

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

23 October 2019

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**Presented to Parliament pursuant to section 3(5) of the Northern
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ISBN 978-1-5286-1654-6

CCS1019314748 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(5) of the Act was laid before Parliament by the Secretary of State for Northern Ireland on 16 October 2019.

Since that report the Secretary of State has continued his intensive engagement through a number of bilateral engagements and discussions. The Secretary of State has met or spoken again with all five of the main parties, travelling between London, Belfast and Derry/Londonderry, and has engaged extensively with the Tánaiste. He was disappointed that it was not possible to restore the Executive before the deadline of 21 October 2019; and accordingly he has extended the period for Executive formation to 13 January 2020.

This engagement will continue in the coming days. The Secretary of State's clear preference remains to restore the Executive. Over the weeks and months ahead, Northern Ireland needs its own locally-elected representatives making decisions on local issues and making Northern Ireland's voice heard across the UK. A functioning Executive, Assembly and North South Ministerial Council is the only sustainable way forward for Northern Ireland.

That said, the Secretary of State continues to believe that the current impasse – and the current arrangements for decision-making during that impasse – can not continue indefinitely.

On 21 October, the period for formation of an Executive under the terms of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 expired and was extended by the Secretary of State until 13 January 2020. This is the only extension permissible under the Act.

Continued failure to restore the Executive will bring about extremely difficult choices about how to ensure effective governance in Northern Ireland. The Government will need to consider the appropriate next steps, including with consideration of the duty that will be placed on the Secretary of State to set a date for an Assembly election. It will be the Secretary of State's continued priority to bring about an agreement to ensure that this is not necessary. The Government continues to stress the responsibilities of the Northern Ireland parties in finding an accommodation and ensuring the future of the devolved institutions that formed an essential part of the peace process.

3(6) Transparency of political donations

This section of the report is based on information 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(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 9 October 2019, setting out the current legal position and progress made towards preparing legislation to provide for the transparency of political donations and loans.¹ Since then there have been no significant updates on which to report.

¹<https://www.gov.uk/government/publications/publication-of-reports-under-the-northern-ireland-executive-formation-etc-act-2019>

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

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

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(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 9 October 2019, setting out progress on the improvement of higher education provision in Northern Ireland.

On 17 October, the Secretary of State met Paddy Nixon (Vice Chancellor, Ulster University), John Kelpie (Chief Executive DCSDC), and Jim Roddy (Derry City Management) as well as with local political representatives in the north-west, discussing a range of issues including the improvement of higher education provision.

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 recent report under s.3(8) of the Act laid before Parliament by the Secretary of State for Northern Ireland on 4 September 2019 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 Troubles².

²https://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

Reforming the legacy system in Northern Ireland remains a major priority for the UK Government. Last year the Northern Ireland Office consulted extensively on the Stormont House Agreement (SHA) proposals. This consultation ran from May to October 2018 and revealed wide support for the broad institutional framework of the SHA and consensus among the main parties in Northern Ireland that the UK Government should push ahead with legislation. At the same time, the consultation process also revealed a number of areas of public concern about the detail of the proposals, including how the institutions would interact, how their independence could be preserved and the overall time frame and costs.

The UK Government firmly believes that we must move forward with broad consensus. It will be essential to demonstrate that any approach we take is fully capable of facilitating independent effective investigations into Troubles related deaths and providing Northern Ireland with the best possible chance of moving beyond its troubled past. In this regard, the principles of the SHA - facilitating independent investigations while promoting reconciliation - provide the best framework for making progress in the most effective and efficient manner possible. The UK Government remains committed to working with all the Northern Ireland political parties and the Irish Government to this end.

In parallel, Ministers and officials in the Northern Ireland Office will continue to meet with a range of partners to discuss next steps and build consensus, including continuing to undertake a range of ministerial meetings victims and victims groups and members of the Armed Forces.

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.

Steps being taken to reform the current system

The recent report under s.3(9) of the Act laid before Parliament by the Secretary of State for Northern Ireland on 4 September 2019 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.

Making progress on legacy matters remains a major priority for the UK Government. Last year the Northern Ireland Office consulted extensively on the Stormont House Agreement (SHA) proposals, in a process that revealed wide support for the broad institutional framework of the SHA and consensus among the main parties in Northern Ireland that the UK Government should push ahead with legislation. At the same time, the consultation process also clearly exposed a number of areas of public concern about the proposals, including how the institutions would interact, how their independence could be preserved and the overall time frame and costs.

The UK Government firmly believes that we must move forward with broad consensus. Central to this will be demonstrating that any approach we take is fully capable of facilitating independent effective investigations into Troubles related deaths and providing Northern Ireland with the best possible chance of moving beyond its troubled past. In this regard, the principles of the SHA - facilitating independent investigations while promoting reconciliation - provide the best framework for making progress in the most effective and efficient manner possible. The UK Government remains committed to working with all the Northern Ireland political parties and the Irish Government to this end.

In parallel, Ministers and officials in the Northern Ireland Office will continue to meet wider partners to discuss next steps, including continuing to undertake a range of ministerial meetings victims and victims groups and members of the Armed Forces.

3(10): Abortion law review

This report is based on information 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 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 Northern Ireland (Executive Formation etc) Act 2019 placed a duty on the Government to change the law in Northern Ireland relating to abortion if the Northern Ireland Executive was not restored by 21 October 2019.

The Government remains committed to restoring devolution in Northern Ireland. There is no substitute to having locally elected and accountable politicians, debate and pass laws that impact on the lives of people living in Northern Ireland. This is particularly important on sensitive matters such as abortion law, where locally elected members of the Northern Ireland Assembly should be debating and deciding on the shape and scope of any reform.

However, given that the 21 October 2019 has passed without an Executive being established, the Government is required to fulfil its obligations under section 9 of the Northern Ireland (Executive Formation etc) Act 2019.

This report sets out the steps that will be taken now that the Northern Ireland Executive has not been restored, and how the Government plans to implement the resulting legal requirements of section 9 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 the medical profession 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')

Section 9 of the Northern Ireland (Executive Formation) Act 2019 came into effect on 22 October, with the following immediate implications:

- sections 58 and 59 of the Offences Against the Person Act 1861 in Northern Ireland (attempts to procure an abortion) are now repealed, which means that no criminal charges can be brought against women and girls who have an abortion or against qualified health care professionals or others who provide and assist in the abortion under these provisions; and
- a moratorium on criminal prosecutions has come into effect, meaning that no 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).

The Government is also now under a statutory duty to put in place a new 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.³

³ 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.

Guidance for medical 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 medical professionals given the statutory changes effective from 22 October 2019.

The Government anticipates that access to abortion services will not be routinely available in Northern Ireland during the interim period due to 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 currently available in England. All costs of these services, including travel, and where necessary, accommodation will be paid for by the Government for all women and girls, without any means testing, from 22 October 2019.

The guidance for healthcare professionals in Northern Ireland contains information about the funded abortion services in England available for women from Northern Ireland under the existing UK Government scheme, and we have provided further information on gov.uk and through social media channels. Health professionals should be clear that they will lawfully be able to refer women to this service.

During the 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 fetus is capable of being born alive” will continue to be unlawful.

The guidance also recognises 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 will be able to seek medical assistance and proper after-care treatment as needed within Northern Ireland.

In the interim period, any health 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 that 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 the medical profession, together with further public communications, ahead of the new regulations coming into effect by 31 March 2020. Information will be updated on gov.uk.

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.

A public consultation on the proposed legal framework for Northern Ireland will be launched shortly. This will enable health professionals, other relevant organisations, and any individuals, in Northern Ireland to provide input and views on the proposals for how this reform could be delivered, consistent with the recommendations of the 2018 United Nations' Committee on the Elimination of Discrimination against Women (CEDAW) inquiry report on abortion in Northern Ireland.

Officials will continue to meet representatives of the medical profession and other stakeholders, including women's groups, and religious organisations, in coming weeks to hear their views.

The consultation and ongoing engagement will assist with working through the range of sensitive policy issues that need to be addressed in order to implement the CEDAW report and bring forward the necessary regulations to introduce the new legal framework in Northern Ireland.

The Government will continue to provide regular updates on the development of the legal framework ahead of its introduction through reports to Parliament under section 3(10) of the Northern Ireland (Executive Formation etc) Act 2019, as well as updates on gov.uk.

CCS1019314748
978-1-5286-1654-6