

DEFENSIVE STATEMENTS FOR No. 10

July '98

**SCOTTISH DEVOLUTION AND ABORTION**

Accusation:

Scottish Parliament should be empowered to reflect will of Scottish people on this issue, as it will be able to on, say, death penalty

Government's argument for cross-border consistency is inconsistent with the fact that law is different in Northern Ireland.

Mr Dewar took a different line in 1978 devolution debate, when there was a free vote.

31 March 1998 "rebellion" would have been larger if Government had made it known that it was a free vote.

|| Prime Minister intervened last year to ensure that abortion not devolved. ||

Prime Minister said [in a reply to a supplementary question from Mr Liam Fox MP on 4 March] that abortion should be devolved to Northern Ireland but not Scotland. || 7

Facts:

The Scotland Bill provides that abortion (both the Abortion Act 1967 and the relevant criminal offences) will be a reserved matter, outwith the legislative competence of the Scottish Parliament. The Scottish Executive will, however, exercise powers to approve premises, make regulations regarding procedures and will supervise the arrangements for terminations, whether within the NHS or the private sector.

There has been pressure from both "pro-choice" and "pro-life" groups, including from Cardinal Winning, for abortion to be devolved.

A Conservative/Lib Dem amendment to delete the reservation was defeated on 31 March in Commons Committee by 278 to 159. 4 Labour MPs are reported to have voted against, including 2 whips. The Scotsman today (1 April) reported that the whips had cleared their voting intentions with the party leadership in advance, but suggested that the "rebellion" would have been larger if it had been made clear that there would be a free vote. It was not our understanding that the matter was to be a free vote, as the issue was not one of conscience but rather a question of

where legislative competence should best lie. We understand that the line on this is being provided separately by the Whips' Office.

In speaking against the amendment, Mr Dewar acknowledged that there had been a debate within Government, that there were arguments for devolution and that he had argued that case in 1978, and that of course the Scottish Parliament could be expected to take a responsible view about the matter. But he made clear that the Government believes that the balance of advantage lies in maintaining common arrangements within Great Britain.

The Prime Minister did not agree in March that abortion should be devolved to Northern Ireland. He was simply highlighting the fact that there has always been a different abortion regime in Northern Ireland and that the 1967 Abortion Act does not apply to the province. He said that "Scotland and Northern Ireland need not necessarily be treated in the same way across the various programmes for devolution. One of the points of devolution is that what happens in Northern Ireland or in Scotland is a matter of debate and can be decided in different ways."

Line to take:

Debate in relation to devolution is not over rights or wrongs of abortion but about where legislative competence should lie. Government believe that balance of advantage lies in maintaining consistent regime within Great Britain.

No question of Scots' voice on abortion being unheard. Scottish MPs at Westminster will of course be able to ensure Scottish Perspective is brought to bear. We will also make arrangements for Scottish Executive to be consulted if changes to legislation are proposed

Northern Ireland has a different history and tradition in this area. Abortion Act 1967 does not apply there. But fact that Northern Ireland is different does not mean we should countenance differences between England and Scotland.

[If pressed: fact is that substantial numbers of women from Ireland come to Great Britain for abortions (around 5000 per year from the republic and 1600 from Northern Ireland.) That is the sort of situation which could easily develop within Great Britain were different regimes to apply in England and Scotland.]

Note on amendments - July '98

### Amendments 213 - 216 (Con)

Amendment 213 would remove abortion; xenotransplantation; embryology, surrogacy and genetics; and medicines, medical supplies and poisons from the list of reserved matters and would thus give the Scottish Parliament competence over the law in these areas.

Amendment 214 would remove xenotransplantation from the list of reserved matters and would thus give the Scottish Parliament competence over the law in this area.

Amendment 215 would remove welfare foods from the list of reserved matters and would thus give the Scottish Parliament competence over the law in this area.

Amendment 216 would reserve matters relating to euthanasia; the approval, refusal of approval, or withholding of medical treatment and health care; and the granting or withholding of consent to medical treatment or health care by incapable patients.

### **Background**

#### Amendments 212, 213 & 214 (Lib Dem & Con)

#### **Abortion**

1. The Abortion Act 1967 (as amended) sets out the conditions whereby a registered medical practitioner may legally terminate a pregnancy; provides for notification of terminations to be made; and allows Health Ministers to approve private sector places for the termination of pregnancy.

2. In Scotland, the law relating to abortion, both civil and criminal, is generally a matter for the common law. At common law it is a crime to procure or attempt to procure an abortion. The 1967 Act supplements this by setting out the circumstances in which it is lawful to carry out an abortion.

3. The 1967 Act applies throughout Great Britain. There are different and more restrictive provisions applying in Northern Ireland.

4. Legislative competence relating to abortion will be reserved. However, two of the executive functions conferred at present on the Secretary of State will be devolved to the Scottish Ministers by means of an order under clause 59. These are:

- the approval of (private sector) places where terminations of pregnancy may be carried out; and
- the power to make regulations regarding the certification of medical opinions on abortion and the requirement to notify abortions to the Chief Medical Officer in Scotland.

This division of responsibility between the Westminster and Scottish Parliaments is the same as was proposed in the 1978 Act.

5. Ministers decided that the law on abortion should be reserved to Westminster because of the importance of maintaining a common approach throughout the country. This has provoked some adverse comment and there has been a letter-writing campaign, stimulated by Roman Catholic and "pro-life" groups, to have abortion devolved.

Supporters of this amendment are likely to concentrate on:

- abortion involves both health and the criminal law. Both of these functions will be largely devolved;
- the right of the Scottish Parliament to reflect the will of the Scottish people on moral issues of this kind - as they will be able to do on e.g. hanging and euthanasia;
- the apparent inconsistency between the position taken now and that taken in 1978 by Mr Dewar, during the passage of the 1978 Scotland Act;
- the differences historically between abortion law in Scotland and in England;
- whether this matter should be decided on a free vote, as was the case in 1978.

6. The question of whether abortion was - or should have been - the subject of a free vote was raised after the debate on the Committee Stage of the Scotland Bill in the Commons. In response to questions, during the Leader of the House's weekly business statement on 2 April, Mrs Taylor indicated that, although the vote was about devolution and not abortion, some hon. Members saw it as a conscience issue and sought the authorisation of the Chief Whip to vote as they did.

### **Northern Ireland**

7. Abortions are illegal in Northern Ireland except where necessary to save the life of the mother or where continuation of the pregnancy would involve risk of serious injury to her physical or mental health. The law in the province has attracted criticism in recent years, from the courts and from human rights groups, on the grounds that it is unclear, outdated, oppressive and discriminatory.

8. Responding to a Question in the Northern Ireland Grand Committee, on 29 January, Mr Worthington said that there are "no plans to extend the Abortion Act 1967 to Northern Ireland". However, he recognised the criticisms made of the current situation in the province and said that "Ministers will wish to take a considered view before any decision on future action is taken".

He also said that "if there is to be a change, the preferable way for it to happen is in a devolved administration in Northern Ireland or, alternatively, by way of a Private Member's Bill from a Northern Ireland Member".

These topics are covered by supplementary speaking notes.

### **Xenotransplantation**

## SPEAKING NOTE

### Amendments 212 (Lib Dem) and 213 & 214 (Con)

#### Abortion (212 & part of 213)

My Lords I have listened intently to the views expressed. But I do not find them persuasive.

I fully appreciate that abortion is a subject on which many people hold, with equal sincerity, very strong and widely differing views. But it is important to recognise at the outset of our debate today that we are not here discussing the rights or wrongs of the current law on abortion. What we are considering is where legislative responsibility should lie for an issue which, while of great significance to the people of Scotland, is of similar importance to people south of the border. I believe that the advantage lies in maintaining a common approach. Arrangements will be put in place to ensure that the Scottish Ministers are consulted about any proposed changes to the law.

**[If more needed:**

We believe that this common approach to abortion, which has endured for over 30 years now in Scotland, England and Wales is absolutely right. Few issues give rise to such a mix of moral, social, religious and personal considerations. More practically, we should not run the risk of Scottish women having to cross the border to secure abortions or, conversely, of women from other parts of the Union coming to Scotland to take advantage of possibly different regimes. That would be an undesirable state of affairs and would run counter to the social cohesion for which we strive.

In saying all this, I am not in any way implying that the Scottish Parliament would act in an irresponsible or extreme way. Rather the point I wish to stress is that, for this very special subject, the balance of advantage lies in maintaining an approach which allows this complex issue to be addressed from the widest possible perspective and in a way which takes into account the broadest possible consensus of opinion. I am in no doubt that the arrangements we propose will achieve this objective.

It is necessary to stress, too, that reservation does not in any sense mean that the very relevant and deeply held views of the Scottish people will go by default or be ignored. On the contrary, the arrangements we propose will fully ensure that the Scottish voice is clearly heard.

First, we shall be making arrangements to ensure that the Scottish Executive will be consulted, if any changes are proposed to national legislation. This will allow the Parliament to be consulted and its views communicated to Westminster for consideration in the wider context of opinion in other parts of the Union. Second, Scottish Members at Westminster will also be able to ensure that the Scottish perspective is brought to bear. The key point is that any changes considered necessary will be made within a general framework which has regard both to the needs of other parts of the Union in general and to Scotland in particular.]

### Xenotransplantation (214 & part of 213)

Turning specifically to amendment 214, the key point here is that xenotransplantation is at the frontier of scientific exploration and development, bringing with it a complex range of ethical, safety and commercial issues, some with an international dimension.

## **SUPPLEMENTARY SPEAKING NOTES ON ABORTION ISSUES**

### **Health and criminal law are largely devolved?**

The arrangements for terminations, whether NHS or in the private sector, will be supervised by the Scottish Executive and the subordinate legislation made under the 1967 Act will be the responsibility of the Scottish Executive.

### **Free Vote on this issue?**

It has long been recognised that the abortion issue is a matter of individual conscience and successive governments have agreed that legislation should be developed on the basis of free votes. But this is not about the content of law: it is a constitutional matter about where the responsibility for legislation should lie. On that basis it is right that the government should take a view, as it does on all other devolution issues.

## **Northern Ireland?**

I recognise that the 1967 Act does not extend to Northern Ireland. Northern Ireland has a different history and tradition in this area and I do not think that it provides an exact parallel to the situation in Scotland.

[If pressed: But the fact is that substantial numbers of women come to England each year for abortions, and some to Scotland; and that is the kind of situation which could easily develop, were different regimes to apply in England and Scotland.]

**Statement by Northern Ireland Minister (Mr Worthington) that any change to the law there should be made by a devolved administration?**

My hon Friend made it clear that no decisions have been taken by Ministers in this area. He was careful to say that "if there is to be change, the preferable way for it to happen is in a devolved administration in Northern Ireland or, alternatively, by way of a Private Member's Bill from a Northern Ireland Member". This is a matter for Northern Ireland Ministers and the people of Northern Ireland, and it would be wrong to speculate further or seek to put convenient interpretations on what the Minister said. We are concerned here with what is best for Scotland.

**Didn't the Prime Minister suggest that abortion could be devolved to Northern Ireland but not to Scotland?**

[in reply to a supplementary question from Dr Liam Fox MP on 4 March]

No. The Prime Minister was simply highlighting the fact that there has always been a different abortion regime in Northern Ireland. The Abortion Act 1967 established common arrangements for abortion in Scotland, England and Wales and the Government believes that it makes sense to stick to that principle.

**Doesn't the current campaign show that the public want abortion devolved?**

Of course, we have paid very close attention to the current campaign. We have received around 250 letters, not all from Scotland. But let us be fair. That is a very small proportion of the Scottish electorate as a whole, which resoundingly voted in favour of the proposals in the White Paper, which stated that abortion would be reserved.

### **Cross Border Traffic?**

At present around 1,600 women from Northern Ireland and almost 5,000 from the Republic of Ireland come to Great Britain each year to have an abortion. The vast majority of these have their terminations in England and in the last 5 years only around a dozen women from Northern Ireland came to Scotland. These figures show that where there are differences in the law relating to abortion, women will travel to other jurisdictions in order to have terminations and I would not wish to encourage this distressing situation any further by providing for another different regime in Scotland.

## **Background - Cross Border Traffic**

### **Abortions in Scotland on women from Northern Ireland**

Over the last five years, the numbers\* of women from Northern Ireland who had abortions in Scotland were:

1992 - 4

1993 - 2

1994 - 1

1995 - 3

1996 - 4

\*These figures depend on information given by the women. A woman normally resident in Northern Ireland but staying with friends or family resident in Scotland and giving their address as her place of residence would be counted as a Scottish resident.

### **Abortions in Scotland on non-resident women**

The numbers of non-Scottish residents undergoing terminations is so small a detailed breakdown is not published. Overall numbers for non-residents in the last 3 years are:

	1994	1995	1996
	21	12	20

The 1996 figure, broken down by country of residence, gives

- 4 Northern Irish
- 12 English
- 1 Australian
- 3 Other European

**Abortions in England on Scottish, Northern Irish, Eire and other non-resident women**

	1994	1995	1996
Scottish	363	291	329
Northern Irish	1,678	1,548	1,573
Irish Republic	4,590	4,532	4,894
Other	3,706	2,952	2,783
Total	10,337	9,323	9,579