

**Report pursuant to
section 3(5) of the
Northern Ireland
(Executive Formation etc)
Act 2019**

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Presented to Parliament pursuant to section 3(5) of the
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ISBN 978-1-5286-1627-0

CCS 1019172574 10/19

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

Report pursuant to section 3(5) of the Northern Ireland (Executive Formation etc) Act 2019

3(1): Executive Formation

This section of the report is based on information provided by the Northern Ireland Office.

Section 3 of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with s.3(1) of that Act which states:

The Secretary of State must, on or before 4 September 2019, publish a report explaining what progress has been made towards the formation of an Executive in Northern Ireland (unless an Executive has already been formed).

Further to this, s.3(5) of that Act states :

The Secretary of State shall make a further report under subsection (1) on or before 9 October 2019 and at least every fourteen calendar days thereafter until either an Executive is formed or until 18 December 2019, whichever is the sooner.

The most recent report under s.3(1) of the Act was laid before Parliament by the Secretary of State for Northern Ireland on 4 September 2019, setting out the background to the current talks process and the progress made over the summer.¹

In a previous statement on 4 September, the Secretary of State said he intended to move to a more directive approach with the parties to help find solutions to the critical issues. In doing so he hoped to reduce the need for direct rule.

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829462/To_be_published_online_-_report_pursuant_to_section_3_1_3_6_3_7_3_8_3_9_3_10_.docx.pdf

Since then, the Secretary of State has intensified his work with the Northern Ireland parties - and in particular with the two largest parties - to explore solutions to the remaining issues, particularly in relation to rights, language and identity.

The Secretary of State has continued his close work with the Tánaiste, Simon Coveney, and both share the view that there remains an opportunity over the next few weeks for the parties to reach an accommodation.

Any agreement will need to include;

- a package of measures to strengthen transparency & governance arrangements
- an agreed approach to a Programme for Government
- reform of the Petition of Concern
- a package of measures to ensure more sustainable and resilient institutions
- an agreement around cultural and identity issues, including on the Irish Language in Northern Ireland alongside wider issues

The Government remain ready to explore with the parties and with the Irish Government, as appropriate, compromise positions which would represent a reasonable and balanced approach to restoring the Executive, covering the areas listed above.

If an accommodation cannot be reached before 31 October and the UK leaves the EU without a deal in place, Northern Ireland will need alternative decision-making arrangements.

On previous occasions where alternative decision making has been necessary, legislation has enabled the Secretary of State to fulfil the functions of the Northern Ireland Executive in the oversight and direction of Northern Ireland Departments and has provided for legislation on devolved matters to be made through an Order in Council.

This is of course a situation the Government would rather avoid, but after over five months of talks we have a duty to provide good governance to the people of Northern Ireland in the absence of locally elected politicians who are willing to lead and take responsibility for governing Northern Ireland themselves.

A restored Executive, Assembly and North South Ministerial Council remain the best way forward for Northern Ireland, not least in light of the UK's exit from the EU. The Secretary of State, working closely with the Tánaiste, will continue to do everything in his power to achieve this.

3(6) Transparency of political donations

This section of the report is based on information provided by the Northern Ireland Office.

Section 3 of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with s.3(6) of that Act which states:

The report under subsection (1) must include a report on progress made towards preparing legislation to provide for transparency of political donations and loans from 1 January 2014.

The most recent report under s.3(6) of the Act was laid before Parliament by the Secretary of State for Northern Ireland on 4 September 2019, setting out the current legal position and progress made towards preparing legislation to provide for the transparency of political donations and loans.²

What steps are currently being taken/ will be taken in respect of the policy

The regime in place for political donations and loans is specific to Northern Ireland and reflects circumstances that are unique to Northern Ireland parties and their donors. The current law maintains anonymity concerning most donations and loans made before 2017.

The legislative framework provides that greater transparency may be introduced in respect of donations or loans made after 1 January 2014, however, in considering the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829462/To_be_published_online_-_report_pursuant_to_section_3_1_3_6_3_7_3_8_3_9_3_10_.docx.pdf

merits of doing so the Secretary of State for Northern Ireland would wish to be satisfied that it creates no risk of intimidation.

The current legislative arrangements are based on broad consensus among the Northern Ireland parties and moves towards changing the law on donations before July 2017 will require a similar level of Northern Ireland consensus. There is a broader long-standing convention that changes to legislation directly affecting political parties are not made without wider discussion and consultation between parties and the Government.

3(7): Higher education and a Derry/Londonderry university

This is a devolved matter. This section of the report is based on information provided by the Northern Ireland Department for the Economy.

Section 3 of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with s.3(7) of that Act which states:

The report under subsection (1) must include a report on the improvement of higher education provision in Northern Ireland and the establishment of a university whose principal campus is in Derry/Londonderry.

Improvement of Higher Education Provision

The most recent report under s.3(7) of the Act was laid before Parliament by the Secretary of State for Northern Ireland on 4 September 2019, setting out progress on the improvement of higher education provision in Northern Ireland.³ Since then there have been no significant updates on which to report.

Ulster University Graduate Medical School in Derry/Londonderry

Given that Health and Social Care and Education are devolved matters and that any expansion of medical student numbers in Northern Ireland is a long term, strategic and cross cutting issue with major financial implications; any 'movement' for a new medical school is entirely dependent upon the restoration of the Northern Ireland Institutions.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829462/To_be_published_online_-_report_pursuant_to_section_3_1_3_6_3_7_3_8_3_9_3_10_.docx.pdf

In this regard, the Secretary of State for Northern Ireland is endeavouring to ensure that the current political talks process is successful, so that local politicians are in place to take the decisions that are important to the people of Northern Ireland.

The decision on the business case for the Ulster University's proposed Northern Ireland Graduate Entry Medical School (NIGEMS) for the Magee Campus, is therefore, a matter for NI Ministers in a reformed NI Executive. This continues to be the view of both the DoH Permanent Secretary, Richard Pengelly and Head of the Northern Ireland Civil Service, David Sterling.

The UK Government remains open to consider the eligibility of contributing Inclusive Future Funds (IFF) towards the capital costs of NIGEMS (The IFF is a £55 million UK Government fund for a "more prosperous and united community in the North-West", as part of an overall economic package including the Derry & Strabane City Deal), However, this too is dependent on the restoration of an Executive - firstly to confirm acceptance of the business case and secondly to formally ask the UK Government to consider making a contribution. The Northern Ireland Civil Service have stated that this would require ministerial decision.

3(8): Presumption of non-prosecution

This report is based on information primarily provided by the Northern Ireland Office. Section 3 (1) of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with s.3(8) of that Act which states:

The report under subsection (1) must include a report on progress made towards protecting veterans of the Armed Forces and other security personnel from repeated investigation for Troubles-related incidents by introducing a presumption of non-prosecution, in the absence of compelling new evidence, whether in the form of a Qualified Statute of Limitations or by some other legal mechanism.

Steps being taken to reform the current system

The most recent report under s.3(8) of the Act was laid before Parliament by the Secretary of State for Northern Ireland on 4 September 2019.⁴ This set out the current position on investigations of Troubles-related deaths and steps being taken to develop an improved system for dealing with the legacy of the Troubles. Since then there have been no significant updates on which to report.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829462/To_be_published_online_-_report_pursuant_to_section_3_1_3_6_3_7_3_8_3_9_3_10_.docx.pdf

3(9): New prosecution guidance for Troubles-related incidents

This report is based on information primarily provided by the Northern Ireland Office.

Section 3(1) of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with s.3(9) of that Act which states:

The report under subsection (1) must include a report on progress made towards developing new prosecution guidance for legacy cases of Troubles related incidents by the Attorney General for Northern Ireland to take into account whether or not the person who allegedly committed an offence had the means to do so because that person had been lawfully supplied with a deadly weapon, with a presumption in favour of prosecuting in cases where a person who has allegedly committed an offence had the means to do so because that person had been unlawfully supplied with a deadly weapon.

Government Position

The most recent report under s.3(9) of the Act was laid before Parliament by the Secretary of State for Northern Ireland on 4 September 2019.⁵ This set out the position with regard to the relevant elements of the policing and justice system in Northern Ireland and steps which the Government is taking to improve the current system for investigating the past in Northern Ireland. Since then there have been no significant updates on which to report.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829462/To_be_published_online_-_report_pursuant_to_section_3_1_3_6_3_7_3_8_3_9_3_10_.docx.pdf

3(10): Abortion law review

This report is based on information provided by the Northern Ireland Office.

Section 3 of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with section 3(10) of that Act which states:

The report under subsection (1) must include a review of the current legal framework on abortion in Northern Ireland with an analysis of how that framework could be amended by Parliament during the period when there is no Executive, subject to a sunset clause to respect devolution, in order to comply with the human rights obligations of the United Kingdom.

The Government has been clear in its preference that as abortion law is a devolved issue, reform should be taken forward in the appropriate place – a restored and functioning Northern Ireland Assembly. It remains the Government's hope that devolved institutions will be restored at the earliest opportunity. This report sets out the steps that will be taken if the Northern Ireland Executive is not restored by 21 October and how the Government plans to implement the resulting legal requirements of the Northern Ireland (Executive Formation etc) Act 2019.

The Government recognises the sensitivities of these issues and the strongly held views on all sides of the debate across Northern Ireland. The importance of ensuring women's safety and well-being, and providing as much clarity for healthcare professionals as possible, is being placed at the forefront of our approach throughout the whole process.

New legal situation from 22 October 2019 up to 31 March 2020 ('the interim period')

If the Northern Ireland Executive is not restored on or before 21 October, section 9 of the Northern Ireland (Executive Formation) Act 2019 comes into effect and has the following immediate implications:

- on 22 October 2019 sections 58 and 59 of the Offences Against the Person Act 1861 in Northern Ireland (attempts to procure an abortion) will be repealed, which means that no criminal charges can be brought against women and girls who have an abortion or against qualified healthcare professionals or others who provide and assist in the abortion under these provisions; and
- on 22 October 2019 a moratorium on criminal prosecutions will come into effect, meaning that no police investigation may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those provisions of the Offences Against the Person Act 1861 (regardless of when an offence may have been committed).

In addition, if the Executive is not restored by 21 October, the Government will be under a statutory duty to regulate to put in place a new medically-based legal framework to provide lawful access to abortion services in Northern Ireland by 31 March 2020 in line with the recommendations of the 2018 United Nations' Committee on the Elimination of Discrimination against Women (CEDAW) inquiry report on abortion in Northern Ireland.⁶

An interim period therefore arises, between 22 October 2019 and the date on which the new legal framework for accessing abortion in Northern Ireland is in place, which must be no later than 31 March 2020. During the interim period women who undergo a termination of pregnancy or a qualified healthcare professional who provides abortion services in Northern Ireland will no longer commit a criminal offence under the Offences Against the Person Act, and the moratorium on criminal prosecution and investigation takes effect.

⁶ Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Given the urgent timescales we are working to, and in the absence of a legal abortion framework in which services could operate, there are no plans for additional services to be routinely available in Northern Ireland before 31 March 2020. However, doctors remain under a duty to act where a woman's life or health are at risk.

Importantly, during this interim period, other relevant laws relating to the termination of pregnancy will remain in place. In particular, section 25(1) of the Criminal Justice Act (Northern Ireland) 1945 which makes it a criminal offence for anyone to assist or wilfully act to 'destroy the life of a child then capable of being born alive', except where the purpose is to preserve the life of the mother 'in good faith' will remain in place. This means that abortions "where the foetus is capable of being born alive" will continue to be unlawful.

The ability of women in Northern Ireland's to access funded abortion services in this interim period is set out in full below.

It is recognised that during the interim period some women may continue to purchase medical abortion pills online. Under medicine legislation, abortion pills are prescription only medicines, the sale and supply of which is unlawful without a prescription and this is not affected by the changes outlined above. Women who may require medical help following use of medical abortion pills bought on the internet should be able to seek medical assistance as needed within Northern Ireland.

Guidance for healthcare professionals during the interim period

Guidance has been provided to healthcare professionals to confirm the new state of the law during the interim period, and their responsibilities. This was circulated through the Royal Colleges and was made available on gov.uk on 7 October 2019. The guidance is intended to be a factual statement of the position in law in terms of the responsibilities for healthcare professionals to their patients ahead of the statutory changes which may come into force on 22 October 2019.

In addition, the guidance contains information for healthcare professionals in Northern Ireland about the funded abortion services in England available for women from Northern Ireland under the existing UK Government scheme. Healthcare professionals will be able to refer women to this service.

In the interim period, any healthcare professional who has a conscientious objection to the provision of abortion services, and who sees a patient considering a termination, should follow guidance from the General Medical Council (GMC), and any other relevant professional guidance which they are obliged to consider. Consideration is being given to a range of sensitive issues to be covered in the new legal framework, including providing for lawful conscientious objection in relation to the provision of treatment to patients.

Further guidance will be issued to healthcare professionals, together with further public communications, ahead of the potential new regulations coming into effect by 31 March 2020. Information will be updated on gov.uk.

Provision of termination of pregnancy services during the interim period

The Government anticipates that access to abortion services will not be routinely available in Northern Ireland during the interim period in the absence of a legal framework and the time needed to establish high quality service provision. It is Government's priority that women obtain safe, high quality care, which they can receive through accessing the services available in England free of charge. We are working hard to ensure that services are routinely available in Northern Ireland as close as possible to 31 March 2020. This requires a range of sensitive policy considerations, as well as working with the healthcare professionals in Northern Ireland on a range of delivery and operational questions, ready to meet the 31 March 2020 deadline.

Fully funded abortion services in England are already available to women in Northern Ireland and from 22 October 2019, when accessing these services in England all travel and accommodation costs will be covered automatically, without the income-related eligibility criteria currently applied. In this interim period healthcare professionals in Northern Ireland should also be clear that they will lawfully be able to refer or signpost patients to these services and will not face any repercussions for doing so.

If approached by a woman considering a termination of pregnancy, healthcare professionals should provide her with the number for the Central Booking Service in England **(0333 234 2184)** or call the helpline on behalf of the woman. Healthcare professionals in Northern Ireland should be clear that they will lawfully be able to refer or signpost patients to these services from 22 October 2019.

The CBS can arrange for advice, support and counselling to be made available for women who are uncertain or unsure of their decision. Those with a conscientious objection to abortion should direct women to where information about services is available including Gov.uk. The package of care available includes:

- a consultation including impartial information/advice and where needed counselling with an abortion provider in England, including an assessment of whether the legal grounds for an abortion in England are met
- an abortion procedure
- HIV and sexually transmitted infection tests, and
- choice of contraception from the abortion provider.

If a healthcare professional does choose to offer an abortion service to women during the interim period, they should do so in line with their professional competence and guidance from their professional body, as well as within the bounds of other relevant laws.

Provision of termination of pregnancy services after the interim period

Work is underway on preparing for the new medically-based legal framework to be in place by 31 March 2020, and further information about our plans will be available in due course.

The Government recognises that in implementing the UN CEDAW report, and bringing forward the necessary regulations to introduce the new legal framework for abortion in Northern Ireland, there would be a range of sensitive policy issues that need to be carefully worked through.

We are currently reflecting on advice received from the Northern Ireland Human Rights Commission (consistent with its advisory function under section 69(3)(a) of the Northern Ireland Act 1998) in relation to the duty under section 9 of the NI EF Act, and the relevant international human rights obligations and standards, that have a bearing on the policy and regulation development. Officials have also met representatives of the medical profession and other stakeholders in recent weeks to hear some initial views, and these discussions will continue.

A public consultation will open on the proposed legal framework for Northern Ireland on or shortly after 22 October 2019 to enable individuals in Northern Ireland as well as all other relevant organisations to provide input and views on how this reform should be delivered.

ISBN 978-1-5286-1627-0
CCS 1019172574