in accordance with the provisions of this Order.

(2) Paragraph (1) shall not apply to a pregnant woman in respect of her own pregnancy.

(3) A person who is guilty of an offence under this section shall be liable on conviction on indictment to fourteen years.

#### **Offence of coercing abortion**

15. —(1) A person commits an offence if they take the following actions towards a pregnant woman with the intention of causing a termination of pregnancy without the informed consent of that pregnant woman—

- (a) using force or the threat of force;
- (b) psychological or emotional abuse;
- (c) controlling or coercive behaviour; or
- (b) administering any substance capable of causing a termination.

(2) A person guilty of an offence under this Article is liable on conviction on indictment to imprisonment for life.

#### **Offence related to certificates and notifications**

16.—Any person who wilfully contravenes or wilfully fails to comply with the requirements of either Article 11 or 12 of this Order shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **PART 5**

### **FREEDOM OF CONSCIENCE**

#### **Conscientious objection to participating in any activity governed by this Order**

17.—(1) Subject to paragraph (2) of this Article, no person who has a conscientious objection to participating in any activity governed by this Order shall be under any duty however arising, to do so.

(2) Nothing in paragraph (1) of this Article shall affect any duty to participate in activity which is necessary to either—

- (a) preserve the life of a pregnant woman; or
- (b) to prevent a real and serious adverse effect on the pregnant woman's physical or mental health, which is either long term or permanent.

(3) In any legal proceedings, a statement in writing and on oath or affirmation by a person that he or she has a conscientious objection to participating in any activity which will result in the termination of a pregnancy in the circumstances described in Article 3 is conclusive evidence of that objection.

(4) A medical practitioner who has a conscientious objection referred to in paragraph (1) must—

- (a) inform the woman who is seeking a termination under Article 3 that she has a right to see another medical practitioner; and
- (b) ensure she has sufficient information to enable her to identify another medical practitioner.

#### **Conscientious objection: employment protection**

18.—The employer of a person who has a conscientious objection to participating in any activity governed by this Order, as set out in Article 17(1), must not—

- (a) discriminate against a person on the basis of their conscientious objection;
- (b) terminate their employment; or
- (c) refuse to employ the person.

## **SCHEDULES**

### **Information to be supplied in an Abortion Notification**

1. Full name and address (including postcode) of the practitioner who terminated the pregnancy and the General Medical Council registration number of the practitioner.
2. In non-emergency cases particulars of the practitioners who gave a certificate of opinion pursuant to Article 3 of this Order and confirmation that they saw and examined the patient before giving the certificate.
3. Patient's details—
  - (a) patient's hospital or clinic number or National Health Service number or (if unavailable) patient's full name;
  - (b) date of birth;
  - (c) in the case of a patient resident in the United Kingdom, her full postcode or, if the postcode is unavailable, her address;
  - (d) in the case of a patient resident outside the United Kingdom, her country of residence;
  - (e) ethnicity (if disclosed by the patient);
  - (f) marital status; and
  - (g) parity.
4. Details of the information and support provided to the pregnant woman under Article 8.
5. Name and address of place of termination.
6. Whether the termination was paid for privately or not.
7. Date and method of foeticide if appropriate.
8. In a case where the termination is by surgery—
  - (a) date of termination;
  - (b) the method of termination used; and
  - (c) in cases where the dates are different, the date of admission to the place of termination and the date of discharge from the place of termination.
9. In a case where the termination is by non-surgical means—
  - (a) the date on which mifepristone is taken;
  - (b) the date on which misoprostol is taken;
  - (c) the date on which the termination is confirmed;
  - (d) in cases where misoprostol is taken in a different place from where mifepristone is taken, the name and address at which misoprostol is taken
  - (e) details of other agents used and the date of administration; and
  - (f) the date of discharge if an overnight stay is required.
10. Number of complete weeks of gestation.
11. The conditions certified for carrying out the termination contained in the certificate of opinion given pursuant to Article 3 of this Order together with the following additional information in the case of—
  - (a) the condition specified in paragraph (2)(a), confirmation that practitioners have seen evidence from the approved person;
  - (b) the condition specified in paragraph (2)(b), the nature of the threat to the pregnant woman's mental or physical health;
  - (c) the condition specified in paragraph (3), the nature of the foetal diagnosis together with method of diagnosis used.
  - (d) the conditions specified in paragraphs (4) or (5), the main medical condition(s) of the pregnant woman.
12. If Article 4(3) applies, the conditions(s) certified for the termination contained in the certificate of opinion and the patient's main medical conditions.

13. Whether or not the patient was offered chlamydia screening.
14. Particulars of any complications experienced by the patient up to the date of discharge.
15. In the case of the death of the patient the date and cause of death.

## SCHEDULE 2

## Regulation 13

### **Requirements relating to termination of pregnancies**

1. The registered person must ensure that, unless two certificates of opinion have been received in respect of the service user—

- (a) no termination of pregnancy is carried out; and
- (b) no fee is demanded or accepted from a patient.

2. The registered person must ensure that a certificate of opinion in respect of a patient undergoing termination of pregnancy is completed and included with the patient's medical record.

3. The registered person must ensure that no termination of pregnancy is undertaken after the 20th week of gestation, unless—

- (a) the patient is treated by persons who are suitably qualified, skilled and experienced in late termination of pregnancy; and
- (b) appropriate procedures are in place to deal with any medical emergency which occurs during or as a result of the termination.

4. The registered person must ensure that no termination of pregnancy is undertaken after the 22nd week of gestation.

5. The registered person must ensure that a register of patients undergoing a termination of pregnancy is maintained, which is—

- (a) completed in respect of each patient at the time the termination is undertaken; and
- (b) retained for a period of not less than 3 years beginning on the date of the last entry.

6. The registered person must ensure that a record is maintained of the total numbers of termination of pregnancies undertaken.

7. The registered person must ensure that the record referred to in paragraph 6 (which may be in paper or electronic form) is—

- (a) accurate;
- (b) kept securely and can be located promptly when required;
- (c) retained for an appropriate period of time; and
- (d) securely destroyed when it is appropriate to do so.

8. The registered person must ensure that notice in writing is sent to the Chief Medical Officer of the Department of Health of each termination of pregnancy.

9. If the registered person—

- (a) receives information concerning the death of a patient who has undergone termination of pregnancy during the period of 12 months ending on the date on which the information is received; and
- (b) has reason to believe that the patient's death may be associated with the termination of pregnancy,

the registered person must give notice in writing to the Regulation and Improvement Authority of that information, within the period of 14 days beginning on the day on which the information is received.

10. The registered person must prepare and implement appropriate procedures to ensure that foetal tissue is treated with respect.

