

Final Business and Regulatory Impact Assessment

Title of Proposal

The Functions of Health Boards (Scotland) Amendment Order 2017

Purpose and intended effect

- **Background**

In Northern Ireland, abortion is only permitted in very limited circumstances, and therefore hundreds of women travel to Great Britain each year in order to access abortion services. Under current arrangements, women who travel to Scotland from Northern Ireland to access abortion services are required to pay for their treatment. This creates an inequality, as only women from Northern Ireland who can afford to pay for treatment are able to access abortion care.

- **Objective**

This SSI will empower NHS Boards in Scotland to provide free abortion services to women from Northern Ireland in Scotland at no cost to those women.

- **Rationale for Government intervention**

The Scottish Government has stated that abortion should be a standard part of healthcare available for all women who need it, and that women from Northern Ireland, in Scotland, should be able to access abortion services for free on the same basis as women in Scotland.

The Functions of Health Boards (Scotland) Order 1991 does not allow NHS Boards to provide abortion services at no cost to women from Northern Ireland, therefore an SSI is required to enable Boards to provide this service.

Consultation

- **Within Government**

This policy has been developed with input from relevant policy divisions across the Scottish Government. Specifically; Health Protection Division, Equalities, Human Rights and Third Sector Division, Health Finance and Infrastructure Division, Constitution and UK Relations Division and the Chief Medical Officer.

- **Public Consultation**

Informal consultation with professionals who deliver abortion services in Scotland, organisations who work with women in Northern Ireland considering pregnancy choices, and organisations in Scotland with an interest in abortion services has supported the development of this BRIA and consideration of related wider policy issues. A virtual advisory group of NHS

experts was set up, including representatives from NHS Lanarkshire, NHS Dumfries and Galloway, NHS Greater Glasgow and Clyde, NHS Lothian, NHS Forth Valley and NHS Ayrshire and Arran.

We also discussed the issue with a number of third sector organisations;

- The Abortion Support Network
- Amnesty International Scotland
- Catholic Parliamentary Office, Scotland
- Engender
- Family Planning Association

Outcomes of Discussions

Stakeholders have been largely positive about Scotland providing a free abortion services to women from Northern Ireland. Further information is provided in the Scottish Firms Impact Test section below.

- **Business**

Officials contacted the two private providers of abortion services in Scotland to seek their views on the impact that the provision of free abortion services to women from Northern Ireland by the NHS in Scotland would have on them. One private provider responded, and agreed with the Scottish Government that this change would not have an impact on their business.

Options

Option 1- Do Nothing

Sectors and groups affected

Women from Northern Ireland who were seeking an abortion would be affected because NHS Boards in Scotland would continue to be unable to provide them with an abortion service without charging them, as is currently the case.

Benefits

There would be no additional cost to the Scottish Government if abortion services were not provided for free to women from Northern Ireland, and no additional pressure on NHS Board abortion services.

Costs

There would be no financial costs from this approach.

Option 2 - Amend the 1991 Functions of Health Boards Order so that NHS Boards are empowered to provide abortion services to women from NI.

Sectors and groups affected

Women from Northern Ireland who were seeking an abortion would be affected because NHS Boards in Scotland would be able to provide them with an abortion service without charging them. This would reduce the barriers they face in accessing safe and legal abortion services.

NHS Boards in Scotland would be affected because the total number of women they provide abortion services to would be increased as a result of needing to provide a service to women from Northern Ireland. We estimate that between 20 and 150 women will travel to Scotland each year from Northern Ireland to access abortion services. In the context of fluctuations in the numbers of abortions in Scotland in recent years, this is a number that can reasonably be absorbed by existing services. Furthermore, the Scottish Government will provide additional funding to support Boards in providing this service.

Year¹	2012	2013	2014	2015	2016
Total number of abortions carried out in Scotland	12,570	11,946	11,778	12,134	12,063

Women from Scotland could be affected as services may become more busy and waiting times could be lengthened. However, as set out above, the number of women expected to travel to Scotland from Northern Ireland is small in the context of the total number of women accessing abortion services in Scotland each year, and so we do not think that this affect is likely.

Private providers of abortions in Scotland could be affected because women who may previously have travelled to Scotland from Northern Ireland and paid for an abortion would be unlikely to do so in the future. This will not just be as a result of the statutory instrument in Scotland, but also the policy decision by the UK Government to provide free abortion services to women from Northern Ireland in England, which could reasonably be expected to cause women to choose to access a free service in England, rather than pay for a service in Scotland. The number of abortions provided by private providers in Scotland is very small, and the service is provided by private hospitals who offer a large number of other private health services. The number of women from Northern Ireland using a private provider in Scotland is not known, but is known to be very low because the total number of women from Northern Ireland and the Republic of Ireland having an abortion in Scotland has been very small in recent years.

Year²	2012	2013	2014	2015	2016
Number of abortions carried out by the private sector in Scotland	32	14	18	28	16

Year³	2011-15	2016
Number of abortions carried out in Scotland on women giving a Northern Irish or Republic of Ireland address	12	0

¹ Data taken from ISD Termination of Pregnancy Statistics, <http://www.isdscotland.org/Health-Topics/Sexual-Health/Abortions/>

² Data taken from ISD Termination of Pregnancy Statistics, <http://www.isdscotland.org/Health-Topics/Sexual-Health/Abortions/>

³ Data provided by ISD.

Benefits

This approach will provide a clear legal basis to empower NHS Boards in Scotland to provide free abortions to women from Northern Ireland. This will benefit women who live in Northern Ireland who are currently unable to access a safe and legal abortion services because they cannot meet the financial cost of treatment and improve equity of access across the UK.

Costs

It is difficult to estimate how many women from Northern Ireland will choose to travel to Scotland to access abortion services for free here, particularly in the context of being able to access free services in England and Wales.

One factor is the number of women in Northern Ireland who would like to access an abortion service. While 724 women travelled to Great Britain in 2016 for an abortion, stakeholders have suggested that the true figure of women wanting to access abortion services (who may in the past have continued with their pregnancy, or bought illegal abortion pills online) may be much higher, with some suggesting that the true figure may be double the official number who travelled. This would mean that up to 1,500 women may wish to travel from Northern Ireland to Great Britain each year.

However, it is not clear what proportion of women will decide to choose Scotland instead of travelling to England. On the one hand, cultural and good transport links may encourage women to travel to Scotland, particularly if they have friends or family here. However the existence of services that allow an abortion to be provided within one day in England may be attractive for women looking to minimise their time away from home, and these services are well established in providing care to women from Northern Ireland.

We have therefore identified a range of estimates for the number of women who will travel to Scotland from Northern Ireland;

- 20 women per year – a low end estimate which assumes that the overwhelming majority of women will wish to access services in England as they have done historically.
- 75 women per year – a mid estimate, based on 5% of the of the estimated 1,500 women in Northern Ireland who want to access an abortion GB travelling in Scotland each year, assuming that almost all women wish to access the more convenient services provided by independent sector providers in England.
- 150 women per year – an upper estimate, based on roughly 10% (i.e. Scotland providing services for a roughly proportionate share) of the estimated 1,500 women in Northern Ireland who want to access an abortion GB travelling in Scotland each year.

Another factor which would affect the cost of providing abortions to women from Northern Ireland is the gestation at which they present at abortion services in Scotland. While we recognise that there are a wide range of factors which may influence this, for planning purposes we have assumed that women will present in a

similar pattern to women who live in Scotland.

Linked to this, another factor which would affect the cost of this policy is whether women from Northern Ireland choose a medical or a surgical abortion. Again, there are a range of factors which may influence this, but for planning purposes we have assumed that women from Northern Ireland will choose the method of abortion in a similar pattern to women who live in Scotland.

The final factor which will affect how much this policy will cost Boards is the cost of treatment itself. It is difficult to estimate the additional costs that Boards will incur for treating each woman from Northern Ireland who presents in their area. For planning purposes, we have used figures from NHS Lothian and NHS Greater Glasgow and Clyde to estimate the additional costs Boards will incur in providing treatment, recognising that we do not anticipate that the number of women from Northern Ireland travelling to Scotland will require Boards to employ additional staff.

Estimated additional costs of providing services to women from Northern Ireland

Medical - Less than 9 weeks	£318
Medical - 9-14 weeks	£797
Medical - 14-20 weeks	£869
Surgical – less than 14 weeks	£1,003
Abortion at 20 weeks or later (requiring referral to England)	£2,000
average cost per a woman of providing contraception (assuming 50% of women choose LARC, and 50% choose the contraceptive pill)	£48.35

Estimated cost for providing an abortion service to women from Northern Ireland in Scotland (20 women)

Gestation (weeks)	Number Medical	Cost for medical	Number surgical	Cost for Surgical	Total Cost
3-9	13	366.35	2	1,051.35	6,865.25
10-13	2	845.35	2	1,051.35	3,793.40
14-19	1	917.35	0	1,051.35	917.35
20+	0	2,048.35	0	2,048.35	0.00
Total	16		4		£11,576.00

Estimated cost for providing an abortion service to women from Northern Ireland in Scotland (76 women)

Gestation (weeks)	Number Medical	Cost for medical	Number surgical	Cost for Surgical	Total Cost
3-9	47	366.35	8	1,051.35	£25,629
10-13	10	845.35	7	1,051.35	£15,813
14-19	4	917.35	0	1,051.35	£3,669
20+	0	2,048.35	0	2,048.35	£0
Total	61		15		£45,112

Estimated cost for providing an abortion service to women from Northern Ireland in Scotland (153 women)

Gestation (weeks)	Number Medical	Cost for medical	Number surgical	Cost for Surgical	Total Cost
3-9	95	366.35	15	1,051.35	£50,574
10-13	20	845.35	13	1,051.35	£30,575
14-19	8	917.35	0	1,051.35	£7,339
20+	1	2,048.35	1	2,048.35	£4,097
Total	124		29		£92,584

On this basis, and allowing a budget of £5k to cover other activity, for example updating websites, we anticipate that the cost of providing an abortion service to women from Northern Ireland in Scotland would be in the range of £17k-£98k. NHS Boards will be provided with additional funding.

Scottish Firms Impact Test

A number of face to face and telephone meetings have taken place, along with email correspondence with relevant individuals and organisations.

We asked third sector organisations to describe their perception of the experience of and challenges faced by women from Northern Ireland seeking abortions, and asked them for their views on our proposed approach to providing an abortion service. We asked NHS stakeholders for their views on aspects of the delivery of a service to women from Northern Ireland.

A number of key issues were identified through this process;

The impact the nature of Scottish services would have on the number of women seeking an abortion in Scotland rather than England – it was noted multiple times that because NHS Boards in Scotland do not provide what is considered by clinicians to be a suboptimal drugs regimen, allowing for a 1-day early medical abortion service, as is offered by independent sector providers in England, it would not be as convenient for women from Northern Ireland to travel to Scotland for treatment as they would be required to stay for a longer length of time. We took this into account when developing the planning estimate of the number of women who will travel to Scotland for treatment.

The need to ensure that contraception and access to abortion counselling is included within the scope of an abortion service for women from Northern Ireland – it was noted that it is important that women are provided with contraception, if they wish, when undergoing an abortion, and that best practice is for LARC to be offered. It was also recognised that some women may wish to access abortion counselling, and so this should be included within the scope of an abortion service. These services are provided as part of standard abortion care for women in Scotland.

Travel, Childcare and Accommodation Costs – stakeholders noted that some women from Northern Ireland would continue to be unable to access abortion

services because they could not meet the costs of travel, childcare and accommodation in order to come to Scotland. These issues were noted, however these issues are outwith the scope of this statutory instrument.

The need for clear information for women from Northern Ireland who may be considering travelling to Scotland – it was recognised in discussions that the systems and practices for the delivery of abortion services in Scotland are very different from those of England, and consequently it will be important that women from Northern Ireland considering travelling to Scotland are able to access accurate information so they can make an informed choice about where to travel to. Following these discussions, we have planned work with NHS Inform to update the information available online about abortion services in Scotland, and we have also identified a need to produce an easily printable guide to Scottish abortion services. This will have the additional benefit of ensuring improved, consistent and accurate information on what to expect from an abortion service will also be available to women from Scotland.

Competition Assessment

This statutory instrument is a technical amendment to the 1991 Functions of Health Boards (Scotland) Order to empower NHS Boards to provide abortions to women from Northern Ireland for free. It is therefore not expected to have any impact on competition.

- Will the measure directly or indirectly limit the number or range of suppliers?

No, the number of organisations able to provide women from Northern Ireland with abortion services will increase because all NHS Boards will be empowered to do so.

- Will the measure limit the ability of suppliers to compete?
- Will the measure limit suppliers' incentives to compete vigorously?

The Order will mean that NHS Boards in Scotland can provide abortions to women from Northern Ireland without charging them. This will limit the ability of private providers to compete to provide abortions to women from Northern Ireland, however, as set out above the number of abortions provided to these women by private sector providers in Scotland is very low, and therefore it will not have a substantive impact.

- Will the measure limit the choices and information available to consumers?

No, the measure will increase choice for women from Northern Ireland considering travelling to Great Britain for an abortion.

Test run of business forms

No new forms are anticipated as a result of this statutory instrument.

Legal Aid Impact Test

No legal aid impacts are anticipated.

Enforcement, sanctions and monitoring

No enforcement or sanctions considerations are relevant because this statutory instrument is a technical amendment to the 1991 Functions of Health Boards (Scotland) Order to empower NHS Boards to provide abortions to women from Northern Ireland for free.

Monitoring of the impact of this change will be undertaken through existing data collection and annual report of abortion statistics, by Information Services Division (ISD), a division of National Services Scotland, part of NHS Scotland.

Implementation and delivery plan

June – September 2017

- Consultation with stakeholders
- Development of Detailed proposals

September – November 2017

- Statutory Instrument laid in Parliament (subject to negative procedure)
- Development of information for the public.

November 2017

- Statutory Instrument comes into force.

Post-implementation review

The Scottish Government will formally review the legislation within 10 years of it coming into force to ensure that it is still fit for purpose.

Summary and recommendation

The Scottish Government's view is that abortion should be part of standard healthcare for all women, and available free from stigma. The Scottish Government believes that a woman from Northern Ireland, in Scotland, should be able to access an abortion for free on the same basis as women in Scotland.

On this basis the Scottish Government recommends introducing an amendment to the Functions of Health Boards (Scotland) Order 1991 to empower NHS Boards in Scotland to provide abortion services to women from Northern Ireland in Scotland at no cost to those women.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:**Date:**

**Aileen Campbell MSP
Minister for Public Health and Sport**

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