This Statutory Instrument has been made in consequence of a defect in S.I. 2020/345 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2020 No. 503

HEALTH AND PERSONAL SOCIAL SERVICES, NORTHERN IRELAND

The Abortion (Northern Ireland) (No. 2) Regulations 2020

Approved by both Houses of Parliament

Made - - - -	*12th May 2020*
Laid before Parliament	*13th May 2020*
Coming into force - -	*14th May 2020*

The Minister of State makes these Regulations in exercise of the powers conferred by sections 9 and 11 of the Northern Ireland (Executive Formation etc) Act 2019(**a**).

PART 1

Introductory

Citation, commencement, extent and revocation

1.—(1) These Regulations—

(a) may be cited as the Abortion (Northern Ireland) (No. 2) Regulations 2020;

(b) come into force on 14th May 2020;

(c) extend to Northern Ireland only.

(2) The Abortion (Northern Ireland) Regulations 2020 are revoked(**b**).

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**c**) applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

"the Department" means the Department of Health in Northern Ireland;

"registered medical practitioner" means a fully registered person within the meaning of the Medical Act 1983(**a**) who holds a licence to practise under that Act;

(**a**) 2019 c. 22.
(**b**) S.I. 2020/345.
(**c**) 1954 c. 33 (N.I.).

"registered", in relation to a nurse or midwife, means registered in the register maintained under article 5 of the Nursing and Midwifery Order 2001(**b**) by virtue of qualifications in nursing or midwifery, as the case may be;

"registered medical professional" means—

(a) a registered medical practitioner;

(b) a registered midwife;

(c) a registered nurse;

"termination" means a termination of pregnancy;

(3) References in these Regulations to a woman include a person of any age who is pregnant.

(4) References in these Regulations to the termination of pregnancy are references to its termination (whether by medical or surgical means) as regards any fetus in circumstances where it is intended that that fetus will not be delivered alive.

PART 2

Grounds for termination: cases with gestational limit

Pregnancy not exceeding 12 weeks

3. A registered medical professional may terminate a pregnancy where a registered medical professional is of the opinion, formed in good faith, that the pregnancy has not exceeded its 12th week.

Risk to physical or mental health where pregnancy not exceeding 24 weeks

4.—(1) A registered medical professional may terminate a pregnancy where two registered medical professionals are of the opinion, formed in good faith, that—

(a) the pregnancy has not exceeded its 24th week; and

(b) the 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.

(2) In forming an opinion as to the matter mentioned in paragraph (1)(b), account may be taken of the pregnant woman's actual or reasonably foreseeable circumstances.

PART 3

Grounds for termination: cases with no gestational limit

Immediate necessity

5. A registered medical professional may terminate a pregnancy where a registered medical professional is of the opinion, formed in good faith, that the termination is immediately necessary to save the life, or to prevent grave permanent injury to the physical or mental health, of the pregnant woman.

Risk to life or grave permanent injury to physical or mental health of pregnant woman

6. A registered medical professional may terminate a pregnancy where two registered medical professionals are of the opinion, formed in good faith, that—

(**a**) 1983 c. 54, as amended by S.I. 2000/3041, 2002/3135, 2006/1914, 2007/3101, 2008/1774, 2019/593. There are other amending instruments but none is relevant.

(**b**) S.I. 2002/253, as amended by S.I. 2009/1182 and 2018/838. There are other amending instruments but none is relevant.

(a) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

(b) the continuance of the pregnancy would involve risk to the life of the pregnant woman which is greater than if the pregnancy were terminated.

Severe fetal impairment or fatal fetal abnormality

7.—(1) A registered medical professional may terminate a pregnancy where two registered medical professionals are of the opinion, formed in good faith, that there is a substantial risk that the condition of the fetus is such that—

(a) the death of the fetus is likely before, during or shortly after birth; or

(b) if the child were born, it would suffer from such physical or mental impairment as to be seriously disabled.

(2) In the case of a woman carrying more than one fetus, anything done to terminate the pregnancy as regards a particular fetus is authorised by paragraph (1) only if that paragraph applies in relation to that fetus.

PART 4

Places where treatment for terminations may be carried out

Places where treatment for terminations may be carried out

8.—(1) Any treatment for the termination of pregnancy must be carried out—

(a) in an HSC hospital;

(b) at a clinic provided by an HSC trust for the purpose of carrying out terminations (whether or not the clinic also provides other services);

(c) at premises used to provide primary medical services in accordance with arrangements under the Health and Personal Social Services (Northern Ireland) Order 1972(**a**);

(d) in the case of the second stage of treatment for termination where the conditions mentioned in paragraph (2) are satisfied, in the home of the pregnant woman; or

(e) at a place approved under paragraph (3).

(2) The conditions mentioned in paragraph (1)(d) are that—

(a) the woman undergoing treatment for the termination of pregnancy has attended a place mentioned in sub-paragraph (a), (b) or (c) of paragraph (1) where she has been prescribed Mifepristone and Misoprostol to be taken for the purposes of terminating the pregnancy;

(b) the woman has taken Mifepristone at that place; and

(c) the pregnancy has not exceeded its 10th week.

(3) The Department may, for the purposes of these Regulations, approve a place for the carrying out of terminations.

(4) The power under paragraph (3) to approve a place includes power, in relation to a termination carried out by means 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.

(5) An approval under this regulation—

(a) must be given in writing;

(b) must be published by the Department in such manner as it thinks appropriate.

(**a**) S.I. 1972/1265 (N.I. 14), as amended by the Health and Social Care (Reform) Act (Northern Ireland) 2009 c.1 (N.I.), S.I. 2004/311 (N.I. 2).

(6) In this regulation—

"home", in relation to a woman, means the place in Northern Ireland where the woman has her permanent address or usually resides;

"HSC hospital" means a hospital managed by an HSC trust;

"HSC trust" means a health and social care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(**a**);

"second stage of treatment" means the taking of the medicine Misoprostol.

PART 5

Certification of opinion and notification of termination

Certification of opinion by registered medical professional

9.—(1) An opinion given for the purposes of these Regulations must be certified—

(a) in a case falling within regulation 3 or 5, in a certificate signed and dated by the registered medical professional;

(b) in a case falling within regulation 4, 6 or 7, in a certificate signed and dated by both registered medical professionals.

(2) The certificate in a case falling within regulation 3 or 5 must state—

(a) the full name and address of the registered medical professional;

(b) the Health and Care number of the pregnant woman;

(c) whether or not the registered medical professional has seen, or seen and examined, the pregnant woman; and

(d) that the registered medical professional is of the opinion, formed in good faith, that the ground mentioned in the regulation in question is fulfilled.

(3) The certificate in a case falling within regulation 4, 6 or 7 must state—

(a) the full name and address of each of the registered medical professionals;

(b) the Health and Care number of the pregnant woman;

(c) whether or not each registered medical professional has seen, or seen and examined, the pregnant woman; and

(d) that each registered medical professional is of the opinion, formed in good faith, that one and the same ground mentioned in the regulation in question is fulfilled.

(4) A certificate must be given—

(a) before the commencement of the treatment for the termination of the pregnancy to which it relates; or

(b) in the case of a termination falling within regulation 5 where compliance with sub-paragraph (a) is not reasonably practicable, not later than 24 hours after the termination.

(5) A certificate—

(a) must be preserved by the registered medical professional who terminated the pregnancy to which it relates for a period of not less than 3 years beginning with the date of termination; and

(b) must, at the end of that period, be destroyed by the person in whose custody it then is.

(6) A person who intentionally contravenes any provision of this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(**a**) S.I. 1991/194 (N.I. 1), as amended by the Health and Social Care (Reform) Act (Northern Ireland) 2009 c.1 (N.I.), the Health and Personal Social Services Act (Northern Ireland) 2001 c.3 (N.I.), S.I. 1994/429 (N.I. 2), S.I. 1997/1177 (N.I.7).

(7) Proceedings in respect of an offence under paragraph (6) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

(8) The Department may provide forms for the purpose of certifying the opinions of registered medical professionals.

Notification of termination to Chief Medical Officer

10.—(1) A registered medical professional who terminates a pregnancy must give to the Chief Medical Officer of the Department—

(a) notice of the termination; and

(b) such other information relating to the termination as is specified in the Schedule to these Regulations.

(2) Notice and information under paragraph (1) must be given—

(a) within 14 days beginning with—

(i) in a case where the termination is by treatment with Mifepristone, the date of that treatment; or

(ii) in all other cases, the date on which the termination occurred; and

(b) in a sealed envelope or by e-mail.

(3) Any notice or information given to the Chief Medical Officer under this regulation must not be disclosed except—

(a) for the purpose of carrying out the functions of the Department, to an officer of the Department authorised by the Chief Medical Officer;

(b) for the purpose of carrying out the functions of the Registrar General for Northern Ireland, to the Registrar General or a member of the staff of the General Register Office;

(c) for the purpose of investigating whether an offence has been committed under these Regulations, to a police officer not below the rank of superintendent or a person authorised by that officer;

(d) for the purpose of carrying out functions in relation to offences under these Regulations, to the Director of Public Prosecutions for Northern Ireland or a member of the staff of the Public Prosecution Service authorised by the Director;

(e) pursuant to a court order, for the purposes of proceedings which have begun;

(f) for the purposes of bona fide scientific research;

(g) to the registered medical professional who terminated the pregnancy;

(h) to a registered medical professional, with the consent in writing of the woman whose pregnancy was terminated;

(i) to the General Medical Council or the Nursing and Midwifery Council when requested by that Council for the purpose of investigating whether the fitness to practise of a registered medical professional is impaired; or

(j) to the woman whose pregnancy was terminated, on her supplying to the Chief Medical Officer the date and place of the termination and written evidence of her identity.

(4) A person who intentionally contravenes any provision of this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) Proceedings in respect of an offence under paragraph (4) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

(6) The Department may provide forms for the purpose of giving notice and information under paragraph (1).

PART 6

Unlawful terminations

Offence to terminate a pregnancy otherwise than in accordance with these Regulations

11.—(1) A person who, by any means, intentionally terminates or procures the termination of the pregnancy of a woman otherwise than in accordance with regulations 3 to 8 of these Regulations commits an offence.

(2) But paragraph (1) does not apply—

(a) to the woman herself; or

(b) where the act which caused the termination was done in good faith for the purpose only of saving the woman's life or preventing grave permanent injury to the woman's physical or mental health.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Proceedings in respect of an offence under paragraph (1) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

PART 7

Conscientious objection

Conscientious objection to participation in treatment authorised by these Regulations

12.—(1) Except as provided by paragraph (3), a person is not under a duty to participate in any treatment authorised by these Regulations to which the person has a conscientious objection.

(2) Paragraph (1) applies whether the duty arises under contract or under any statutory or other legal requirement.

(3) Paragraph (1) does not affect any duty to participate in treatment which is necessary to save the life, or to prevent grave permanent injury to the physical or mental health, of a pregnant woman.

(4) In any legal proceedings the burden of proof of conscientious objection rests on the person claiming to rely on it.

PART 8

Amendments

Amendments to offence of child destruction

13.—(1) Section 25 of the Criminal Justice Act (Northern Ireland) 1945(**a**) (offence of child destruction) is amended as follows.

(2) In subsection (1) for "sub-section" substitute "section".

(3) After subsection (1) insert—

"(1A) Subsection (1) does not apply to—

(a) the pregnant woman herself; or

(**a**) 1945 c. 15 (N.I.). Section 25 was amended by the Criminal Justice Act (Northern Ireland) 1953 c.14 (N.I.).

(b) a registered medical professional (within the meaning of the Abortion (Northern Ireland) (No. 2) Regulations 2020) who terminates a pregnancy in accordance with regulations 3 to 8 of those Regulations.".

(4) At the end insert—

"(3) Proceedings in respect of an offence under subsection (1) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.".

Amendments consequential on the repeal of sections 58 and 59 of the Offences against the Person Act 1861

14.—(1) In the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018(**a**) omit section 4 (Secretary of State's guidance).

(2) In section 26 of the Criminal Justice Act (Northern Ireland) 1945 (prosecution of child destruction offence) omit—

(a) in subsection (1), the words from "or for an offence under section fifty-eight" to "procure abortion)" and the words "or of an offence under the said section fifty-eight"; and

(b) subsection (2).

PART 9

Consent to treatment

Consent to treatment

15. Nothing in these Regulations affects any statutory provision or rule of law relating to consent to medical treatment.

PART 10

Transitional provision

Transitional provision

16.—(1) Regulation 9(1) applies to an opinion given for the purposes of the Abortion (Northern Ireland) Regulations 2020 as it does to an opinion given for the purposes of these Regulations where—

(a) a certificate was required to be given not later than 24 hours after a termination in accordance with regulation 9(4)(b) of the Abortion (Northern Ireland) Regulations 2020, and

(b) the certificate had not been given before the coming into force of these Regulations.

(2) Regulation 9(5) applies to a certificate given under the Abortion (Northern Ireland) Regulations 2020 as it applies to a certificate given under these Regulations.

(3) Regulation 10(1) applies to a registered medical professional who was required to provide notice and information under regulation 10(1) of the Abortion (Northern Ireland) Regulations 2020 but had not done so before the coming into force of these Regulations.

(4) Regulation 10(3) applies to any notice or information given to the Chief Medical Officer under regulation 10 of the Abortion (Northern Ireland) Regulations 2020 as it does to any notice or information given to the Chief Medical officer under regulation 10.

(**a**) 2018 c. 28; section 4 was partially repealed by S.I. 2019/1514, reg. 5(2).

(5) Any forms provided by the Department under regulations 9(8) or 10(6) of the Abortion (Northern Ireland) Regulations 2020 are to be treated as forms provided under regulation 9(8) or 10(6) of these Regulations.

Robin Walker
Minister of State
12th May 2020 Northern Ireland Office

SCHEDULE

Regulation 10

Information to be supplied in a notification under regulation 10

1. The full name and address of the registered medical professional who terminated the pregnancy and the General Medical Council or Nursing and Midwifery Council registration number of the medical professional.

2. In relation to each registered medical professional who gave a certificate of opinion under these Regulations—

(a) the full name and address of the registered medical professional and the General Medical Council or Nursing and Midwifery Council registration number of the medical professional, and

(b) whether that medical professional saw, or saw and examined, the woman whose pregnancy was terminated before giving the certificate.

3. The following details about the woman whose pregnancy was terminated—

(a) Health and Care number;

(b) age;

(c) in the case of a woman resident in the United Kingdom, postal district or, if that is unavailable, place of residence;

(d) in the case of a woman resident outside the United Kingdom, place of residence;

(e) the number of complete weeks of gestation;

(f) ethnicity (if disclosed by the woman);

(g) marital status (if disclosed by the woman);

(h) the number of previous livebirths, stillbirths, miscarriages and terminations.

4. The date and method of feticide (if appropriate).

5. In a case where the termination is by surgery—

(a) the name and address of the place where the termination was carried out;

(b) the date of termination;

(c) the method of termination used; and

(d) 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.

6. In a case where the termination is by non-surgical means—

(a) the date and place of treatment with Mifepristone;

(b) the date and place of treatment with Misoprostol;

(c) the date on which the termination is confirmed (if known);

(d) details of other agents used and the date of administration (if appropriate); and

(e) the date of discharge if an overnight stay is required.

7. The grounds certified for terminating the pregnancy contained in the certificate of opinion given under these Regulations together with the following additional information—

(a) in a case falling within regulation 4 or 5, the main medical conditions of the woman concerned;

(b) in a case falling within regulation 6, whether or not there was a risk to the woman's mental health and if not, her main medical conditions;

(c) in a case falling within regulation 7, the primary and any other fetal abnormalities diagnosed, together with the method of diagnosis used.

8. In a case of selective termination, the original number of fetuses and the number of fetuses remaining.

9. Whether or not the woman whose pregnancy was terminated was offered chlamydia screening.

10. Particulars of any complications experienced by the woman up to the date of discharge.

11. In the case of the death of the woman, the date and cause of death.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the purpose of regulating abortions in Northern Ireland following the repeal, by section 9 of the Northern Ireland (Executive Formation etc) Act 2019, of sections 58 and 59 of the Offences against the Person Act 1861(**a**).

These Regulations revoke the Abortion (Northern Ireland) Regulations 2020 (S.I. 2020/345). These Regulations are materially the same as the Regulations revoked, except that cross-references in paragraph 7 in the Schedule to the Regulations have been corrected.

The Regulations authorise abortions to be carried out by a 'registered medical professional', as defined in regulation 2, in a place referred to in regulation 8 where one of the grounds set out in regulations 3 to 7 is fulfilled. The remaining regulations deal with certification and notification of various matters by registered medical professionals, offences, conscientious objection and consequential amendments.

Regulation 16 makes transitional provision to ensure that the revoking and replacement of the Abortion (Northern Ireland) Regulations 2020 does not have any practical consequences.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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(**a**) 1861 c. 100.

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