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**MEMORANDUM E (20) 47 (C)**

**FROM: ROBIN SWANN  
MINISTER OF HEALTH**

**DATE: 3 APRIL 2020**

**TO: EXECUTIVE**

**FINAL EXECUTIVE PAPER - OPTIONS FOR INTRODUCING A LIMITED EARLY  
MEDICAL ABORTION SERVICE FOR WOMEN IN NORTHERN IRELAND  
DURING THE COVID-19 EMERGENCY PERIOD**

**Introduction**

1. The purpose of this paper is to:
  - i. Advise you of the impact of Covid-19 on women from Northern Ireland's access to abortion services in England, and the health risk to women who can no longer use this service; and,
  - ii. Seek your agreement for my Department to take steps to quickly establish a limited Early Medical Abortion service for the period of the Covid-19 emergency.
  
2. The options set out in this paper, proposing to commission a limited Early Medical Abortion (EMA) service during the period of the Covid-19 emergency to allow an abortion treatment to be carried out fully at the home of a woman in Northern Ireland could be considered as significant or controversial and outside the scope of PfG. As they propose to allow an abortion treatment to be carried out at the woman's home they seem to cut across the responsibilities of DoJ. The options would also seem to cut across the human rights responsibilities of FM and dFM. In view of this I am obliged, under the Ministerial Code, to bring this matter to the Executive to discuss and agree before the matter can proceed.

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### Background

3. The Northern Ireland (Executive Formation, etc.) Act 2019 requires the Secretary of State for Northern Ireland to make whatever changes to the law are necessary to give effect to the recommendations of the Report by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), published on 6 March 2018. The report recommended, among other things, the repeal of sections 58 and 59 of the Offences Against the person Act 1861, the provisions that criminalise abortion in the UK, and the adoption of legislation to provide for abortion in certain circumstances. A copy of the recommendations is attached.
  
4. The Secretary of State laid The Abortion (Northern Ireland) Regulations 2020 in Parliament on 25 March 2020. They came into force on 1 April 202, but will cease to have effect after 28 sitting days in Parliament unless they are agreed by both Houses of Parliament.
  
5. The measures set out in the Regulations are as follows:
  - Terminations can be carried out by registered doctors, nurses or midwives (defined in the regulations as registered medical professionals).
  - A registered medical professional can terminate a pregnancy if the pregnancy has not exceeded its 12<sup>th</sup> week.
  - A registered medical professional can terminate a pregnancy where two registered medical professionals are of the opinion that the pregnancy has not exceeded its 24<sup>th</sup> week; and the continuance of the pregnancy would involve greater risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated.
  - With no gestational limit, a registered medical professional can terminate a pregnancy if it is immediately necessary to save the life, or to prevent grave permanent injury to the physical or mental health, of the pregnant woman.

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- With no gestational limit, a registered medical professional may terminate a pregnancy where it is immediately necessary to save the life, or prevent grave permanent injury to the physical or mental health of the pregnant woman;
- With no gestational limit, a registered medical professional can terminate a pregnancy where two registered medical professionals are of the opinion that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or the continuance of the pregnancy would involve risk to the life of the pregnant woman which is greater than if the pregnancy were terminated.
- With no gestational limit, a registered medical professional can terminate a pregnancy where two registered medical professionals are of the opinion that 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.
- Terminations can be carried out in any locations where HSC services are delivered, including hospitals, GP surgeries, family planning clinics and, in cases of early medical abortion (where 2 pills are taken), provision for the second pill to be taken at the woman's home.
- The Department of Health may approve other locations where terminations can be carried out.
- A certification by the registered medical professional is required, as is notification to the Chief Medical Officer.
- Offences have been created for failure to certify the termination, failing to notify the Chief Medical Officer, and for carrying out a termination not in accordance with the regulations. A woman cannot be prosecuted for terminating her own pregnancy.
- The Regulations make four significant changes to section 25 and 26 of the Criminal Justice Act (Northern Ireland) 1945, which created the offence of child destruction:
  - 1) s25 of the 1945 Act does not apply to a woman who terminates her own pregnancy;

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- 2) s25 of the 1945 Act does not apply to a registered medical professional who terminates a pregnancy in accordance with the new Regulations;
- 3) the gestational period in law for 'capable of being born alive' is reduced from 28 weeks to 24 weeks in line with GB;
- 4) proceedings in respect of an offence can only be brought by, or with the consent of, the Director of Public Prosecutions for NI.

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will set out my

Department's detailed proposals for commissioning abortion services and addressing the other health and wellbeing recommendations in the report of the Committee for the Elimination of Discrimination Against Women (CEDAW).

8. It is clear that notwithstanding the diverse and opposing range of views on this subject, women choose to terminate their pregnancies. For the last full year for which statistics are available, 1,053 women from Northern Ireland chose to have an abortion in England or Wales. The Whitehall Department of Health and Social Care currently commission a service whereby women from Northern Ireland phone a Central Booking Service and receive a referral to appropriate abortion services in England. Travel, accommodation and the abortion itself are provided free of charge to the woman.

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9. Until such times as the commissioning of the full abortion services in Northern Ireland had been agreed by the Executive and publicly consulted on, my Department looks to the English Department of Health and Social Care to continue to provide an interim abortion service in England for women from Northern Ireland. However, due to the Covid-19 emergency, my Department needs to bring to the Executive proposals to commission a limited Early Medical Abortion Service for women from NI to overcome the travel restrictions arising from airline closures, service restrictions and the need for social distancing during the period of the emergency. Due to these restrictions women from NI are unable to travel to England to access the interim abortion service.
  
10. I understand that many women, particularly before the English service became available, used unregulated online abortion services. There is a real risk that women will again turn to these unregulated services which have no inspection, quality control or aftercare services, or, worse, may attempt other forms of self-induced abortion.
  
11. My Department is therefore seeking Executive agreement that it may put in place, a limited Early Medical Abortion (EMA) service for the period of the Covid-19 emergency, reverting to the interim service arrangements as soon as all travel restrictions and social distancing guidance are lifted. My Department has identified three potential options for commissioning the proposed limited EMA service but has had to rule out Option 1 due to legalities which would prevent this option from being implemented. However, for completeness I have set out below all three options.

### Option 1

12. My Department has explored with DHSC and the NIO whether it would be possible to introduce for women in Northern Ireland the same arrangements that women in England, Scotland and Wales have for accessing the EMA service during the period of the Covid-19 Emergency. These arrangements involve enabling women in those jurisdictions to have an online consultation

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with a doctor, with the prescription posted directly to the woman, for the woman to take both the first and second pill in her home. Under the normal arrangements the first pill is taken in a medical facility. If it were possible to introduce this service for women from NI following the online consultation the prescription would be dispensed by a hospital pharmacy in NI. To enable this arrangement my Department would designate the woman's home as an appropriate place to take the first pill.

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### Option 2

14. Option 2 would involve my Department exploring with the HSC whether it would be possible to quickly commission a EMA service for a limited period during the Covid-19 emergency to provide women from NI with access to this service locally. This would involve similar arrangements to those introduced in England and Wales. On a regional basis my Department would commission the HSC to provide an online consultation with a local doctor, if the doctor decides to prescribe the pills the prescription would be posted directly to the woman, for her to take to a hospital pharmacy for the pills to be dispensed, or if possible the pills would be posted directly to the woman by the pharmacy. The woman would take both the first and second pill in her home. To enable this arrangement my Department would designate the woman's home as an appropriate place to take the first pill.

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### Option 3

15. Option 3 would involve my Department exploring with the health authorities in the Republic of Ireland (ROI) whether it would be possible for them to quickly provide an EMA service for a limited period during the Covid-19 emergency to provide women from NI with access to this service locally. This would involve similar arrangements to those introduced in England and Wales with the on-line consultation being provided by a doctor in the ROI and the pills being posted to the woman from a pharmacy in the ROI (regulatory differences between the jurisdictions in NI and ROI mean it would not be possible for a prescription written by a doctor in the ROI to be dispensed by a pharmacy in NI). To enable this arrangement my Department would designate the woman's home as an appropriate place to take the first pill.
16. My Department has not explored the legal or service delivery practicalities of this option with the health authorities in the ROI.

### Recommendation.

17. The Executive is asked to:
  - i. Note that the Abortion (Northern Ireland) Regulations come into force on 1 April 2020;
  - ii. Note that work on a full commissioning specification has been paused while the Health and Social Care system deals with Covid-19;
  - iii. Note the current difficulties for women from NI accessing the interim EMA service in England and Wales, due to the travel restrictions and social distancing guidance, and agree for my Department to take steps to establish an EMA service on the basis of Options 2 or 3 above, whichever can be commissioned.
18. If it would be helpful to reaching a consensus view on this matter it might be useful for the Executive to establish a subcommittee to consider the options in detail and make a recommendation to the Executive.

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**ROBIN SWANN, MLA**  
**Minister of Health**

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