

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

ABORTION (NORTHERN IRELAND) (NO. 2)
REGULATIONS 2020

Monday 8 June 2020

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The Committee consisted of the following Members:

Chair: SIR DAVID AMESS

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| † Blunt, Crispin (<i>Reigate</i>) (Con) | † Merriman, Huw (<i>Bexhill and Battle</i>) (Con) |
| † Creasy, Stella (<i>Walhamstow</i>) (Lab/Co-op) | † Miller, Mrs Maria (<i>Basingstoke</i>) (Con) |
| † Dines, Miss Sarah (<i>Derbyshire Dales</i>) (Con) | † Morris, James (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | † Nokes, Caroline (<i>Romsey and Southampton North</i>) (Con) |
| † Farry, Stephen (<i>North Down</i>) (Alliance) | † Smyth, Karin (<i>Bristol South</i>) (Lab) |
| † Graham, Richard (<i>Gloucester</i>) (Con) | † Walker, Mr Robin (<i>Minister of State, Northern Ireland Office</i>) |
| † Hayes, Sir John (<i>South Holland and The Deepings</i>) (Con) | |
| † Johnson, Dame Diana (<i>Kingston upon Hull North</i>) (Lab) | |
| † Jones, Ruth (<i>Newport West</i>) (Lab) | Peter Stam, <i>Committee Clerk</i> |
| † Lockhart, Carla (<i>Upper Bann</i>) (DUP) | |
| † Loughton, Tim (<i>East Worthing and Shoreham</i>) (Con) | † attended the Committee |

The following also attended, pursuant to Standing Order No. 118(2):

- | | |
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| Coffey, Dr Thérèse (<i>Secretary of State for Work and Pensions</i>) | Green, Damian (<i>Ashford</i>) (Con) |
| Donaldson, Sir Jeffrey M. (<i>Lagan Valley</i>) (DUP) | Paisley, Ian (<i>North Antrim</i>) (DUP) |
| | Shannon, Jim (<i>Strangford</i>) (DUP) |

First Delegated Legislation Committee

Monday 8 June 2020

[SIR DAVID AMESS *in the Chair*]

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

3.30 pm

The Chair: Colleagues, we meet in extraordinary circumstances, but an awful lot of effort has gone into preparing this room. If anyone is puzzled, the purple cards showing a tick indicate where you can sit. No members of the general public will be coming into the room, so you can sit anywhere at the back. However, if you intend to speak, either project your voice or ask a colleague to swap seats with you so that you are near a microphone. I appreciate that a few colleagues have never served on a Delegated Legislation Committee before, and I am sure that everyone will bear with those Members as they seek to catch my eye.

The room has been assessed by Public Health England to be able to hold 22 people. As I have said, spaces are already clearly marked. Unmarked spaces must not be occupied. The usual convention of a Government side and an Opposition side is waived on this occasion, so Members may sit anywhere. Hon. Members are welcome to use the marked spaces in the Public Gallery and will be able to participate from there. For that reason, members of the public and the media are not permitted in the room. However, our proceedings are being broadcast over the internet on *parliamentlive*. Unfortunately, it has not been possible to arrange for video in a room of this size, so the broadcast is audio only. If you are not a member of the Committee but wish to speak, I ask that you leave the room after making your contribution, to allow others in to speak. You can follow the debate on the broadcast.

As the debate comes to a close, only members of the Committee, who are able to exercise a vote, should be present in the room. Let me explain what will happen if the number of people present in any part of the room exceeds a permitted number. I do not know whether some colleagues who are now in the Chamber, waiting to ask questions, will be waiting outside. What you see at the moment may not be what is happening outside, so you will just have to bear with us. I have been allowed to have one Doorkeeper as well. But if social distancing measures break down—no colleague wants to be criticised for that—I will briefly suspend the sitting until we sort things out.

Ian Paisley (North Antrim) (DUP): On a point of order, Sir David. Is it in order for such major regulatory changes to be debated in a DL Committee? Already you have indicated that they cannot be properly debated because access is restricted for many colleagues who would like to have full participatory rights to be here to attend to these matters, to listen to every word that is said, and to be able to respond to every word that is said. Surely the appropriate place for this debate, if not the Floor of the House, must be a Northern Ireland Grand Committee, rather than a standard DL Committee. Should these proceedings not be brought to a halt until that Grand Committee is established?

The Chair: I thank the hon. Gentleman for notifying me of his intention to raise a point of order. Frankly, had he not done so, I would have been in the dark as to how we had arrived precisely where we are today, but I have sought advice, and this is the advice that I have been given. First, this is not a matter for the Chair. However, in order to be helpful, particularly to people in Northern Ireland who want to know why this is the position, I will explain that the scheduling of delegated legislation is a matter for the Government and the usual channels. Unless the Whip wants to say something, I really cannot comment further on that. The House made a decision on delegated legislation procedure, and Standing Order No. 118(5) states that I am to put the Question after two and a half hours of debate. Again, it is not within my authority to change that, and I trust that hon. Members will consider sharing out the time if we are to occupy proceedings for two and a half hours.

Ian Paisley: Further to that point of order, Sir David. Thank you for your leniency in allowing this further point of order. When this matter came before the House, it was given 17 minutes after it came back from the House of Lords, on a major piece of legislation that affects criminal law and law relating to everyone in Northern Ireland. Today we are being restricted to a DL Committee, so the maximum amount of time possible for debate today is less than two and a half hours, and of course the Government and the Opposition have to make their statements. Surely it is not appropriate for such a major issue of constitutional change in Northern Ireland to be shunted into a private room at the top of the stairs in Parliament, for a debate that is not even televised and so has minimal coverage, and these major laws are being changed. That cannot be in order for major constitutional change of this kind.

The Chair: I recognise how strongly the hon. Member feels on the issue, and those on the Government Front Bench will have heard what he has said, but I say again that this is really not a matter for the Chair. However, I am sure that the Government will reflect on the point that he has made—[*Interruption.*] Order. The right hon. Member for Lagan Valley needs to occupy a seat with a tick on it, which I am afraid will be down there.

Tim Loughton (East Worthing and Shoreham) (Con): On a point of order, Sir David. I do not know whether we have been sold a pup or not. You just said that we will be here for two and a half hours. I was under the impression that a DL Committee took 90 minutes. Am I wrong?

The Chair: As this DL relates to Northern Ireland only, the debate can last for two and a half hours.

Caroline Nokes (Romsey and Southampton North) (Con): On a point of order, Sir David. You said earlier that there was a limit on the number of people who could be in the room—people, not Members. May I just ask you to clarify how many that is, please?

The Chair: The number is 22. I hope that I am not going to be embarrassed to find out that there are already more than 22—[*Interruption.*] It is 18 plus eight in total. Apparently, it is 22 in front of me, so I assume that means 22 in what is the normal body of the room, and then it is eight beyond that. I wish we were not in these circumstances.

Jim Shannon (Strangford) (DUP) *rose*—

The Chair: I will take one final point of order.

Jim Shannon: On a point of order, Sir David. In the deliberations that this DL Committee will make, the issue of legality becomes a very clear one, and if I do get the opportunity to speak I will want to make that point. From the Minister's point of view, and from your point of view, Sir David, when it comes to the issue of legality and whether this legislation is legal to take forward, I am ever mindful of QCs' opinion, which will probably be given at some length. I think it is important that we know where we are with this Committee legislatively, because if QCs' opinion—legislative and legal opinion from Northern Ireland and elsewhere—seems to indicate that we are following a procedure here that is wrong, then I question whether we can proceed.

The Chair: Again, I say to the hon. Gentleman that that really is not a point for the Chair. However, I can reassure him that these proceedings and the way that we are going about dealing with this piece of legislation are entirely legal.

3.39 pm

The Minister of State, Northern Ireland Office (Mr Robin Walker): I beg to move

That the Committee has considered the Abortion (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020, No. 503).

I welcome your chairmanship, Sir David, and I thank the House staff for the work they have done to make this Committee Room safe for Members in the current difficult circumstances.

In proposing this debate, I recognise that this issue is a contentious and difficult one, and that there are strong opinions on all sides. I respect the deeply held views that Members will bring to this debate, and I am glad that the decision of the usual channels to allow a free vote on the issue will allow all Members to vote according to their conscience. However, I remind colleagues that in carrying out the instructions of this House of Commons from another vote last year, the Government are doing no more than meeting their legal duty.

We previously made the Abortion (Northern Ireland) Regulations 2020, which came into force on 31 March 2020, to set out the new legal framework for the provision of abortion services in Northern Ireland. Those regulations were also made under the affirmative procedure, and were required to be debated by 17 May 2020 to remain in force as law. However, the unprecedented situation created by covid-19 has impacted on parliamentary processes, and virtual voting systems were not yet fully implemented. We therefore took the decision to remake the regulations and give Parliament an additional 28 days to consider and scrutinise them properly, given the nature of this policy. This approach has ensured that the law on abortion in Northern Ireland continues to apply, with no risk of a gap or legal uncertainty, and that services in Northern Ireland can continue on the same legal basis as they have started operating within the new legal parameters.

Ian Paisley: The Minister has stressed that he is following a legal duty. If that is the case, I would like him to put on the record which treaty obligations he is in breach of if he does not pursue the implementation

of a Committee on the Elimination of Discrimination against Women recommendation. I believe that we are in breach of no treaty, and that he is under no legal obligation to do what he is doing.

Mr Walker: The hon. Gentleman mentions treaties, but I did not; I mentioned a legal obligation, under which the House of Commons has placed us through section 9 of the Northern Ireland (Executive Formation etc) Act 2019. As he will know, as a result of an urgent question last week, we debated at some length the fact that we were bringing this forward, and I provided answers as to why we were doing so, rather than—as some in his party suggested—repealing section 9. I think this is a perfectly rational approach to delivering on the commitments that the House has placed on us under the 2019 Act.

Sir John Hayes (South Holland and The Deepings) (Con): I am grateful to the Minister, who has behaved with genuine courtesy throughout the whole of this process. Would he comment on whether, in the write-round that precedes these things, our Attorney General expressed any concerns in respect of the legal and constitutional implications of these regulations? I appreciate that the Minister cannot detail any concerns—that would be inappropriate—but were concerns expressed by the Attorney General about the legal and constitutional implications?

Mr Walker: As my right hon. Friend knows very well, the Government never comment on legal advice. However, he is quite right to refer to the fact that there has been a write-round process, and the Attorney General of the United Kingdom has supported that process to allow these regulations to move forward.

This statutory instrument, the Abortion (Northern Ireland) (No. 2) Regulations 2020, came into force on 14 May and revoked the earlier regulations. These regulations have been made in accordance with the statutory duty that Parliament imposed on the Government last summer through section 9 of the 2019 Act. That duty was to make regulations to provide for lawful access to abortion services in Northern Ireland in a way that implemented the recommendations in paragraphs 85 and 86 of the 2018 United Nations Committee on the Elimination of Discrimination against Women report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland, under article 8 of the optional protocol of the convention on the elimination of all forms of discrimination against women. The CEDAW recommendations mandate access to abortion services at least in the cases of

“(i) Threat to the pregnant woman's physical or mental health without conditionality of ‘long-term or permanent’ effects;

(ii) Rape and incest; and

(iii) Severe foetal impairment, including FFA, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term.”

Jim Shannon: The Minister will know that the GB law allowing discriminatory abortion is already under fire. The way things are shaping up here, abortions of those who have Down's syndrome, for instance, could actually take place. What consideration has the Government given to the GB law allowing discriminatory abortion, given that it is already under fire but this legislation is coming through with the same intention?

Mr Walker: The hon. Gentleman is perhaps referring to litigation that is under way, which I of course cannot comment on. What I can say is that we gave very careful consideration, both in the consultation itself and in the follow-up to it, to all aspects of this legislation. We decided to follow the approach of GB law by not specifying particular conditions, but being clear that the approach to severe foetal impairment has to be for the individual woman, in consultation with medical professionals. We think that is the right approach; it is the approach established elsewhere in the UK, and indeed in many other jurisdictions.

The CEDAW report does not recommend or mandate specifics of how access should be provided. In particular, it is silent on issues such as gestational time limits for legal abortion, which it leaves open to the state to determine. The key requirement is to ensure access to services for women and girls in the circumstances I have set out, and abortions should be delivered as part of sexual and reproductive health services.

We recognise that this is a sensitive and personal issue for many people. We have heard many differing views about abortion in this House and the other place over the past 12 months, including in the debates on the reports under the Northern Ireland (Executive Formation etc) Act 2019. I extend my thanks to all hon. Members who have engaged with me over recent months in discussions about these regulations, and have contributed views and shared insights from the wider engagement that they have been having with a range of constituents and other stakeholders.

Carla Lockhart (Upper Bann) (DUP): The Minister refers to the fact that a number of people have contributed to this debate, but does he not accept that the Northern Ireland Assembly—the place where this should be debated and decided upon—was unable to contribute to the debate and articulate its view? It voted on Thursday. Why has this Committee not taken cognisance of that vote?

Mr Walker: I respect the hon. Lady and the position from which she is arguing, but the Northern Ireland Assembly has had many opportunities to take forward these issues and provide a framework that would address the requirements of CEDAW, and it has not taken them. As she refers to the debate, I reiterate what I said in response to the urgent question last week: the Northern Ireland Assembly chose to vote on one aspect of these regulations and said that it did not like it. It did not debate the full details of the regulations themselves, and it did not provide a way forward that is compliant with CEDAW. I am very happy for it to debate these issues and take them forward, but it must do so in a way that is CEDAW compliant. It has every right to do that and reform these regulations, should it choose to do so in a way that is CEDAW compliant.

I appreciate that this is an issue on which views are deeply held, and I respect the fact that people coming at it from either side of the argument are doing so with the best interests of others in mind. I have no doubt that the arguments that we will hear today, across the whole spectrum of opinion on the subject, come from the heart and will be well informed. The starting point for the framework was that, as a result of the repeal of sections 58 and 59 of the Offences Against the Person Act 1861, from 22 October 2019 carrying out an abortion

is no longer a criminal offence, except for late-term abortion, to which the offence of destroying a child capable of being born alive would still apply.

In relation to complying with the statutory duty on the Government, our overarching policy aims were to ensure that the framework protects and promotes the health and safety of women and girls, provides clarity and certainty for the medical profession, and is responsive and sensitive to the Northern Ireland Executive and Assembly being restored from January, where our legal obligation remained to act on this issue.

Towards the end of last year, we publicly consulted on the proposals for the new legislative framework. The consultation gave people and organisations in Northern Ireland an opportunity to provide input and views on how we could best deliver an abortion framework consistent with our statutory duty. We were clear in that consultation that this is not about whether the Government should deliver on our statutory duty, but rather about how we can most effectively deliver a framework as required.

The Government have engaged with a range of stakeholders in Northern Ireland during this process and in recent months, including political parties, medical professionals, women's groups, abortion service providers, trade unions, civil society organisations, individuals with lived experience and church groups. We listened to feedback expressed in the consultation process and through various engagements, and we have responded accordingly. We have sought to balance the range of views against our statutory duty, and to take pragmatic decisions informed by evidence.

Many stakeholders have welcomed the regulations, including the Northern Ireland Human Rights Commission. It is our firm view that the regulations provide a new legislative framework that is operationally sound, works best for Northern Ireland and delivers on the Government's statutory duty.

Sir John Hayes: On the issue of the legality of these regulations, I understand the Minister's reticence about discussing the legal advice from our Attorney General, but he will know that Northern Ireland's Attorney General has also commented, and made those comments publicly available. That gentleman has argued that regulations 7 and 12 are ultra vires and that, in respect of regulation 13, the Secretary of State may have been guilty of misdirection. Those are very serious remarks from a Law Officer. Would that advice not make it almost impossible to receive these regulations in Northern Ireland?

Mr Walker: My right hon. Friend refers to the Attorney General's comments to the Executive, which, as he says, he has made public.

I am, for my part, very confident that we have the vires under the Northern Ireland (Executive Formation etc) Act 2019 to carry forward the legislation. I have to say to my right hon. Friend, whom I greatly respect, that this issue has been a matter of contention over a long period. He, like me, would much rather that Northern Ireland politicians had been able to address the issue together and take it forward, but that has not proven to be the case. It was in recognition of that that this House told the Government to take action on this issue.

Stephen Farry (North Down) (Alliance): Further to his correct response to the right hon. Member for South Holland and The Deepings in relation to legal advice,

does the Minister recognise that the courts in Northern Ireland and, in particular, the UK Supreme Court have already ruled that the outgoing abortion regime in Northern Ireland is incompatible with human rights? In that regard, I pay tribute to the work of Sarah Ewart in championing the need for reform.

Mr Walker: Absolutely, and I recognise that the decisions that this House took to give the Government the locus to act on these issues were partly in the light of those judgments, both in the Belfast High Court and in the Supreme Court. The hon. Gentleman is right to address those issues. I must say, having met with Sarah Ewart and her mother, that I was hugely impressed by the courage that she has displayed in bringing her issues to light and publicly engaging in this, coming from a background that was not necessarily one that people would expect.

Jim Shannon: Does the Minister recognise the depth of feeling among the community across Northern Ireland? He referred earlier to churches and so on, but he will know that some 20,000 people signed a petition in Northern Ireland. In comparison with the rest of the United Kingdom, that would equate to half a million people on the mainland signing a petition. When it comes to looking holistically across the whole of the community, the number of people who are unhappy with the legislation going ahead is very important. There are indications that some 71% of the population would be unhappy with this liberalisation of abortion going ahead in Northern Ireland.

Mr Walker: The hon. Gentleman refers to statistics, and numbers of people. These are contested matters; we hear of different polls giving different results on these issues. What is very clear is that this Parliament mandated the Government to deliver on this issue. We have the vires to do so, and we have sought to do.

Sir John Hayes: The last Parliament.

Mr Walker: It was the last Parliament, as my right hon. Friend points out. I believe that the majority by which that Parliament, on a free vote, mandated the Government to do this was around two thirds. I think it is very clear that this is the right thing to do, partly because of the issues raised by the hon. Member for North Down.

I know that a number of hon. Members, including the hon. Member for Strangford when he just spoke, have expressed that this has resulted in what they view as a more liberal regime than in Great Britain. I do not believe that that is the case, and we have sought to ensure proper and appropriate implementation of the CEDAW recommendations, in a way that means that the outcomes delivered will be equivalent to those in the rest of the UK, to ensure that women and girls have the same access to services in similar circumstances.

Therefore, many of the provisions in the regulations mirror provisions under the Abortion Act 1967 on such issues as conscientious objection to ensure consistency in the provision of services across the UK. The Government's response to the consultation, published on gov.uk, sets out further detail on how the Government made their decision on each element of the framework, and the reasons behind each decision.

I will briefly turn to an overview of the key elements of the regulations. They provide for access to abortions without conditionality up to 12 weeks' gestation. We judge that that provision is proportionate and appropriate in order to implement the CEDAW recommendation of ensuring access in cases of sexual crime, while avoiding building a system that could lead to further trauma for victims of rape or incest, or act as a barrier to access for those victims. A barrier to access would, in the Government's view, be a breach of the CEDAW requirements.

Without a period of access without conditionality, the duty to report a crime that applies to everyone in Northern Ireland, including medical professionals, could create a perceived barrier to access for victims of sexual crime and lead to women or girls seeking alternative, unsafe options outside the health system, which we want to avoid now that there is lawful access. We know that that was an issue in preventing access to even the very limited scope of abortions that were legally available prior to October 2019.

The regulations also set out three further circumstances in which an abortion is legal: first, up to 24 weeks' gestation, in cases where the continuance of the pregnancy would involve risk or injury to the physical or mental health of the pregnant woman or girl greater than the risk of terminating the pregnancy; and, secondly, in cases of severe foetal impairment and fatal foetal abnormalities with no gestational time limit. That is where there is a substantial risk that the condition of the foetus is such that the death of the foetus is likely before, during or shortly after birth; or, if the child were born, it would suffer from such physical or mental impairment as to be seriously disabled. The third set of circumstances are cases where there is a risk to the life of the woman or girl greater than if the pregnancy were terminated or, where necessary, to prevent grave permanent injury to the physical or mental health of the pregnant woman or girl, including in cases of immediate necessity—with no gestational time limit.

In such cases, the regulations require that two medical professionals, as defined in the regulations, certify in good faith that the ground has been met. Abortions are also allowed where it is immediately necessary to save the life, or to prevent grave permanent injury to the physical or mental health, of the pregnant woman. The CEDAW report is silent on the question of gestational limit in such circumstances. We consider that the above grounds are an appropriate way of delivering on our statutory duty and implementing the recommendations of the report in a way that will work effectively in practice. An intentional contravention of the requirements to certify that an opinion has been reached in good faith that one of the grounds under the regulations has been met to allow the abortion is punishable by a fine of up to £2,500.

The regulations allow for abortions to be provided by a doctor, nurse or midwife. They may be carried out in general practitioners' premises, clinics provided by a health and social care trust, and health and social care trust hospitals, operating under the overall Northern Ireland health and social care framework. Early medical abortions are carried out by taking two pills. The regulations allow the second pill to be taken at a woman's home,

[Mr Robin Walker]

following the first pill being taken at an approved location. That mirrors the approach used in the rest of the United Kingdom.

The regulations allow the Department of Health in Northern Ireland to approve other places where abortions may take place—a power that mirrors the power for the Secretary of State under the Abortion Act. That could be used, for example, to approve third or private sector provision, or to enable greater use of telemedicine.

The regulations require the medical professional to notify the chief medical officer of the Northern Ireland Department of Health of the abortion, alongside other relevant data specified in the regulations. The Department of Health in Northern Ireland will then be responsible for annual publication of relevant data. To ensure confidentiality and the protection of personal data, the regulations impose restrictions on how the data can be used. Disclosure of information notified to the chief medical officer, other than in accordance with the regulations, is an offence punishable by a fine of up to £2,500.

We recognise the strongly held beliefs about abortion. That is why the regulations make it clear that no one will be required to take part in treatment for abortion to which they have a conscientious objection. The only exception is where that treatment is necessary to save the life, or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

That protection mirrors precisely the conscientious objection provision in the Abortion Act, is consistent with the interpretation of that provision by the Supreme Court, and does not extend to the ancillary, administrative and managerial tasks that might be associated with that treatment. The Government are satisfied that the current scope of the conscientious objection provision works satisfactorily in the rest of the UK, is human rights compliant, and is therefore appropriate to apply in Northern Ireland to the provision of abortion services under the regulations.

Finally, the regulations impose a criminal sanction on anyone who intentionally terminates or procures the termination of the pregnancy of a woman otherwise than in accordance with the regulations. That is about where someone is acting dishonestly or negligently, and it will not apply where a 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. It is not intended that a medical professional should be prosecuted where they form an honest opinion in good faith as to risk, but makes a factual error.

As an additional protection for medical professionals, the consent of the Director of Public Prosecutions is required before proceedings can be brought under the regulations. Other criminal laws will continue to apply, including section 25 of the Criminal Justice Act (Northern Ireland) 1945, which prohibits the destruction of a child otherwise capable of being born alive. However, the regulations make relevant amendments necessary to ensure that abortions carried out in accordance with the regulations by the relevant medical professionals are not contrary to section 25 of the 1945 Act, and no woman or girl can be prosecuted with respect to ending her own pregnancy.

Ian Paisley: Is it not disingenuous to say that the regulations mirror what happens in GB? In GB, if what the Minister describes were to occur, a person would face imprisonment from up to five years to life. In the Republic of Ireland, that person would face up to 14 years' imprisonment. In Northern Ireland, the very maximum that anyone would face for breaching this criminal law would be a fine of level 5, which is about £2,500. Is it not the case that the regulations do not mirror legislation, but liberalise that legislation?

Mr Walker: As I said, we set out in our response to the consultation the detail of how each of the decisions in this process was reached. We recognise that the situation ante this regulation in Northern Ireland was that the Northern Ireland (Executive Formation etc) Act 2019 had already removed the criminal sanctions, so we were under an obligation to create a framework, then reimpose criminal sanctions outside of that framework. That is the way in which we have addressed this.

We are clear that this is a situation in which CEDAW requires us to ensure that women and girls cannot be prosecuted for these regulations, and the regulations should not have—as, unfortunately, it was clear from some of the consultation responses, the criminal law previously did have in Northern Ireland—a chilling effect on availability, nor erect any barriers to access.

Carla Lockhart: Will the Minister give way?

Mr Walker: I will make a little bit of progress and allow the hon. Lady to come in before the end. Access to abortion services in Northern Ireland is now a matter for the Northern Ireland Department of Health, as well as the Health and Social Care Board and the Health and Social Care Trust, to take forward, as a new health service.

We continue to have full respect for the devolution settlement, recognising that health is a devolved matter, and to that extent have ensured that, where possible and practical, the regulations can be developed over time, in a way that works best for Northern Ireland by Northern Ireland. For example, the approval power for the Northern Ireland Department of Health to approve new locations in which services can be provided will allow it to respond to service needs and development over time, as the services are commissioned and embedded into health and social care settings in Northern Ireland.

Some interim service provision on the ground in Northern Ireland has now commenced, with early medical abortion services being provided as part of the existing sexual and reproductive health services in the Belfast, northern and western trust areas. This is to ensure access on the ground during covid-19, before fuller services have been commissioned by the Health and Social Care Board.

Of course, abortion remains a devolved issue in Northern Ireland going forward. That means that the Assembly is able to legislate further on abortion, subject to the usual Assembly and other procedures, including compliance with the European Convention on Human Rights. The UK Government will continue to ensure that we abide by our domestic and international legal obligations. The Government stand ready to provide whatever support and guidance we can both to the Northern Ireland Minister of Health and the Department of Health, to assist them in progressing work to set up abortion services in line with our new legislative framework.

As set out in our response to the consultation, the Secretary of State for Northern Ireland has written to the relevant Northern Ireland Ministers to ensure the implementation of all the recommendations under paragraphs 85 and 86 of the CEDAW report, and the Northern Ireland Office will continue to work closely with the Department of Health and other Northern Ireland Departments in continuing to progress this work.

I hope that the Committee will support these regulations. We believe that they will fully deliver on the requirements placed on the Government by section 9 of the Northern Ireland (Executive Formation etc) Act 2019 and allow us to move forward in a way that protects the safety of women and girls in Northern Ireland, will remove over time the need for travel for women and girls facing extremely difficult circumstances, and provide certainty and a clear framework for medical professionals. I commend these regulations to the Committee.

4.3 pm

Karin Smyth (Bristol South) (Lab): It is a pleasure to serve under your chairmanship, Sir David. I would like to start by thanking the Minister, his officials and the former Secretary of State, the right hon. Member for Skipton and Ripon (Julian Smith), for the way in which they have opened up and agreed to work with us constructively on this issue.

This has been a difficult issue for the Government, because for over 50 years, women in Northern Ireland have been denied rights equal to those of the rest of the United Kingdom. Politicians in Northern Ireland and Britain, of all political colours and in all Governments, have been united in ensuring that a complicated array of arguments have been deployed to ensure that women have no route to have their voice heard.

I pay tribute to all those women over those decades and, in many cases, their male partners, who have shared traumatic experiences and shone a light on the cruelty inflicted on them by a state that should care more. I also pay tribute to many campaigners and politicians who have pursued this over the decades, those who have offered refuge in Britain for women seeking help, and my hon. Friend the Member for Walthamstow, who last year brought a coalition of support together in this place to ensure that we meet our human rights obligations and end the decades of stalling on this issue.

Abortion has not been a criminal offence since last October. Services could have been provided since last October. All we are doing today is giving confidence to women and practitioners about the detailed scope of those services. We support the Government in laying these regulations, which have benefited from a great deal of discussion—the Minister has been very flexible in listening to people and making alterations along the way. As has been mentioned, we were disappointed to see the criminal sanctions reintroduced, but I understand why the Minister has seen fit to do that. There are some issues that I would like to raise with him.

The Government have been clear on their legal obligations since October. It is also clear that the Department of Health in Northern Ireland is not progressing with the commissioning of services to meet those obligations. Some services are available, but they have been developed by practitioners and third-sector support, which is necessarily piecemeal and geographically

iniquitous—it is a postcode lottery and cannot continue. As strong supporters of devolution, we recognise that this is difficult political territory, but we will hold the Secretary of State to account to ensure that services are available, so that the UK Government meet their obligations.

As I have said, women in Northern Ireland have been ignored and bounced between Stormont and Westminster for 50 years. It would be particularly cruel for the Stormont and Westminster Governments to think that no more needs now to be done. It would be callous to force more women and their families to relive a trauma and bring legal proceedings to make wider commissioning happen. It is irresponsible that services are not currently commissioned more quickly to stop women having to travel during this pandemic. That does not show concern for all those women's lives.

Will the Minister outline exactly how he will work with the Assembly and the Minister in Northern Ireland to ensure that services are commissioned beyond 10 weeks' gestation? By what date can women in Northern Ireland expect to see that happen? We note and welcome the fact that the Government will continue to honour their commitment to funding travel from Northern Ireland to Britain. Will the Minister say how long the British taxpayer will be asked to support the refusal by the Northern Ireland Department of Health to provide a local service?

Before coming to this place, I worked as a commissioner of NHS services for some 20 years and served on a primary care trust as we developed sexual health services. Frankly, I have been really horrified by what I have learned in recent months about the level of sexual health services education in Northern Ireland. Although the Committee is discussing abortion regulations, I want to highlight the fact that during the passage of the Northern Ireland (Executive Formation etc) Act 2019, we talked about paragraph 86 of the CEDAW report, which is broadly about advice, guidance and education, including education for young people. It would be helpful if the Minister indicated how we will make sure that that particular provision is adhered to.

Finally, on the commissioning of services for very late abortions, as part of our inquiry on the British-Irish Parliamentary Assembly—led by Lord Dubs—I was a member of a Committee that took evidence in London, Belfast, Dublin and Liverpool. As a result of the public health approach that has been adopted in Britain, very late abortions are now thankfully rare and medical expertise is therefore highly specialised in Britain, as it is now particularly in Northern Ireland and in the Republic of Ireland. Cross-border healthcare in Ireland is a key component of the Belfast/Good Friday Agreement. Will the Minister indicate whether he will work to ensure that that area of healthcare is monitored as we progress, and to support the provision of and access to highly medicalised services for very late abortions across all these islands?

Several hon. Members *rose*—

The Chair: Order. At least five colleagues wish to speak—I do not know whether anyone is waiting outside—and we have until 6 o'clock. In calling people, I shall give preference to members of the Committee. I call Mrs Maria Miller.

4.8 pm

Mrs Maria Miller (Basingstoke) (Con): Thank you, Sir David; It is a great pleasure to serve under your chairmanship. I was reminded that it was just over a year ago that the Women and Equalities Committee published its report on abortion in Northern Ireland after colleagues and I spent an extensive period looking at the issue. I am really grateful for the opportunity to contribute to the debate.

The Government have introduced regulations that put into place the decisions of this Parliament, which were democratically agreed very recently. The regulations also right a wrong that long predates this Parliament and devolution, and has been sidestepped by all political parties. It is absolutely clear that the Government have a legal obligation to act, not only because of the recent decision of Parliament, but because of the decisions of the courts in recent years. While abortion is a devolved matter, that is clearly a fudge, because there are clear and specific obligations that the Northern Ireland Assembly must adhere to when it passes legislation—that it cannot be contrary to the UK's international obligations or contrary to human rights law. It is a fudge, because this law predates that devolution, and it was not tackled at the time of devolution itself. However, devolution does not remove the UK Government's responsibilities to ensure that all the law in the United Kingdom complies with international obligations, and it does not remove the Government's obligation to ensure that all law is compliant with human rights law as well.

The United Nations committee on the elimination of discrimination against women found “grave violations” in relation to abortion law in Northern Ireland as it stood previously, particularly regarding fatal foetal abnormality, rape and incest, and “systematic violations” in the criminalisation of abortion and the restricted access to the ability to end pregnancies for many women, because of the need to travel outside Northern Ireland to secure it.

That is something that we should all be concerned about. We undertake international obligations so that we can comply with them. Those in Northern Ireland cannot simply have special pleading to sit outside that framework. What is more, at home, the UK Supreme Court identified very clearly that there was a breach of women's article 8 rights in the law as it stood. The highest court in the land identified that the law breached human rights, and that is not something I believe any Government should ignore.

On top of that, if the Democratic Unionist party Members argue that this is something that is being foisted upon them, I would be interested to understand why, in October last year, the High Court in Belfast itself, in the heart of that community, found that the law as it stood was incompatible with article 8 rights.

Ian Paisley: The right hon. Lady should know that the European convention on human rights case that was brought by the ECHR was dismissed by the Supreme Court in Northern Ireland. It was not upheld. It was dismissed.

Mrs Miller: And the hon. Gentleman will know that some of the problems in that case related to the standing of the Northern Ireland Human Rights Commission, which I will come on to later, if I may. I hope that in raising that point, he was not seeking to try to mislead

people who are following this debate. It is important that we stick to the facts of the debate, because—*[Interruption.]* If I may finish my point, in our visits as a Select Committee to Northern Ireland, the one thing that was overwhelming was how confused people were about the law.

Ian Paisley: I do not attempt to mislead anyone. It is stated in the documents that are before us. The fact is that, whether we like it or not, no matter the reasons or the deliberations of the Supreme Court of Northern Ireland, it dismissed the ECHR case because the plaintiff had no standing. End of story. That is a fact. That is what I said.

Mrs Miller: Again, I thank the hon. Gentleman, and we will not fall out over this, but I will gently remind him that it has been widely accepted that the reason the case was not accepted either in Northern Ireland or in the Supreme Court just over the road was because of a technical error in the drafting of the legislation when the standing of the Northern Ireland Human Rights Commission was drawn up.

Stella Creasy (Walthamstow) (Lab/Co-op): It may be important for the record that we recognise that there have been many human rights cases involving abortion, Northern Ireland and the ECHR, and other cases have indeed ruled that there are breaches that need to be addressed, but they recognised that this Parliament was seeking to act. If, for completeness, we are to recognise that, yes, some rulings have been dismissed on technicalities, there have been others, for example, where the court has ordered compensation to be paid to women who have suffered injustices as a result of the law, and it is therefore right that we act to address it.

Mrs Miller: I thank the hon. Lady for that intervention, and I think the Minister needs in his summing-up to give some assurances to hon. Members here today that there will be clarity for people in Northern Ireland and that we will not continue to have this fear culture, bringing a lack of clarity for women, doctors and medics on the ground, not knowing whether the law that has been passed here is, as we have said it is today, the law of the land. He has to make that crystal clear.

To echo what the Minister said earlier, to paint this as a liberalisation of abortion law is not consistent with my reading of what is being put forward. Introducing the 12-week limit is consistent with the Republic of Ireland, and given the cross-border issues, I am sure the Minister thought carefully when he put that provision in place. The remainder of the changes are more or less consistent with the rest of the Abortion Act 1967, as it applies in England and Wales, and consistent with the regulations surrounding the use of medical abortion pills, particularly that women now have the option to take a second pill as part of the treatment at home. It is crucial that we communicate these details to women who will be trying to navigate something that is, perhaps, being obscured to them in the way it is being reported.

I echo the tributes made by the hon. Member for Bristol South to the women who have had the courage to bring cases, to speak out to Select Committees, including the Select Committee on Women and Equalities, which I chaired at that time, and to talk about their experiences, to ensure that people knew in full about the suffering they had gone through.

Richard Graham (Gloucester) (Con): Does my right hon. Friend agree that, to many of us here, it is matter of huge regret that Northern Ireland has proved unable, so far, to resolve these issues herself, in the usual democratic way, and that this Parliament is only getting involved, alas, because of the failure to do so?

Mrs Miller: My hon. Friend is absolutely right, but we need to grasp this issue fully and not apologise for the fact that we have taken the time to legislate. We firmly want to see the legislation that we have passed put into law and to be clarified for those who live in Northern Ireland.

As the Minister knows, passing that law is not enough. I have some of the same concerns as the shadow Minister about Parliament, here in Westminster, passing a law that will then be implemented by an Administration that was not part of the process of drawing up the law. We need to have some assurances from the Minister that while he, of course, will not have day-to-day responsibility for the implementation of the law, that he will make sure that it is implemented, because he has international and legal obligations to do so. It is important that he spells that out in when he sums up.

Tim Loughton: I agree with everything that my right hon. Friend has said. She was talking about uncertainty and the dilemmas that that provides for women in Northern Ireland. Would she agree that, if these regulations do not go through, the uncertainty will continue, and we will see a return of the absurd and obscene travel from Northern Ireland to try to find alternative provision in England and Great Britain, at a time when travel is not advised because of the coronavirus epidemic?

Mrs Miller: My hon. Friend is right. The Select Committee report, just a year ago, found that there was a postcode lottery for provision and showed that lack of access to abortion in Northern Ireland drove many women to have to seek abortions in England, without the support of family and friends. There were some traumatic stories that were completely unacceptable.

Carla Lockhart: The right hon. Lady makes reference to the people who have spoken out and raised their concerns about their own personal situations. Will she also take note of Heidi Crowter, the Down's syndrome campaigner, who has spoken out loudly and clearly, and said that this Government make her feel that she should not exist?

Mrs Miller: I pay tribute to the hon. Lady. She has spoken extremely eloquently, not just here today but in the Chamber, on that issue. She is right that there is a massive tension when it comes to abortion and what constitutes the grounds for it. She is right to speak out about that. Many people would agree with her that Down's syndrome is not grounds for abortion, but I am sure, like me, she has met women who have been forced to take a pregnancy to full term, in the certain knowledge that their baby will die either before or shortly after birth. That is not right and cannot be countenanced. In making sure that individuals with Down's syndrome have a right to life, we do not have to put in the way a prohibition on abortion for those who really require it.

Sir John Hayes: In her advocacy of clarity and certainty, perhaps we can be clear and certain about those who were just named in the intervention by the hon. Member for Upper Bann. Can I ask a straightforward question? Will she back the Bill that will be presented to the House to prohibit the abortion of people with cleft lips and palates or clubbed feet, who are currently under the law in this country, let alone in Northern Ireland, being aborted, but could live and be successfully treated?

Mrs Miller: I will look carefully at the measure that my right hon. Friend is talking about because although this is a live debate, it should not fog what is a wrong and inappropriate system in Northern Ireland where women in very difficult situations have not been able to access a service which I am afraid his and my constituents would take for granted. That is not right.

Sir David, I will make progress and I am sorry to colleagues who would like to intervene—maybe I should speak a little more before accepting any further interventions. The simple truth that we found when we spoke to people on the ground in Northern Ireland of all views—it is our obligation as a Select Committee to have done that—was that there were some doctors who believed that referring women for an abortion in England was unlawful—fact; and that women were being forced to bring back the remains of their foetuses in their hand luggage because they were not able to be treated more formally for fear of being reported to the police. These are the sorts of things that we found in the Select Committee inquiry—practices that we would not accept in any other part of the United Kingdom. I gently ask DUP Members who are unhappy about this coming into play to look at the detail of those inquiry submissions to understand the reality of what was happening on the ground for too many women.

In the absence of an independent regulator of health in Northern Ireland, can the Minister confirm again—I asked him this question on the Floor of the House—who will monitor the implementation of these new regulations which have to include the expansion of training and medical facilities, because there is no independent regulator to do that? What obligations are there on the Northern Ireland Government to ensure that any future re-evaluation of this policy has to be human rights compliant and has to be compliant with the international obligations of the United Kingdom of which they are part?

The Select Committee recommendations included the very useful recommendation that the General Medical Council should run a campaign to raise awareness about how to complain about a doctor if they fall short on standards expected under the law, particularly with regard to abortion. That would help to increase public confidence and, perhaps, confidence among doctors about what is lawful and what is not lawful, because in our conversations with doctors only a year ago, it was clear there was a huge amount of confusion.

Dame Diana Johnson (Kingston upon Hull North) (Lab): I am following very carefully what the hon. Lady is saying. Does she agree that there is a role for the royal colleges as well in terms of the training and support that their members need to understand fully the new legislative background and framework that have been put into place? If any future changes to the regulations are not CEDAW compliant, what does she understand would happen? What measures could be taken to deal with that?

Mrs Miller: The hon. Lady is right to say that there is room for more than just the General Medical Council to be involved in communicating these changes. It should go broader than that. I have to say that members of the Select Committee were quite shocked at the lack of involvement of the royal colleges in the situation in Northern Ireland, despite the fact that they were very aware of what was going on. There needs to be more courage coming from the royal colleges in ensuring that their members adhere to the law.

In terms of CEDAW compliance, there are obviously regular monitoring visits from CEDAW where it can come along and look at the law, but I think the Minister would want to make sure that he would not fall short when it came to a CEDAW compliance visit. I am sure that he will be keeping a very careful eye on that, as indeed will any Ministers who follow in his footsteps.

We have heard today the very strong differences of opinion on this issue. Therefore, as a Committee we should be under no illusion about the need to communicate the changes that the regulations introduce. However, after hearing the Minister speak, I have to say that there is one thing I am a little confused about. When he sums up, could he clarify whether, under section 5 of the Criminal Law Act 1967, there is still a requirement on doctors to report all criminal offences to the police, including rape and incest, because that is an important measure that at the moment stops women seeking the help they need for fear of criminalising someone in their family?

Change is not enough unless we communicate it, particularly to the large rural population; that came through very clearly in our Select Committee hearings. So, will the UK Government support organisations to explain these changes to rural communities?

As I have just said, we have heard today about the disagreement regarding the changes that are being introduced. Can the Minister confirm to the Committee that he will seek clarity between our Attorney General and the Attorney General for Northern Ireland that what has been agreed today is lawful?

Finally, we have already touched on the issue that one of the reasons we are in this situation and that the UK Government have had to act is because a serious error was made in the law regarding the legal standing of the Northern Ireland Human Rights Commission. At the time of our report a year ago, the Government undertook to right that wrong swiftly. Can the Minister please update the Committee on when that will happen, so that the Northern Ireland Human Rights Commission has the standing that it thought it had in the first place?

Many people will be listening to this debate today who took their courage in their hands and spoke out about this issue. We are making these changes for them and for women who come after them. I fully support the Minister in all that he has done and I commend him for the way that he has handled a very difficult and sensitive matter.

Several hon. Members *rose*—

The Chair: Order. I hope that colleagues will bear in mind that this Committee must finish at 6 o'clock. I now have five Members who wish to speak and of course we want the Minister to be able to respond to the various points that are made. I hope colleagues will bear that in mind and share the time out.

4.27 pm

Carla Lockhart: It is a great pleasure to serve under your chairmanship today, Sir David.

I believe that the crux of this issue is one of respect: respect for devolution; respect for the devolved Assembly; respect for the will of the people of Northern Ireland; and respect for those with disabilities. I respect this place; I respect its role and its authority. As MPs, we should stand up and defend the authority of this place to rule on all aspects over which it has competence.

My colleagues in the NI Assembly ask for the same. Last week, 75 out of 90 Members of the Legislative Assembly indicated that they did not support abortion for non-fatal disabilities, yet this Government proceed. To borrow a phrase, those 75 MLAs want to “take back control” of abortion law. They want to defend the life of the unborn with a disability. Indeed, an open letter that Baroness O’Loan and I launched on Friday, to present to the Government, has more than 12,000 signatures already. That shows the depth of feeling in Northern Ireland.

In the time available, I will focus my remarks on regulation 7; as drafted, it legalises discrimination. While regulation 4 protects viable babies between 24 weeks’ gestation and full term from abortion, regulation 7 provides no such protection to viable babies of exactly the same age who have a non-fatal disability. So, this legislation provides less protection for a viable disabled baby than it provides for a baby who is the same age and not disabled.

The NI Assembly vote was inspired by a remarkable woman, Heidi Crowter, who lives with Down’s syndrome.

She has expressed how the regulations “tell people like me that we should not exist.”

Last week, I asked the Minister what his message was for Heidi. I hope he will address that in his closing remarks. I also hope that we will take a moment to appreciate the distress that Heidi has expressed, and that of every parent with a disabled child in hon. Members’ constituencies. What message are we sending to those loving parents? The moral argument for rejecting regulation 7 is clear. I have heard no compelling argument otherwise.

I will now consider the legal competence of regulation 7. The UN convention on the rights of persons with disabilities prohibits discrimination on the basis of disability, including the most serious form of disability discrimination that we are concerned with today—foetal disability discrimination. In 2018, Lord Kerr in his Supreme Court judgment said:

“UNCRPD is based on the premise that if abortion is permissible, there should be no discrimination on the basis that the foetus, because of a defect, will result in a child being born with a physical or mental disability.”

The Attorney General of Northern Ireland has pointed out that section 9(9) of the Northern Ireland (Executive Formation etc) Act 2019 states that the powers of the Secretary of State to make the regulations are subject to the same constraints that apply to the Northern Ireland Assembly. Section 6(2) of the Northern Ireland Act 1998 says that the Assembly is not competent to make any law that is contrary to EU law. The UNCRPD has been ratified by the EU, so is part of EU law.

Finally, and in some ways most fundamentally, the discriminatory way in which regulation 7 deals with disability suffers from the fatal flaw that it directly contradicts the recommendation of paragraph 85 of the CEDAW report, which section 9 of the 2019 Act requires the Secretary of State to engage with. Paragraph 85 is clear that changes to access to abortion provision in respect to disability must be made “without perpetuating stereotypes”, yet the manner in which the legislation has been framed directly and expressly does what Parliament requires it should not do.

I recognise the importance of women carrying babies with non-fatal disabilities from 24 weeks and the need for them to receive meaningful support, as required by paragraph 85. Specifically, it states that in a case of severe foetal impairment, there should be

“appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term.” Nothing is forthcoming in the legislation, however, to help women who find themselves in such circumstances. When challenged on that by the Secondary Legislation Scrutiny Committee, the Northern Ireland Office said that that has not been specifically excluded from the regulations because

“a woman and her child would be eligible for the normal disability and/or carer’s benefits and no additional legislation is required.”

Again, what does that say or do to help parents who want to choose life? It is totally inadequate and wholly unacceptable.

It is clear that although the Government have used paragraph 85 as their excuse for the manner in which they have drafted regulation 7, they have not had paragraph 85 in mind in the actual drafting of the legislation, but rather the Abortion Act 1967, which Northern Ireland rejected. As a result, we have 100,000 lives alive today, as opposed to the 9 million babies aborted here in this province. Their objective has been to make Northern Ireland abortion law with respect to disability compliant with the 1967 Act, rather than paragraph 85, as Parliament is required to do.

When Parliament voted for paragraph 85, it voted clearly against disability discrimination and demonstrated that it was 2019 and not 1990. What it has been given in the regulations, however, is quite the contrary. I cannot imagine that, having voted against disability discrimination in 2019, Parliament will want to affirm discrimination now.

Heidi Crowter asked me to quote two things to the Committee, which I proudly do for her. The first is:

“I will praise thee; for I am fearfully and wonderfully made”, which is a Bible verse that she holds dear, as I do. Secondly, a famous singer sings that,

“You’re beautiful just the way you are”.

Regardless of what hon. Members think about any other aspect of the regulations, regulation 7 means that they are not fit for purpose. As drafted, they are an embarrassing liability. For that reason alone, these unamendable regulations must be rejected in their current form. Time should be allowed for the Northern Ireland Assembly to legislate, knowing the will of the people in Northern Ireland.

The Minister referred to the fact that the Northern Ireland Assembly had not adhered to CEDAW. The report for CEDAW was posted in, I think, July 2019. The Northern Ireland Assembly was in suspension at that time, so it would therefore find it difficult to be in

compliance with CEDAW. This is just the tip of the iceberg and, due to time constraints, I am unable to touch on the fact that this legislation permits sex selection. It also gives a free-fire zone for abortion for any reason up to 12 weeks. It allows for coercive abortions and goes far beyond the will of the people of Northern Ireland.

On Thursday past, the Minister used language such as “on balance”. There is nothing balanced about what the Government are doing. They are permitting the termination of lives, against the will of the Northern Ireland people. I would say that, on balance, the Government need to quickly recognise the errors of their way. Some 79% of the people of Northern Ireland who responded to the consultation on the regulations said no, they did not want a change in the legislation, and they wanted the Northern Ireland Assembly to act in this regard. The regulations will see the most liberal abortion laws foisted on the people of Northern Ireland. If the Government proceed, a Province that has been life affirming and values life will revert to a society that destroys life and terminates existence.

I ask the Committee to take note of the fact that both lives matter. We hear much about women’s health—as a woman, I agree that we need to adhere to women’s health and ensure that they have everything in place to assist them—but both lives matter; there is also a baby in the conversation. I call on hon. Members to hear the silent scream of the baby being terminated. I thank hon. Members for listening, and I appreciate the opportunity to speak on this issue.

4.37 pm

Stephen Farry: It is a pleasure to serve under your chairmanship, Sir David. I rise to speak in favour of the regulations and to give an authentic Northern Ireland voice in support of the actions that Parliament has taken. In doing so, I thank all hon. Members who followed the leadership of the hon. Member for Walthamstow in passing the relevant clauses to the Northern Ireland (Executive Formation etc) Act 2019 in July last year, and I thank the Northern Ireland Office for its work in taking forward the regulations over the past year. Today they are part of the law, subject to the further confirmation of Parliament.

I recognise that there are many progressive voices in Northern Ireland who welcome the changes. I pay tribute not just to Sarah Ewart, whom I mentioned previously, but to many other campaigners who have been pushing for reform over the intervening decades, including through organisations such as Amnesty International and Alliance for Choice.

I am a former Member of the Northern Ireland Assembly, and it has always been a source of great frustration that the Assembly has been incapable of passing even the most modest reform to Northern Ireland’s abortion laws. People may reflect on the past with some degree of regret that opportunities were not taken and that there was a resulting need for Parliament to intervene. I was a member of the Assembly when the Act of Parliament was passed, and in no way, shape or form did I feel imposed on or overruled, or feel that my mandate had been unrecognised. Rather, I was pleased that someone was taking action to address the situation in my part of the United Kingdom, and that the rights of women were to be upheld properly. Parliament is for the UK as a whole, and there are responsibilities on the

[Stephen Farry]

UK Government to ensure that all parts of the country follow and are in compliance with international human rights standards, including article 8 of the European convention on human rights, CEDAW and the recommendations of the committee more recently.

Hon. Members have referred to the fact that the Assembly voted the way it did last week, and I will make some references to that. First, it is important to bear in mind that this is an issue of rights, and rights are not addressed through majoritarian processes. There are duties on legislators to follow the rule of law and human rights standards, and to ensure that things are in place in that regard. Public opinion in Northern Ireland has changed dramatically in recent years, particularly among young people, and opinion polls have shown that there is majority support for a range of reforms to be taken forward in Northern Ireland, so I do not recognise that Parliament is acting contrary to the wishes of the majority of the people of Northern Ireland. In any event, it still has an overarching duty to ensure that the law is human rights-compliant.

If we are to be truthful about the situation in Northern Ireland, it was not the case that abortions were not taking place. Our abortion issue was being exported to other parts of the UK, creating a situation of huge trauma for the women involved, and also creating difficulties for people in more challenging socioeconomic situations and for women in situations of domestic violence and coercive control, who were not able to avail themselves of their rights in the same way that women in other parts of the UK were. I therefore welcome the actions that are to be taken forward.

It is important to recognise that the context of Northern Ireland will still be very difficult. We still have a considerable degree of controversy that Members will no doubt express today. Sadly, we will hear more about it in due course. There is a risk that some of the controversies around the guidance will create a chill factor and make it difficult for healthcare professionals to fulfil their responsibilities. Indeed, we could see a situation in which women are denied their lawful rights in terms of reproductive healthcare, so it is important that we provide a stability of certainty for professionals.

I also recognise that the regulations re-introduce a risk of criminal sanctions against healthcare workers. The hon. Member for Bristol South has already alluded to that. Given the ongoing stigma in that regard, I encourage the Minister to do what he can to give further reassurance that the reinstatement of criminal sanctions cannot be used to prosecute healthcare workers who act in accordance with criminal guidance and who also act in good faith.

I want to put on the record concerns around exclusion zones. I appreciate that the Minister has made it clear that that will be under continued review. Indeed, a wider debate is happening across the UK, but it is important to put it in context. Given the degree of stigma and controversy in Northern Ireland and that there have been considerable problems historically, and indeed today, around the harassment of women who try to access their healthcare rights, it is important that a reconsideration is given due attention as quickly as possible.

There are two important challenges. Before we come to that, it is important that we try to put the issue to bed. Parliament has acted and the clauses in the Offences Against the Person Act 1861 have been repealed. There is a duty in primary legislation to have regulations. Where those regulations are voted down, that duty still continues and further regulations need to be put in place and need to be CEDAW-compliant. That duty is there and continues to exist. It is important that we try to recognise that this debate is now settled, and the same applies to the Northern Ireland Assembly, which has the ability to pass its own measures, but again, it is important that those are CEDAW-compliant. That must be our benchmark.

Carla Lockhart: The hon. Gentleman and I will differ on this issue. For the benefit of his constituents, will he make it clear whether he supports abortion for Down's syndrome up to birth—yes or no?

Stephen Farry: I support CEDAW-compliant regulations. It is important that we do not place this in a pejorative way around certain circumstances. Every situation and crisis pregnancy that a woman experiences is a very personal circumstance. The decisions and choices that that woman has to make are often very difficult. We have to give respect and support in that regard.

In that context, I shall make my two final points. The first is that there is a need for the Northern Ireland Office to continue to have a dialogue with the Department of Health and the wider Northern Ireland Executive about ensuring that there is the full provision of services in Northern Ireland. So far, we have seen piecemeal provision; that needs to go further. I regret to report that the Minister of Health in Northern Ireland, rather than treating this as an operational healthcare matter, has referred it back to the Northern Ireland Executive, which is a political cauldron. That will create difficulties in terms of getting decisions to proceed with the full commissioning of services. It is important that the Northern Ireland Office remains fully abreast of that situation and continues to follow up on the encouragement that it has given to date to ensure that those measures are put in place.

It is also important to ensure that there is a proper roll-out of information and guidance, including on websites, for the public to understand what the service situation is, but also to ensure that that is passed down throughout healthcare staff, because there is ongoing confusion. In that context, we could see a situation in which there are rights on paper but not in practice.

4.46 pm

Sir John Hayes: This is a contentious issue. Abortion debates always arouse, stimulate, catalyse strong opinions. But this, in essence, is not about abortion. These regulations and this debate are about devolution. They are about the willingness of this House to respect the settlement that it made with the people of Northern Ireland. It is my contention that these regulations—these proposals—are unconstitutional, unwanted and unwise. The risk that we run by voting for them is of opening a Pandora's box in respect of our constitutional settlement with Ulster. If we take this out of the box, why not something else? What is to be next? All at a time when that settlement is fragile, this tests it to a point where I would not be sure that it will not break.

As a Unionist, I have protecting the strength of the United Kingdom at the heart of my political credo, and I know the same is true for colleagues across this Committee and, indeed, the whole House. With that in mind, I urge members of the Committee and the House to reflect on the importance of devolution in the context of Northern Ireland. The UK Government have an ethical duty to honour their promise to the people of Ulster, as well as a constitutional duty to preserve our Union.

It was that sentiment that I imagine the hon. Member for Walthamstow had in mind when she initiated the measures to which these regulations give flight. She said:

“I understand that, if it was not for the fact that we do not have an Assembly, this would absolutely not be the right way forward, but we do not have an Assembly and we will not have one any time soon.”—[*Official Report*, 9 July 2019; Vol. 663, c. 183.]

Of course, the truth is that we do now have an Assembly, and that Assembly has the understandable expectation that it should decide on matters on which we ask it to do so. The extraordinary behaviour of the Government—I say that with all respect to the Minister, who, as I said at the outset, has behaved with great courtesy and decency in the discussions that we have had with them on this subject—given that there has been an election since the original decision was taken to impose their views and these regulations on Northern Ireland, flies in the face of the devolution settlement.

Huw Merriman (Bexhill and Battle) (Con): Will my right hon. Friend consider the right that I have to effect legislation as an hon. Member? I did so last year, and I expect that legislation to come into force. Will he also consider the point that treaty obligations are a requirement for this institution to take into account and not for the Assembly in Northern Ireland?

Sir John Hayes: To be clear, when that decision was taken, Stormont was not sitting and there was no prospect of its doing so. We were not to know then—I am sure that my hon. Friend voted in good faith—that Stormont would reassemble and thereby be able to come to a view about these matters. This is a devolved matter, after all. Were this a matter that would normally be decided by this Parliament, I would not be able to make the point that we are imposing our view in an area of policy that we chose to devolve to the Assembly.

It would be no different if we were doing this in Scotland or Wales. It not only risks the settlement in Northern Ireland, but undermines the very principle of devolution. I was here when we first debated that, and I think I voted against it when the Labour Government introduced it, as most of my party did. I have no doubt that my hon. Friend would have done so too, had he been here. However, the settlement that we came to went through, and that is where we are.

Huw Merriman: My right hon. Friend is very generous in giving way. The point that I would make, though, is that treaty obligations, which are what the Supreme Court said Parliament was out of step with, are a duty and requirement of this place, and not a devolved matter.

Sir John Hayes: I am not sure that that is the view that the Northern Ireland Attorney General took. I refer my hon. Friend to his advice, of which I have a copy if

he wants to read it in detail; I cited it earlier. I am also not sure, although he would have to ask this question of course, that it would necessarily be the view that our Attorney General would take. However, that is not for me to judge or gauge, and since I could not encourage the Minister to give any greater clarity about the Attorney General’s advice, perhaps I will leave it there.

Stephen Farry *rose*—

Tim Loughton *rose*—

Sir John Hayes: I wish to make some progress, and then I will happily give way again. The key thing is that the will of the people of Northern Ireland is clearly quite different from the view of the last Parliament, when the essence of the changes that the regulations make legal was considered. For any Parliament to fly in the face of the will of the people is, as I have described it, not only unconstitutional but unwise.

It is quite clear that the regulations are unwanted in Northern Ireland. The Minister referred to the consultation, to which 79% of respondents stated their opposition to the furthering of abortion provision in Northern Ireland.

Richard Graham: Will my right hon. Friend give way?

Sir John Hayes: I do not want to give way too often, because I know that others want to contribute, but I will happily give way to my hon. Friend.

Richard Graham: On that specific point, what percentage of the population responded to the consultation?

Sir John Hayes: That is a question for the Minister, not me, because he will have those figures to hand, but he was the one who made great play of the consultation, not I. He cited the consultation in his opening remarks. Indeed, he celebrated the fact that the Government had consulted widely. I was simply clarifying that in that wide consultation the overwhelming majority of people who responded were not in favour of what we are being asked to support today.

There have been other tests of opinion and other polls. The University of Liverpool released a poll showing that only 5% of Northern Irish voters wanted abortion to be provided up to 24 weeks, which is what the regulations do. The strength of feeling on the issue transcends the usual divides in Northern Ireland. According to polling, 58% of Sinn Féin voters and 54% of Democratic Unionist party voters believe that abortion should be allowed only if the mother’s life is at risk.

I could go on about polling, but I will simply make this point: it would be easy to assume that women took a different view from men, or that the young took a different view from those who have lived longer. In truth, women are less supportive of the regulations than men, and the young are less supportive than their parents and grandparents. In Northern Ireland, the regulations are certainly unwanted. That was illustrated last week, as has been said, when the Northern Ireland Assembly voted to oppose the regulations, passing a motion that states:

“That this Assembly welcomes the important intervention of disability campaigner Heidi Crowter and rejects the imposition of abortion legislation which extends to all non-fatal disabilities, including Down’s syndrome.”

[Sir John Hayes]

The regulations are unwise. Seventy-nine of the 90 MLAs in the Northern Ireland Assembly voted against abortion on the grounds of non-fatal abnormalities. Despite that, the regulations permit abortion up to birth on the grounds that the unborn child has been diagnosed with Down's syndrome, a cleft lip or palate, or a club foot. If we vote the regulations through, what does that say to the people in Northern Ireland about how we view their opinion? Even more importantly, what does it say to those disabled people in that part of our kingdom, indeed in the whole of our kingdom, about how we regard them? I say it would broadcast loudly and clearly that we do not regard them very highly at all.

Furthermore, the regulations go much further than the requirements set out in the Northern Ireland (Executive Formation etc) Act 2019 and further than the provisions that apply in England and Wales. Specifically, they allow for abortion on demand without certification through to 12 weeks, which will allow sex-selective abortion to be available during that period. It is the first time that no ground for abortion has been allowed up to 12 weeks. Some will say, "Well, that won't happen. That's alarmist. Why on earth would people abort a child on the basis of its gender?" I do not share that uncynical view, because we know there are cases where people have done so, and there are places in the world where that is common. We do not want it happening here, and anything that risks it should, frankly, send a shiver down the spine of any member of the Committee.

Indeed, the Government have curiously—I would go so far as to say remarkably—chosen to impose on Northern Ireland a more permissive regime than the one that applies in England and Wales. I do not have time, and you would not permit me, Sir David, to go through all the areas in which the regulations are more liberal than the regime that applies to the rest of the kingdom. That raises the issue of consistency, certainty and clarity—all used as arguments in favour of the regulations by my right hon. Friend the Member for Basingstoke, who has now left. How bizarre—*[Interruption.]* My right hon. Friend is back; her ears must have been burning. If it is clarity, certainty and consistency that we want, why on earth would we want to impose a different regime in Northern Ireland from that which prevails elsewhere?

Yet there is a substantially different regulatory approach to abortions proposed for Northern Ireland from that in England and Wales. The Northern Ireland regime will allow all GP surgeries to be approved locations to do abortions, allowing this serious procedure to take place in a dramatically increased number of locations compared with England and Wales.

Carla Lockhart: Does the right hon. Gentleman also agree that the legislation has no reference to inspections of places where abortions can take place, which leaves difficulty in managing where they can and will take place?

Sir John Hayes: That is true, too. It is also true that whereas an abortion can be carried out in England and Wales only by a doctor, the regulations extend that. The issue of home abortions, with the woman taking a pill—there has been quite a lot of publicity in the national press in the last few weeks about how that can go wrong—is also catalysed by the proposed changes.

Dame Diana Johnson: I am concerned about what the right hon. Gentleman just said. The past president of the Royal College of Obstetricians and Gynaecologists, Professor Lesley Regan, has made it clear that the safety of women taking tablets at home is not to be disputed. He needs to consider what he said about things in the press, because that is not backed up by scientific or professional evidence.

Sir John Hayes: Up until now, we have taken the view as a Parliament that, because abortion is a serious matter, there should be a structure and framework governing where it takes place that maximises the prospect of the safety that the hon. Lady and I want to guarantee. That is why we put it into the hands of medical professionals, and put limits on the places where it can happen. That is why we have a legal framework, and prohibit—indeed, penalise—abortions that take place outside it. My anxiety, like hers, is about guaranteeing safety and security, and I believe that that is done by the existing provisions. We therefore do not need to change them.

I want to reflect on a point that I have touched on briefly already about non-fatal disabilities. I find it deplorable that, in contradiction of all the notions of equality that we rightly promote in the 21st century, a child diagnosed with Down's syndrome, a cleft lip, a cleft palate or a club foot can continue to be aborted. As the hon. Member for Upper Bann said, that clearly discriminates against disabled people. The last time that abortion regulations in England and Wales were examined in real depth was 1990, before the passing of the Disability Discrimination Act 1995 and the Equality Act 2010. That is why, as I said earlier, I am pleased that a Bill is being introduced that will address that inequality. These regulations permit abortion up to birth on the grounds that the unborn child has been diagnosed with Down's syndrome, a cleft lip, a cleft palate or a club foot in Northern Ireland. Where a child is capable of being born alive in Northern Ireland, this law will permit different treatment of those with disabilities and those without disabilities. That lawful discrimination will continue until the child is born. If this House were to endorse these regulations, we would be endorsing discrimination on the basis of disability. We would be endorsing applying the Equality Act to some and not all. We would effectively be saying that some lives matter less.

In conclusion, I urge Members to reject these regulations for two main reasons: devolution and equality. They are unconstitutional, and may actually be illegal—I have not got time to pursue that at great length, but that is certainly the view of the Attorney General for Northern Ireland; the question of whether they are legal was asked earlier; he certainly thinks that they are not.

Stephen Farry: Will the right hon. Gentleman give way?

Sir John Hayes: I will not, because I am about to reach my exciting peroration, but I will happily send the hon. Gentleman the advice if he has not seen it already.

On the grounds of devolution and promoting and protecting the interests of people with disabilities, we should reject these regulations. They are unwise, unconstitutional and unwanted. If that has not persuaded members of this Committee, let me finish not with my words but those of Heidi Crowter, a 24-year-old woman with

Down's syndrome who, when reflecting on the regulations that I imagine some people on this Committee plan to vote for, said:

"it makes me feel like I shouldn't exist".

5.4 pm

Stella Creasy: It is a pleasure to serve under your chairmanship, Sir David, as we debate these important regulations. This is an opportunity for this House to come together and uphold the human rights of all UK citizens. I start my contribution by paying tribute to the work that many have done to get us to this point. I thank the Minister, who has been patient and diligent and listened to all sides of the debate on this matter before arriving at these regulations. I also thank the shadow Minister, my hon. Friend the Member for Bristol South, who has been an incredibly diligent and thoughtful advocate for the importance of getting these regulations right. I thank my colleague and hon. Friend, the hon. Member for Kingston upon Hull North, who has been a stalwart campaigner for the right of a woman to have the equal right of a man to choose what happens to her body—unfortunately, this is still a contested issue in 2020. I thank the former Chair of the Women and Equalities Committee, the right hon. Member for Basingstoke (Mrs Miller), who gave a brilliant speech earlier today about the things she heard and the work that Committee did.

Above all, I thank the many voices from Northern Ireland who have been able to be heard over the past couple of years, in this place and outside, as a result of us as a Parliament taking on something that, for years, people have said was too difficult to deal with. This has been a difficult debate, and I recognise there are strongly held opinions on all sides of the House about this matter, but because we put it in the "too difficult" box, we have denied the voices of thousands of women in Northern Ireland who have been speaking about their human rights. That has changed over the past couple of years, and I pay tribute in particular to the Alliance for Choice, the London Irish Abortion Rights Campaign, Amnesty International and Together for Yes, as well as women such as Sarah Jane Ewart, who have been incredibly powerful and brave in telling their story about the consequences of this legislation.

These regulations are needed because almost a year ago, this House recognised that it was important to repeal sections 58 and 59 of the Offences Against the Person Act 1861, which put having an abortion in the same category as child-stealing and using gunpowder to blow this place up. However, repealing those sections was only 50% of treating every single woman in the UK as an equal citizen. We need these regulations to clarify what the provision of abortion in Northern Ireland is. I stand with the hon. Member for North Down, who is very welcome in this place and has clearly stated the simple truth that not regulating for abortion—banning abortion—does not stop it happening, but means that it happens in an unsafe manner. It puts lives at risk.

We know that for generations, Northern Ireland has been exporting its need for abortion to the rest of the United Kingdom. We know women who have had to make that horrific journey under horrific circumstances: not just Sarah Jane Ewart, but thousands of women who have had to travel, if they can at all, because they do not want to continue an unwanted pregnancy. At the heart of this regulation is a very simple question: do we

have the right to force a woman to continue an unwanted pregnancy? If we say yes, then of course, we can stand up to those human rights organisations that have told us countless times over the years that we are torturing our own citizens—that is how they have described deciding for somebody else what happens to their body, in this most graphic way. That is why it is right that this place acted, and it is why I must respectfully disagree with the right hon. Member for South Holland and The Deepings when he says that this is somehow illegal.

These regulations stem from that moment last year when we recognised our human rights obligations as a United Kingdom, and expressly said that devolution does not deny those rights to some women in the United Kingdom. Indeed, in that moment we were sticking to article 27 of the Vienna convention, which states that a party to a treaty

"may not invoke the provisions of its internal law as justification for its failure to perform a treaty"

and paragraph 39 of CEDAW's general recommendation on the core obligations of states, which says that states cannot use their delegated powers to absolve themselves of responsibility to all women. It is clear that for too long, this place has denied its responsibility to the women of Northern Ireland, and today's regulations put that right. They do so in a sensitive and CEDAW-compliant manner, so that we treat the women of Northern Ireland with the respect we would wish for all women.

We are required to follow the ECHR, and it is right that this place deals with this issue, because it is our law—the Offences Against the Person Act 1861—that created these challenges in the first place. Whatever legislation the Northern Ireland Assembly wishes to bring forward on this matter, which it can do, it could not take action without dealing with that Act, so it is right that this place seeks to act—

Sir John Hayes: Will the hon. Lady give way?

Stella Creasy: I will, but I want to make reasonable progress, to allow the Minister time to answer some of the questions. I give way happily.

Sir John Hayes: I want to be clear about this. When the hon. Lady spoke on this subject in the House before the last election, she said clearly that the reason she was advocating what she was, was the absence of Stormont; were Stormont sitting, she would not do so. Now, she is making a completely contradictory argument, that Stormont should never have had the powers at all. If she thought that then, why did she not say so?

Stella Creasy: I am grateful that the right hon. Gentleman appears to have listened to what I said in the House. If we are honest, in debates, it sometimes feels that that is not always the case for those on opposing sides. If he listened to what I said then—and what I say now—it was that devolution did not absolve us of our responsibility. Indeed, the requirements of the European Court of Human Rights cross-cut to Northern Ireland as part of the Good Friday agreement.

The right hon. Gentleman says that we have always devolved this but, I genuinely suggest to him, the absence of legislation on Northern Ireland was in 1967. That was before the 1998 Good Friday agreement, which enshrined the responsibility of this place to uphold the human rights of the people in Northern Ireland, leading to the creation

[Stella Creasy]

of the Northern Ireland Human Rights Commission, which sought to address this issue but, as we discussed, was not able to do so because of a technicality. Does he want to suggest that there is a clear demarcation? Furthermore, I have not yet heard him advocate that other forms of human rights such as on torture should also be delegated to Northern Ireland. We do not do that; we recognise that some rights are universal and that, collectively, we have a responsibility to uphold them.

My point last year was that for too long, because of the absence of the Assembly, this issue had not been addressed. I ask those who today say that we should not agree to the regulations, if not these regulations, where is the alternative? Now that the Assembly is up and running, it can come up with alternative proposals. As yet, it has not.

The risk is twofold: first, the continuation of the abuse of the human rights of the women of Northern Ireland, whereby they are forced to continue an unwanted pregnancy because there is no safe, legal and local service for them; and, secondly, in the absence of regulation, now that we have repealed sections 58 and 59—I agree with Government Members who made this point—there is a gap, a lacuna, in what services are provided that needs to be addressed.

If the right hon. Gentleman wishes to advocate devolution, he should advocate what CEDAW-compliant regulations the Northern Ireland Assembly should be coming up with, so that we may navigate this terrain of being part of the United Kingdom, of upholding our human rights obligations and of recognising the role of local institutions in identifying how those regulations are provided. He should not be saying simply, “Put it back in the ‘Too Difficult’ box—let’s not go there.”

Having said all that, it is important for us to look at the legislation, at the regulations before us, and I am sure that the Chair wishes me to do so. The regulations implement what polls in Northern Ireland have been telling us for some time: the vast majority of people do not consider this to be a criminal matter but a medical one, requiring medical regulation, which is what the regulations do. That is the view of both the MLAs and the broader public. However, there is common ground to be found: we need to find a medical way of moving forward.

Dame Diana Johnson: I, too, pay tribute to the work of my hon. Friend last summer to ensure that we are here today to discuss the regulations. Specifically, with the repeal of sections 58 and 59 of the Offences against the Person Act 1861 as relating to Northern Ireland, we are left with England and Wales still covered by that Victorian law that could send women to prison for life. I wondered whether she would care to comment. Having repealed those sections, the use of regulation to establish a framework for an abortion law that works for the 2020s and beyond is not beyond the wit of man or woman any more. The Abortion Act 1967 should also now be considered ripe for reform, in line with the reforms that we are seeing in Northern Ireland.

Stella Creasy: My hon. Friend knows that she has my full support as she makes the argument that our constituents in Hull and Walthamstow should also be treated with dignity. I am always mindful that abortion is the

only medical procedure in which we deny the patient the opportunity to consent. Were we to apply the same rules to having a vasectomy, for example—that somehow two doctors should decide for people whether they were entitled to have such a procedure—I suggest gently that some in Committee would be equally affronted by the denial of their rights to make a choice about their own body. They would not want to be forced to continue something that they did not wish to do.

I am mindful of time and what the Minister has said. I will press him on a number of issues, because it is right that, now we have made this choice to uphold the human rights of women in Northern Ireland, we should ensure that the regulations can be enacted in real time, so that women no longer have to wait. The Minister himself said that the reality is still that people have to travel. There have been thousands of such women, since it was required in 2017 that women in Northern Ireland at least be allowed to come to the NHS in England and Wales, and not be charged despite being UK citizens paying taxes towards the costs of those services. I am conscious that the right hon. Member for South Holland and The Deepings was slightly confused when he talked about home user abortion. In England and Wales people can now take both pills at home. It is important that we recognise that we have made some progress in trusting women to make choices over their own bodies.

If the bodies in Northern Ireland continue to refuse to commission for any gestation at all, as they are doing at the moment, does that count as a breach of the regulations? Will the Minister answer that explicit question for us? It is untenable, those decisions have been taken, and the regulations having been brought in, for women to be required to travel, when that is not an option for many of them. It is not just because of cost. They might be in abusive relationships or have other childcare commitments. That is not the safe, legal and local service that the House overwhelmingly voted to extend to all women in the United Kingdom. Is what I mentioned therefore considered a breach of the CEDAW determination that the previous situation in Northern Ireland was

“violence against women that may amount to torture or cruel, inhuman or degrading treatment”?

Any form of regulation, I suspect, would not find favour with Members from some parties who are present today, because it would allow women to make the choice to have an abortion. However, if the regulation is not commissioned, what does the Minister expect to do to make sure that we are CEDAW-compliant, and what is the timescale for that? How long, essentially, are we to ask women in Northern Ireland to continue to wait before their rights are upheld? The right hon. Member for South Holland and The Deepings talked about asking for time to regulate. Frankly, the Northern Ireland Assembly now has the time to regulate, but it shows no sign of doing so. Without that, and with the determination not to commission, there are no regulations in force, with the possibility of being in breach.

The regulations say that it should be possible to get an abortion in Northern Ireland under 12 weeks without any grounds. Are we in breach of those regulations at the moment? At the moment, it is possible only for some women under 10 weeks to get access to a service. At 10 weeks and one day they cannot, because the service is not being commissioned. The Minister talked about a good faith defence for medics. Will he clarify

what sorts of cases he believes that is intended to safeguard against, so that we can understand better the scenarios he believes possible?

Finally, we talked about the 12-to-24-week provisions and the fact that it is possible to have an abortion in Northern Ireland if doctors say that there is a risk to physical or mental health. That is not a provision available to women in Northern Ireland at the moment. It has not been commissioned. It is a very rare occurrence. Most abortions take place before 10 weeks and the women have made that choice. When abortions happen later it is usually because of horrifically tragic circumstances such as those that Sarah Jane Ewart pointed out, when it is discovered that a child will die at birth. If we do not pass the regulations we are asking women to be in that position, and requiring them to continue and give birth to a baby they know will die. I do not think anyone in the Room would want that to happen, so we must regulate. There must be provisions so that in the horrific circumstance when women who go for a sonogram are told their baby will not live we are with them rather than judging them; offering them support to make the choice they want to make—not to continue the torture—rather than telling them there is no alternative. Will the Minister clarify whether there is an appeals process and, if so, what it might be, for women denied an abortion between 12 and 24 weeks because two doctors refuse it?

I stand with the right hon. Member for Basingstoke who talked about the importance of information. Above all, now that we have reached this point—having had the difficult conversation and heard the voices, and having been given the opportunity to get the legislation right and get the regulations—a “don’t ask, don’t tell” policy would be a travesty. People in Northern Ireland deserve respect and to understand what services they are entitled to. Will the Minister clarify information processes? What information will there be for people whose doctors decide that they do not want to take part in the process and how will we make sure that they are not forced by delay in service delivery to wait for a later stage of pregnancy? Three years ago, we made a promise to the women of Northern Ireland when we first started this conversation and first looked at their right to be able to travel here that we were not done. If we are honest, we are not done yet with these regulations. We are much further down that road, but there is still much more work to be done.

I know the Minister recognises that and wants to see this through. It is important today that we vote for these regulations and get further along that road, but it is also important that we do not give up on ensuring that what we talk about in this place—those rights, that equality of being able to manage our own bodies and our own choices—is extended to all our citizens.

I thank the Minister for the work he has done. I will be voting for these regulations, and I recommit myself to working with those woman and men on the ground in Northern Ireland, to help to ensure that their voices continue to be heard in this process, until we are all truly, equally able to exercise our own rights. Surely that is the best of human rights, and that is the best of democracy.

5.21 pm

Ian Paisley: It is a pleasure to serve under your experienced chairmanship, Sir David.

This is an issue that is vastly controversial and provokes much thought; in some quarters it provokes concern, anger and frustration, and in other quarters it provokes much happiness. Those are the differences we are in. This divides parties, it divides families and it divides homes. I think everyone recognises the controversial and difficult nature of this.

However, hon. Members should be under no illusion whatsoever: today’s proceedings, when they are voted for—there is no doubt that they will be passed, given the Government’s majority—will not stop the confusion. The promise that this will end the confusion over regulations and all the rest of it in Northern Ireland is complete and total nonsense, as the Chairman made clear when he was addressing the issues to do with points of order. He said he was in the dark about how we got here.

If a Chairman as esteemed as you, Sir David, is in the dark about how the Government got themselves into a position where they are pushing through important regulations about criminality, social and constitutional change and the right to life of the pre-born in a two-and-a-half hour, crammed-in session, in an Upper Committee Corridor in this House, when we were only allowed 17 minutes on the Floor of the main Chamber last year in a previous Parliament—not this Parliament—to deal with the amendments that came from the House of Lords, if that is the fact of how we are going to deal with legislation that affects Northern Ireland in such a massive way, there is zero respect being paid not only to hon. Members from Northern Ireland, whatever their different opinions, but to women in Northern Ireland. This is not the way we should be legislating for anyone or any matter in that regard.

That is why I reiterate the points I made earlier and agree wholeheartedly with the speech of the right hon. Member for South Holland and The Deepings, who said that the way this has been carried out is an affront to the people of Northern Ireland. The hon. Members who are privileged to vote on this matter today, while the vast majority of Members from Northern Ireland are completely denied a vote on the issue, will have to ask themselves whether they are content that, by the end of these proceedings, they will have helped to pass the most permissive abortion regulations in the whole of the United Kingdom.

The abortion regulations that are being passed for Northern Ireland, as we have already heard in the to and fro, do not mirror what occurs in this part of the United Kingdom, but are completely different. Hon. Members have spoken in the past in this House about having to ensure that English laws represent English votes, and we have English votes for English laws procedures in place to do that. Northern Ireland Members have a right to ask, “Will this House make laws that reflect the character of Northern Ireland?”

The strength of this Union is that it is made up of very different component parts: peoples who have different views, peoples who are divided in many ways. The House should at least respect those differences. If it is good enough to have English votes for English laws, this House should recognise that the changes to be brought about should at least reflect the views of the people in Northern Ireland. As I have already indicated, the regulations are not a mirror image of the law in Great Britain. I hope that I am not being unfair to the Minister, who is an absolute gentleman and always deals with us

[*Ian Paisley*]

courteously, but it is wrong to help Members through the Lobbies to vote for this legislation by suggesting to them that, “It mirrors what happens in the rest of the UK, so it is okay—we can push it on through and those Paddys will just have to accept it because it is the same as in the rest of the United Kingdom.”

The regulations do not mirror what happens in the rest of the United Kingdom in four key and distinct ways. The rules and regulations that would be introduced are much more permissive in terms of the gestation time limits that are allowed for abortion. They are more permissive on the issue of sex selection, which is outlawed in the United Kingdom and cannot now be protected in my part of the United Kingdom because no reason has to be given for a termination. They are more permissive in allowing abortion and termination on the basis of disability; and they are more permissive on the social reasons that have to be given, but not the medical reasons on the question of mental wellbeing.

The regulations do not mirror the law in the rest of the United Kingdom. People have talked about having two doctors’ opinions; zero doctors’ opinions are required in Northern Ireland by the regulations. Medical opinion can come from a midwife, a nurse, or anyone with a medical qualification, but the regulations do not specify that a doctor’s opinion is required in Northern Ireland. The 1967 abortion law was brought in on the basis that a doctor’s opinion was key to allowing the decision, and that has been completely done away with. On that key point, the suggestion that the regulations mirror GB is completely and totally erroneous.

Under the regulations, in Northern Ireland no reason has to be given for the termination to take place up to 12 weeks’ into gestation—no reason whatever. That is not the case in the rest of the United Kingdom, where reasons have to be given. In Northern Ireland, that opens the door to sex selection; it opens the door to other social reasons and to other issues that do not form any part of the regulations and practice in the rest of the United Kingdom. That goes well beyond even what CEDAW requires. CEDAW made it clear that there was a deficiency in the Northern Ireland regulations as they stood, because of rape, incest and fatal foetal abnormality issues. That no reason has to be given means that the laws in Northern Ireland would be at variance with and completely different from what happens in the rest of the United Kingdom. That does not mirror the United Kingdom.

On the highest sanction for illegal termination, the practitioner may decide that they are or are not satisfied with the reasons that are given, but are wrong in coming to that decision. If that person is eventually brought to court, the highest sanction that that person will face is a level 5 fine, meaning that, for something that is criminal law in the rest of the United Kingdom, a person can buy their way out of that problem with less than £5,000. That is the fact. The regulations do not mirror those here, where, if someone breaks that law, they face anywhere between five years to life in prison. That really makes a significant change in terms of how the regulations would be interpreted and applied in Northern Ireland. Even the Republic of Ireland, which has changed its abortion regulations, recognised that the punishment had to be by way of imprisonment of up to 14 years. Allowing people to buy their way out of that problem does not mirror what happens in the rest of the UK.

As I have already said, sex-selection terminations will be permitted, as it is not an offence to terminate for any reason. The regulations fail to mention sex selection. The Government have had ample opportunity to include sex selection and make it clear that it is not allowed, but they have been silent. As the Government have failed to mention it, how will the laws that outlaw sex selection in GB extend protections to unborn life in Northern Ireland? Maybe someone does not want a girl or a boy and then decided, “That’s a good enough reason.” It is a travesty, and it is wrong. It does not mirror what happens in the rest of the United Kingdom.

Carla Lockhart: My hon. Friend makes a valid point about sex selection. Does he agree that it is normally girls who are aborted? We talk so much about women’s health and women’s rights, yet it is girls who are aborted in the womb.

Ian Paisley: My hon. Friend makes the point exceedingly well, and we should listen to her words. This legislation does not protect the rights of women and girls, or of the unborn. It dismisses their rights—that is the fact.

The Attorney General for Northern Ireland has claimed that the Secretary of State has exceeded his authority. That is why the regulations, if and when they are passed, will unfortunately run into further controversy—no doubt they will be challenged. They will not bring an end to a difficult argument or suddenly solve it. We are in the process of dealing with difficult issues all the time, and the suggestion that the regulations end a difficult problem is just complete and total nonsense. If it was so easy, most hon. Members would welcome that. However, in claiming that the Secretary of State has exceeded his authority, the Attorney General for Northern Ireland made the following comments:

“It is doubtful that the legislation gives adequate ECHR protections to the rights of those opposed to these regulations, whether on conscience or philosophical grounds.”

He went on to say:

“It is inappropriate for the provision. In light of the political context that now exists in Northern Ireland, these provisions are actually lawful.”

Let me just complete the quotation. He goes on to say:

“It is disproportionate, contrary to article 9 of ECHR, as well as article 8, to require those who undertake ancillary, administrative or managerial tasks to act contrary to their conscience.”

Sir John Hayes: My hon. Friend the Member for Bexhill and Battle suggested that the regulations might be made lawful by reference to a treaty. Will the hon. Gentleman let the Committee know, perhaps by way of a confirmation, that the regulations cite no treaty and relate to no treaty?

Ian Paisley: It is absolutely clear that we are not breaching any treaty; indeed, the Minister said so himself when I intervened on him earlier. No treaty is being contravened, and we are under no obligation whatever. We are doing something because it is politically expedient to do something. We are genuflecting to a committee that does not have the standing that the Minister and the Government give to it. That is why there will be many people who echo your words, Sir David—I hope I do not quote you incorrectly—by saying, “I’m confused about how we’ve got ourselves into this position.” If that is the case, these little committees all around Europe—

The Chair: Order. The Chairman is entirely impartial, and I am not sure the hon. Member should have interpreted my words in that way. I gently remind him that there is one more person waiting to speak, and I am sure the Committee wants a full response from the Minister.

Ian Paisley: I certainly would not want to put words into your mouth, Sir David. I think the words were “in the dark about how we got here.” I reiterate that people listening to the debate should take out of those comments whatever they wish.

The regulations discriminate against the disabled and against the sex of the child. How have they tested whether these regulations comply with the current laws against sex selection of the unborn? Do the Government accept that these regulations open the door to sex selection terminations? I believe they do. How will sex selection terminations remain illegal under these regulations given that the Government have been silent on that key matter?

The Government can repeal section 9. Since the election in December and the introduction of this law, there have been significant constitutional changes. We now have an Assembly operating in Northern Ireland that is opposed to these changes. Several hon. Members have cited the votes. Even members of the Alliance party voted against some of these regulations. One Parliament cannot tie the hands of another Parliament. Yet, it appears the Minister is quite willing to have his hands tied today because of what happened in a previous Parliament. He and the Government do not have to do that.

The Minister also said that he listened carefully to the people of Northern Ireland. Some 21,244 people responded to the consultation, 79% of whom stated their opposition to these regulations. The Minister did not listen to them. If that was the case, there would be a different outcome. Consultations are a joke. Let us be clear about this: this consultation was one of the biggest catastrophic jokes ever played on the people of Northern Ireland. Some 21,244 out of 1 million adults in Northern Ireland responded—one of the biggest responses ever—in a matter of weeks. The Government did not listen. Do not kid yourself. Do not play the game with us and say, “We listened to the people of Northern Ireland.” I’ll tell you what happened: the people of Northern Ireland were ignored in that consultation.

In the Assembly vote last week, 76 out of 90 Members, including members of the Alliance party and the Social Democratic and Labour Party, the sister party of the Labour party, voted not only with matters that my party brought forward but with other amendments that rejected these regulations—76 out of 90. They were ignored. They were thrown to the side.

Whenever medical professionals in Northern Ireland are asked to bring an opinion on whether a life should be terminated, they only have to act in what is called “good faith”. The grounds for termination do not require any diagnosis whatsoever, but just to act in good faith. That is different from what happens in the rest of the United Kingdom, and that alone will bring further controversy to this matter and more concern to the people around this House.

I believe this is an affront. I appeal to hon. Members to recognise that this should go to a Northern Ireland Grand Committee or the Floor of the House. Irrespective of what side of the argument they are on, this is not the

way to make such significant changes to the laws in Northern Ireland. I appeal to hon. Members to think tonight before they vote.

5.38 pm

Jim Shannon: I very much appreciate the opportunity to address this Committee on a matter that I have a great interest in. Abortion is a devolved matter and it should be a devolved matter for Northern Ireland. My hon. Friend the Member for Upper Bann referred to the fact that 100,000 people in Northern Ireland today are alive because of our legislation. That was disputed by some, but the fact is that after an investigation it was clear that that figure was reasonable. It has been important for people in the rest of the UK, but it is very important for us in Northern Ireland. Some of the people we meet are alive today because of our legislation.

In 2016, the democratically elected Northern Ireland Assembly voted on primary legislation not to change our abortion law. The process begun in July last year is ongoing. We are all very fond of the Minister, but on this issue we really are at different ends of the spectrum. This impacts our law and constitution and poses deep questions.

The first convention that was flouted was through the application of the accelerated procedure. The fast-tracking of Northern Ireland legislation reduces further the scrutiny that these measures should receive. We reiterate our concern about the routine nature of fast-tracking legislation relating to Northern Ireland.

The second convention that was flouted was that, despite the Clerks’ advice to MPs, the amendment that became section 19 was clearly out of the scope of the Bill. The whole point of constitutional democracy is that it is not crudely majoritarian, especially if the policy affects different national units of different sizes, but it is subject to constitutional rules, devised for the good of the polity as a whole. Constitutional rules, however, have been ignored.

The third constitutional convention that was violated was the convention that Westminster should not vote on a devolved matter: 100% of MPs who took their seats in Northern Ireland were present, and 100% of those who were present voted against a change in the law. The constitutional outrage was and is on a par with two very dark moments in the recent history of the Union, which are now regarded as huge mistakes, and which have both been the subject of public apologies.

Others Members have referred to how much the Union means to them—how much it means to you, Sir David, and how much it means to us as Members. In the 1950s, it was decided that Liverpool needed access to another reservoir. It was decided that the best way of doing would be to flood and thereby destroy a village in Wales called Tryweryn. The people of Wales were rightly outraged that a Government should deem it appropriate to remove an entire village, with its history and its culture: 35 out of the 36 Welsh MPs voted against, yet the legislation was passed in this House, disregarding the opinion of the MPs in Wales.

The people in Scotland were rightly outraged in the late 1980s when the Government proposed to make Scotland the guinea pig and introduced the poll tax one year early. In the vote, the overwhelming majority of Scottish MPs voted against the legislation; yet it was passed, courtesy of the votes of MPs with no mandate

[Jim Shannon]

in Scotland to make decisions. In 2005, the city of Liverpool finally issued an apology to the people of Wales. David Cameron also issued a public apology to the people of Scotland for this particular abuse.

I will quote a couple of people, although I am very conscious of time. Professor Hill said:

“The text of international treaties such as CEDAW are carefully crafted expressions of intent and belief. There is no reference to abortion in the text of CEDAW. There is nothing in the text of CEDAW which requires a state party to allow abortion on specified grounds and/or decriminalise abortion generally. The absence of such a provision in the formal text gives a clear indication that no such obligation exists”.

It is not just the view of one lawyer. It is also the view of Supreme Court in 2017. The conventions and the covenant to which the UK is a party carefully stop short of calling upon national authorities to make abortion services generally available. Some of the committees go further down that path, but as a matter of international law the authority of their recommendations is slight. It is hard to find words to express how deeply distressing for the people of Northern Ireland it is to be disenfranchised, like they were in Wales in 1950 and like they were in Scotland in 1980.

What they were doing has been described as a travesty of constitutional due process. The terms of the law were completely rewritten from the text debated on one occasion by the House of Commons, and were then subject to a time-limited debate of one hour, which covered all Lords amendments and was dominated by Brexit. If we add up the fragments mentioning abortion and the amendment, it took up 17 minutes of debate. Again, that underlines our concerns.

The Secondary Legislation Scrutiny Committee said:

“Public consultation began on 4 November 2019 and lasted for a period of six weeks. In our view this is too short for so sensitive a topic. Added to which, it took place during the General Election period and in the run up to Christmas, neither of which conforms with best practice. Of the over 21,000 responses received, 79% registered general opposition to any change to the established position in Northern Ireland.”

I am not going quote, because of the time, Sir David, but David Scofield QC has been on the record and answered on many occasions, and we cannot ignore his opinion:

“The NIO states that, where possible, this statutory framework mirrors the Abortion Act 1967 so that provision will be broadly consistent with the abortion services in the rest of the UK. The NIO was, however, obliged by law to implement the specific recommendations of the CEDAW Report which relate to Northern Ireland. This report has sought to expand on some of the Government’s policy choices and also to air the main issues drawn to our attention in submissions, to assist the House in the forthcoming debate.”

I would have to say that the Northern Ireland regulations need to be referred to the Attorney General. We have ignored the John Larkin recommendations to the Committee. He said that the regulations in section 9(11) do not go as far as being able to the Act, which is a reform in the recommendations.

Stephen Farry: Will the hon. Gentleman give way?

Jim Shannon: I am conscious of the time, and the hon. Gentleman has had his chance. I also want to give the Minister a chance to respond.

Liz Crowter says:

“At 24 weeks babies are viable. You cannot have a law that says it is OK to end the lives of some viable human beings because they have Down Syndrome, while saying that other viable human beings of the same age cannot be because they don’t have a disability, without saying human beings with non-fatal disabilities are worthy of less protection and are therefore less valuable.”

It is not just Heidi Crowter. Máire Lea-Wilson’s one-year-old son Aidan has Down’s syndrome. Papers were lodged with the High Court just last week. Mindful of such things, Parliament must vote to reject the regulations and ask the Government to think again. We have a functioning Assembly that can make its own abortion law, as has happened since the 1861 Act. Yet the Government are proposing that, before 19 June, Parliament vote on a devolved matter by passing the regulations. Others have referred to the 75 MLAs who oppose abortion on the basis of non-fatal disability. My point is that there is a stronger legal argument for us to leave the matter to the Assembly.

I would like to ask the Minister some other questions, but I do not have time. I will finish with one more point. The Government have cast constitutional due process to one side, through pressing for out-of-scope amendments in the context of accelerated procedure; failing to point out that there was no international legal imperative for changing the law, especially if doing so involved violating a key constitutional convention; the effective disenfranchisement of the people of Northern Ireland on a Northern Ireland piece of legislation on a devolved matter; peers having only a few hours’ sight of the amendment that became law before the debate; permitting only 17 fragmented minutes of debate on a completely new text that proposed making hugely controversial changes through secondary rather than primary legislation; giving only six weeks for the consultation; knowing that 79% of people said, “Please don’t do this”; the failure to welcome the restoration of the Assembly as giving Parliament the opportunity to repeal section 9; the production of regulations that undermined devolution significantly more than Parliament required after the restoration of the Assembly; the production of regulations in respect of which the Attorney General has pointed out that the Secretary of State repeatedly exceeded his power; and responding to the cross-community vote of the Assembly by rejecting the regulations with absolute authority.

The British constitutional position is predicated on the assumption that no Parliament can bind its successors. The 2017-19 Parliament, happily, is no exception. The Government now have the chance to extricate themselves from a catalogue of abuses and save themselves from the huge embarrassment of asking Members to vote for disability discrimination in violation of the requirement in paragraph 85 of the Committee report on the regulations.

5.48 pm

Mr Walker: We have heard a wide range of strongly held personal views and varied contributions on all aspects of the regulations from members of the Committee.

I thank all members of the Committee for the courteous way in which they have generally expressed themselves. In particular, I thank the hon. Member for Bristol South for her courteous response to the regulations. I will come to some of the specific points that she made as I go through some of the various issues.

The hon. Member asked about education, and the responsibilities that were placed on us in that regard. We have written as a Department to the relevant Northern Ireland Minister, as set out in our consultation response, but recognise that there are further steps to be taken on that front. It is an issue, as with the wider implementation, as raised by my right hon. Friend the Member for Basingstoke. We recognise that our duties do not finish with the regulations and their passage. We will monitor implementation and continue to work closely with the Department of Health in Northern Ireland to ensure that it can be taken forward.

It is understandable that right now the top priority of the Department of Health is, and has been, dealing with the covid-19 pandemic. Despite some positive moves by clinicians to get services up and running and to provide solutions, there is further work to be undertaken. The chief medical officer has been writing to let medical professionals know of changes to the law, but I agree with my right hon. Friend that it is vital that we provide legal certainty. Passing the regulations is a very important first step in doing that.

I would like to address several of the points raised during the debate, but I apologise to hon. Members if I do not have time to address every single one. I am pleased that, as a result of the regulations being in force, some services are operating on the ground in Northern Ireland, already providing local access for women and girls. The Northern Ireland Health Minister updated the Assembly on the numbers to date, and with 129 between 31 March and 22 May, it would seem that the majority of demand is already being met locally in Northern Ireland.

I was pressed by both the hon. Member for Bristol South and my right hon. Friend the Member for Basingstoke on when we can end the requirement to fund travel. We will continue to fund services in England until we are confident that sufficient service provision is on the ground in Northern Ireland for all the cases covered by CEDAW. We have not set a specific deadline for that, but of course we want to work closely with the Department of Health in Northern Ireland to make sure that that is as soon as possible.

The hon. Member for Walthamstow made a passionate speech and spoke, as she has many times before, of the voices that for too long have not been heard in some of the Northern Ireland debate. She asked about our interpretation of mental and physical health grounds on which I want to respond specifically, because it is important. I note that concerns have been raised about how previously in Northern Ireland health grounds have been narrowly interpreted in practice. The approach we have taken on risk to physical and mental health complies with CEDAW's requirements to ensure access in cases of risk to mental and physical health without conditionality of long-term and permanent effect, mirroring the law in England and Wales. My right hon. Friend the Member for South Holland and The Deepings and the hon. Member for North Antrim accused us of departing from that law in other areas. We are clear that the grounds should be interpreted and applied in the same way across the UK, not in a restrictive way. That does not require a specific mental health diagnosis before abortion is allowed. The explanatory memorandum makes it clear in paragraph 7.11:

"In forming an opinion as to the application of this ground, medical professionals may take into account a woman's wellbeing,

and the woman's actual or reasonably foreseeable circumstances, including wider social circumstances. The threshold of risk to the physical or mental health of the woman is a matter for the opinion in good faith of each of the registered medical professionals involved. However, medical professionals should interpret the grounds in Northern Ireland consistent with the rest of the UK, for example the risk to mental health is not required to relate to a specific or diagnosed mental health condition and does not require a mental health or psychiatric assessment before the abortion can be permitted."

I hope that provides some reassurance to colleagues across the House.

I appreciate the concerns raised by my right hon. Friend the Member for Basingstoke and the hon. Members for Bristol South and for North Down, but based on previous concerns in Northern Ireland when medical professionals were operating within a narrow window of what constituted legal abortion, they could be deterred by having a sanctions regime in place. Other Members expressed concern about a potential free-for-all without any sanctions. The CEDAW recommendations do not require unlimited access to abortion services; it is for the Government to set appropriate safeguards on the circumstances for provision of abortion services and determine how those will be enforced. It would be unusual to put specific regulatory requirements in legislation that have to be complied with, including where and how abortions can be provided, without sanctions being applied for breaches of those requirements. The sanctions are therefore in place to protect women and girls against intentional, reckless or persistent disregard for the requirements and conditions imposed by the regulations, so that anyone intentionally breaching the new framework, particularly outside of commissioned abortion services and where acting dishonestly or negligently, can be investigated and prosecuted as appropriate. The explanatory memorandum makes that clear in paragraphs 7.35 to 7.38, where it is noted that

"it is not intended that a medical professional should be prosecuted where a medical professional forms an opinion in good faith as to risk but makes a factual error."

I hope that provides some assurance on that front.

I note that the hon. Member for North Down and some respondents to the consultation were concerned that we had not gone further on exclusion zones. I recognise that many campaigners are concerned about that. We have had conversations with the Police Service of Northern Ireland and I understand that a range of existing public order offences are likely to be able to be relied on. In this area, as in many others, we felt it right to look at practice across the whole of the UK and not to go beyond the UK framework.

The hon. Member for North Antrim and my right hon. Friend the Member for South Holland and The Deepings raised concerns about unconditional access up to 12 weeks. I set out the reason for that in my opening remarks: so as not to erect barriers that would be inconsistent with the CEDAW issue. However, based on current public data, 86% of the abortions accessed by residents of Northern Ireland in England under the Abortion Act 1967 take place prior to 12 weeks' gestation and would be covered by that limit. We consider that the right approach to take to ensure that women resident in Northern Ireland have access without conditionality in the vast majority of cases where it is their individual choice to do so. This approach ensures compliance with CEDAW.

[Mr Robin Walker]

I appreciate also the deeply held concerns that have been raised with respect to severe foetal impairment. I respect the passion with which Members across the Committee have spoken on that issue, but I must be clear that in contrast to some of the things that have been said, there is nothing in this regulation that permits abortion for specific conditions. There is no discrimination in this respect. The regulation follows the law in England and Wales and the approach that we have taken to SFI in the rest of the United Kingdom. In that respect, it brings a consistent approach across the UK.

Given the often late diagnosis and timing of follow-up scans and tests, women need to be given time to understand the nature and severity of the conditions that they might be dealing with. It is right that they should be able to make informed decisions based on their own health and wider circumstances and in consultation with doctors. We of course recognise that CEDAW also calls for these proposals to be taken forward,

“without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term.”

Putting in place proper supports and provision of information to support women in making informed decisions is hugely important, but it is an operational issue for the Department of Health in Northern Ireland to take forward as part of commissioning and overseeing abortion services as a new health service, consistent with regulations.

The regulations will improve the situation for women and girls facing some of the hardest choices that anyone could ever have to face and for the medical professionals trying to support them. I appreciate that there are areas on which people on either side of the argument would

like us to have gone further, or feel that we have gone too far, but I make no apology that when it comes to precedent we have sought to achieve the same outcomes as the frameworks in place across the rest of the UK. This is the right thing to do to remove the need for travel and to ensure that we have a CEDAW-compliant framework that does not create barriers to access, as well as to ensure legally robust protections for conscience. I therefore commend the regulations to the Committee.

Question put.

The Committee divided: Ayes 15, Noes 2.

Division No. 1]

AYES

Blunt, Crispin	Loughton, Tim
Creasy, Stella	Merriman, Huw
Dines, Miss Sarah	Miller, rh Mrs Maria
Elmore, Chris	Morris, James
Farry, Stephen	Nokes, rh Caroline
Graham, Richard	Smyth, Karin
Johnson, Dame Diana	Walker, Mr
Jones, Ruth	

NOES

Hayes, rh Sir John	Lockhart, Carla
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Question accordingly agreed to.

Resolved,

That the Committee has considered the Abortion (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020, No. 503).

5.59 pm

Committee rose.