

FROM THE MINISTER OF HEALTH



Department of
Health

An Roinn Sláinte

Máinnystrie O Poustie

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THE HEALTH AND CARE BILL 2021 – LEGISLATIVE CONSENT MEMORANDUM

Under the provisions of Standing Order 42A (2), please find attached a Legislative Consent Memorandum relating to the Health and Care Bill.

Should the Business Office need to discuss the Memorandum with an official from my Department, the relevant contact is Kerry Loveland Morrison, Head of Adult Safeguarding Unit at telephone number 07979904264.

Robin Swann MLA
Minister of Health

LEGISLATIVE CONSENT MEMORANDUM

The Health and Care Bill 2021

Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Health is:

“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions within the Health and Care Bill introduced in the House of Commons on 6th July 2021, to ban virginity testing and hymenoplasty”.

Background

2. This memorandum has been laid before the Assembly by the Minister of Health under Standing Order 42A(2). The Health and Care Bill was introduced in the House of Commons on 6th July 2021. The latest version of the Bill can be found at:

https://publications.parliament.uk/pa/bills/lbill/58-02/071/5802071_en_1.html

Summary of the Bill and its policy objectives

3. The Health and Care Bill seeks to reform the delivery of health services in England.
4. Part 5 of the Bill seeks to ban the practice and process of virginity testing viz., the gynaecological examination of female genitalia, with or without consent, for the purpose (or purported purpose) of determining whether a woman or girl has had vaginal intercourse. Sections 130 – 133 of the Bill set out the draft provisions in respect of virginity testing as proposed for Northern Ireland.

5. The Bill will also seek to ban hymenoplasty procedures viz. the practice and process of hymen reconstruction undertaken on a woman or girl for the purpose of creating the impression that she has not had vaginal intercourse.

Provisions which deal with a Devolution Matter

6. The practices of virginity testing and hymenoplasty are health and social care issues. Health is a matter which has been transferred and which the Northern Ireland Assembly has full legislative powers over.
7. The other devolved governments, Scotland and Wales, are in the same position as Northern Ireland and have been or will be required to bring forward a Legislative Consent Memorandum on these issues. It was confirmed on 16th December 2021 that Wales has given its support for the introduction of the hymenoplasty ban.

Reasons for making the Provisions

8. Virginity testing and hymenoplasty are harmful and intrusive practices which are widely regarded as a forms of violence and abuse against women and girls. They are categorised as honour based abuse as women and girls are often coerced or pressured into the procedures to protect or defend the 'honour' of their family and/or their community. The procedures are linked to one another. A woman or girl who 'fails' a virginity test is likely to be forced into undergoing a hymenoplasty procedure to create the impression that she has not had vaginal intercourse prior to her wedding night. Both procedures infringe upon a woman or girls' right to have ownership over their own sexual and reproductive health and it can have a significantly detrimental effect on any victim's physical and psychological wellbeing.
9. Virginity testing is not recognised as a medical procedure nor does it carry any scientific or clinical merit; there is no known examination that can prove or disprove a history of vaginal intercourse. Further, there is no medical or clinical need or to repair or reconstruct the hymen and there is no guarantee that hymenoplasty will fully reform the hymen or cause bleeding when penetration is attempted. The procedures are not offered in healthcare facilities in Northern Ireland in either Trust or private facilities regulated by the RQIA.

10. It follows that virginity testing and hymenoplasty procedures should be criminalised to regulate their practice and to protect women and girls from violence and abuse.

Reasons for utilizing the Bill rather than an Act of the Assembly

11. The Bill has already been introduced in Parliament and, with the legislative constraints in the current mandate, it would not be possible to bring equivalent provision via an Assembly Bill within the same timescale.

12. It is anticipated that the Bill will receive Royal Assent in or around March 2022. Provisions should be made for introduction of the offences and related penalties to Northern Ireland at the same time and under the same piece of legislation as they will be in England, Scotland and Wales.

Consultation

13. The Department of Health has consulted with the Department of Justice for its views on the implementation of offences of virginity testing and hymenoplasty and their related penalties. The Department of Justice advised on 14 December 2021 that there is likely to be no impact on the justice system in Northern Ireland, and that it is keen to approve the extension of the criminal sanctions for virginity testing and hymenoplasty to Northern Ireland.

14. The Department of Health has consulted with colleagues within the Executive Office who confirmed on 16 December 2021 that they had no issues or comment to make in relation to the criminalisation of virginity testing or hymenoplasty procedures. They confirmed that they will continue to work with officials in all Departments and with stakeholders to bring forward the Violence against Women and Girls Strategy (a wider strategy) and to ensure that work on that Strategy and on the subject issues are joined up and effective.

Human Rights and Equality

15. The Department of Health and Social Care has completed the relevant assessments and it has concluded that the practices of virginity testing and hymenoplasty amount to a violation of a girl or woman's human rights.

Lord Kamall, in consideration of the Bill, has made the following statement under section 19(1)(a) of the Human Rights Act 1998: *“In my view the provisions of the Health and Care Bill are compatible with the Convention rights.”* The Department of Health and Social Care is ad idem with this finding.

Financial Implications

16. It is likely that there will be minimal spend related to these matters. Specifically, a total cost of £4.2 million over 10 years has been estimated in relation to the implementation of the virginity testing policy, related police investigations and prosecutions. The Department of Health and Social Care has advised that implementation of the hymenoplasty policy will be less than that of virginity testing.

Summary of Regulatory Impact

17. It is anticipated that the Bill’s implementation is likely to have a minimal impact on employees, consumers and costs to business. The wider impact on the public sector will be one of safeguarding and ensuring where appropriate guidance and training is provided to those that may encounter a victim of virginity testing or hymenoplasty procedures. There will not be a direct or indirect impact on the environment.

Engagement to date with the Committee for Health

18. The Minister of Health wrote to the Committee for Health on 22nd December 2021 to advise its members of the laying of this Legislative Consent Memorandum. Engagement with the Committee for Health will continue as the issue progresses.

Conclusion

19. The view of the Minister of Health is that in the interests of justice that so far as the provisions of the Bill deal with a devolution matter they should extend to Northern Ireland.

Department of Health

The 13th day of January 2022.