

FROM THE MINISTER OF HEALTH



Department of
Health

An Roinn Sláinte

Mánnystrie O Poustie

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Dear *Colm,*

Committee for Health - Evidence on the Severe Fetal Impairment Abortion (Amendment) Bill

The Committee has requested written briefing from my Department on the Severe Fetal Impairment Abortion (Amendment) (SFIA) Bill, including on three specific issues which I have addressed in turn further below. Please accept my apologies for the delay in responding, however I trust you will appreciate the need for careful consideration and verification of facts by my Department regarding these sensitive matters, and I hope that you find the information set out below to be suitably comprehensive and informative.

Firstly, it may be useful for me to provide some background to the current legal and policy context to assist the Committee's deliberations on this issue.

Current legal framework

The Northern Ireland (Executive Formation etc) Act 2019 ("the 2019 Act") gave enabling powers to the Secretary of State for Northern Ireland (NI) to amend the law in NI in order to implement the recommendations listed under paragraphs 85 and 86

of the UN CEDAW Committee report, which included the decriminalisation of abortion in NI.

The Abortion (Northern Ireland) Regulations 2020 (now replaced by The Abortion (Northern Ireland) (No. 2) Regulations 2020) (“the 2020 Regulations”) subsequently came into force on 31 March 2020, making abortion services legal in Northern Ireland in the following circumstances:

- On request up to 12 weeks;
- Up to 24 weeks if 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; or,
- With no gestational limit in cases where there is:
 - Immediate necessity - it is immediately necessary to save the life or prevent grave permanent injury to the physical or mental health of the pregnant woman;
 - Risk to life - there is a risk to the life of the pregnant woman or necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman;
 - Fatal fetal abnormality (FFA) – the death of the fetus is likely before, during or shortly after birth; or,
 - Severe fetal impairment (SFI) – if the child were born, it would suffer from such physical or mental impairment as to be seriously disabled.

Whilst it is now lawful for Trusts to provide abortions under the 2020 Regulations, these services are not yet commissioned. Preparatory scoping work to develop a commissioning model and service specification was paused by my Department from February 2020, as resources were wholly diverted to managing the Health and Social Care (HSC) response to the pandemic. This work was resumed in June 2021 and I have provided further information about this project below.

In the meantime, Trusts began to put in place limited, non-commissioned abortion services in line with their statutory responsibilities from April 2020. I understand that

the briefing received by the Committee from Trust Chief Executives included an overview of these services.

Prior to the 2019 Act and the 2020 Regulations, clinicians were providing abortion services in limited circumstances on the basis of the law and extant Departmental guidance in place at that time. These were: Sections 58 and 59 of the Offences Against the Person Act 1861; and Section 25 of the Criminal Justice Act (Northern Ireland) 1945, and relevant common law provisions which permitted abortion only where necessary to preserve the life of the woman, or where there was a risk of real and serious adverse effect on her physical or mental health, which was either long term or permanent. *Departmental Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland*, which had been published in March 2016, ceased to apply after the law changed.

[Inter-Departmental Working Group on Fatal Fetal Abnormality \(FFA\)](#)

With regard to the SFIA Bill, I understand that the Committee has considered the 2016 [report of the Inter-Departmental Working Group on Fatal Fetal Abnormality \(FFA\)](#). [This report](#) was published in the public interest in 2018 by my Department and the Department of Justice, during the period in which Assembly was suspended, however it is important to note that the report has [not been endorsed by officials nor by Ministers](#).

The report describes the background to its development, i.e. an agreement between the then Ministers of Health and Justice in July 2016, following a request by the leader of the DUP in February 2016 to the then Health Minister, Simon Hamilton, to establish a group to make recommendations on how the issue of FFA could be addressed, including, if necessary, through a change to legislation. The group completed its report in October 2016 and it was submitted to both the (new) Health and Justice Ministers at that time, however, as a joint conclusion was not reached between both Ministers, the report was not submitted to the Executive for endorsement.

During the period in which the Assembly was suspended, the Permanent Secretaries of both the Health and Justice Departments agreed to publish the working group's report due to its public interest and human rights implications. The report was

[published by both Departments in April 2018, and is available on my Department's website at:](#)

<https://www.health-ni.gov.uk/publications/report-working-group-fatal-fetal-abnormality>

Other Jurisdictions

The Committee will also be aware of the position in neighbouring jurisdictions in relation to SFI. The Irish Joint Committee recommended that Irish law should not provide for abortion on the grounds of significant fetal abnormality where the abnormality is not likely to result in death before or shortly after birth. In Great Britain, the Abortion Act 1967 provides for abortion without any gestational limit where there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Commissioning of Abortion Services

The Committee will be aware that, in light of easing COVID-19 pressures on Departmental and HSC resources, work to develop a commissioning framework and service specification for abortion services, as provided for under the Abortion (Northern Ireland) (No.2) Regulations 2020, was restarted by my Department in June 2021. The recommended service model will be subject to prior approval by the Executive, under the terms of the Ministerial Code, as well as business case approval and public consultation, in due course.

In the meantime, and in recognition of the risks to women's health and of inequitable access to services while this work progresses, I have submitted a further paper to Executive colleagues on 19 May 2020.

I intend to submit a further paper to the Executive in the near future in relation to the Abortion Services Directions 2021, which the UK Government introduced in July this year.

Response to the Committee's questions on SFI

I hope that this provides a useful outline and update on the current context with regard to this issue. Taking the Committee's specific points in turn, please see my Department's responses below.

Question: The impact on the Department if the SFIA Bill is passed, including the impact on any ongoing policy development work and the cost of implementation

Response: As outlined above, work is under way to develop a service specification which would (subject to necessary approvals) give effect to abortion services as provided for under the current legislative framework, i.e. the 2020 Regulations. The SFIA Bill seeks to change the current legal framework through a proposed amendment to the 2020 Regulations which would limit the circumstances in which abortion would be lawful in NI. In taking forward this work forward, the Project Board will therefore be cognisant of the implications potentially arising from the SFIA Bill.

Question: The current provision of screening programmes.

Response: Currently in Northern Ireland, every pregnant woman is offered blood tests at their antenatal booking appointment (usually 10-12 weeks of pregnancy) to screen for infectious diseases, including HIV, hepatitis B, syphilis, and susceptibility to rubella. This is as part of the Infectious Diseases in Pregnancy Screening programme, a managed population screening programme which works to meet nationally agreed standards as recommended by the UK National Screening Committee (UK NSC).

As part of routine antenatal care in Northern Ireland all pregnant women are also offered a detailed fetal anomaly scan, typically at 18-21 weeks of pregnancy. This is to check for structural abnormalities and rare conditions and to allow referral to fetal medicine services for further assessment and follow-up as required.

Question: Advice on available counselling services for pregnant women who receive a severe fetal impairment (SFI) diagnosis during pregnancy or after birth.

Response: Currently, in the upsetting circumstances in which a woman receives a diagnosis of SFI, she will firstly be referred to fetal medicine services for further assessment and follow-up tests as required. This may take several weeks in total,

during which she will have access to antenatal midwifery support and counselling services through her Health and Social Care Trust. This also includes access to a network of parents (who have previously attended fetal medicine) who offer their time to talk to parents who are given the diagnosis of a similar severe fetal condition.

The service commissioning project, as referred to above, will examine current service provision in this area and make recommendations to standardise and improve services where necessary, including consideration of the specific needs for those who are diagnosed with FFA or SFI.

In conclusion, my Department's view on the SFIA Bill is that it remains a matter for the Assembly, or possibly the Executive, to determine. In the event of the SFIA Bill becoming law, my Department's policy approach to service planning, and its advice to Trusts regarding their statutory responsibilities, would be adjusted as required. In practice, any services delivered by Trusts, whether fully commissioned or otherwise, would continue to be within the parameters of the statutory framework in place at any given time.

Finally, as it is for the Office of Legislative Counsel (OLC) to consider the legal implications of the SFIA Bill, and any matters relating to the Assembly's legislative competence in this matter, it would be inappropriate for me or my Department to comment as these aspects of the Bill.

I hope that you find this information useful in your ongoing consideration of the Bill.

Yours sincerely



Robin Swann MLA
Minister of Health