

Abortion (Disability Equality) Bill
Briefing for Committee Stage on 26th January 2017 (first business)

- 1) Introduction
- 2) The effect of the Bill:
 - In summary
 - Legal opinion
- 3) The rationale for a change in the law
- 4) Relevant statistics
- 5) Further information

1) Introduction

I am introducing this Bill as a severely disabled person who is committed to dismantling disability discrimination and to promoting equality. My Bill neither comments on the ethics of abortion *per se* nor materially affects existing abortion legislation, other than as it relates to disability. Instead it builds on the remarkable work done by Noble Lords to combat disability discrimination by confronting it at source where it starts, before birth. My Bill would remove the double whammy of discrimination which currently makes disabilities like mine, and those far less severe, legitimate grounds for termination *and* does so right up to birth, as opposed to no later than 24 weeks for cases of no disability. Such outdated discrimination, enshrined in law, is inconsistent with the spirit of equality legislation. This Bill gives Parliament an opportunity to look at the law again and remove the most pernicious example of institutional disability discrimination still on the statute book.

2) The effect of the Bill

- In summary:
 - The Bill provides for the removal of section 1(1)(d) of the Abortion Act¹ (and other related provisions) which states:
 - *Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered*

¹ <http://www.legislation.gov.uk/ukpga/1967/87/section/1>

Abortion (Disability Equality) Bill
Briefing for Committee Stage on 26th January 2017 (first business)

medical practitioner if two registered medical practitioners are of the opinion, formed in good faith:

- *that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped*

- Currently abortion on the grounds that a foetus would be ‘seriously handicapped’ when born, is permitted at any stage prior to birth under section 1(1)(d). This contrasts with section 1(1)(a), which has in place a limit of 24 weeks².
- In practice ‘seriously handicapped’ is interpreted to include disabilities such as Down’s syndrome and easily surgically rectifiable conditions such as cleft lip/palate and club foot³.
- Section 1(1)(d) is unique among the current grounds for termination in that it does not require there to be any risk of injury to the mother or any existing children of her family. Instead the focus is solely on the ‘risk’ of the foetus having a specific characteristic at birth.

➤ **Legal opinion**

According to a legal opinion prepared by Hugh Preston QC:

‘The Abortion (Disability Equality) Bill (“the Bill”) is succinct and limited in its scope. If enacted, it would remove s. 1(1)(d) of the Act completely. The practical effect of this would be that where there is a substantial risk of serious handicap, the mother’s rights to abort would be governed by the same criteria as apply in the case of any other foetus. Thus, where the foetal handicap is such as to present a risk to the mother’s life or a risk of serious permanent damage, there will remain a right to abort up to birth.

Where the risk of injury to the mother is not so grave as to meet these criteria, then the mother’s right to abort will be governed by s. 1(1)(a) of the Act, i.e. abortion is permitted subject to there being a risk to the physical or mental health of the mother or her existing children,

² <http://www.legislation.gov.uk/ukpga/1967/87/section/1>

³ <http://www.telegraph.co.uk/news/health/news/9845780/Cleft-lip-abortions-10-times-as-common-as-reported.html>

Abortion (Disability Equality) Bill
Briefing for Committee Stage on 26th January 2017 (first business)

greater than the risk of continuing with the pregnancy. In practice, in circumstances where a mother has concluded that she wishes to terminate a pregnancy having decided that she does not wish to have a seriously handicapped child, then one anticipates that this relatively low threshold would not be difficult to overcome (as indeed is the case generally in the case of foetuses presenting no risk of serious handicap).

It follows that the practical effect of abolishing s. 1(1)(d) of the Act, is that any abortions by reason of disability will need to be carried out within the first 24 weeks subject to s. 1(1)(a) of the Act, unless there is a risk of serious permanent damage to the mother, in which case they will remain permissible until birth. Thus, whilst the risk of serious handicap would no longer be a valid ground in itself for a legal abortion, in practice it will remain permissible in many cases to undergo an abortion where the foetus is likely to be born with a serious handicap on other grounds, particularly during the first 24 weeks of pregnancy'.

3) The rationale for a change in the law:

- **The law promotes inequality**
 - **By stating that disability is grounds for termination, the law is promoting inequality. It would be internationally condemned if a country's abortion laws singled out foetuses on the ground of gender or skin colour. Yet because the characteristic targeted is disability, it's somehow OK? This is inequality, sanctioned, sponsored, and funded by the state.**
- **The law is inconsistent with disability discrimination legislation for after birth**
 - **It is completely inconsistent for Parliament to have passed laws (the Disability Discrimination Act 1995 and the Equality Act 2010), which expressly prohibits discrimination on grounds of disability after birth while allowing another law, which expressly provides for lethal discrimination through termination on grounds of disability right up to birth, to remain on the statute book.**

Abortion (Disability Equality) Bill
Briefing for Committee Stage on 26th January 2017 (first business)

- **The law is out of date.**
 - This provision is a throwback to a time when we had totally different attitudes to the inclusion and contribution of people with disabilities.
 - You only have to look at the discriminatory language used by all sides of the debate in Parliament when this was discussed in 1967 and 1990 to realise how far attitudes have changed. We've moved on. The law hasn't. It's time it did.

Positions of major bodies and other evidence

- **UN Committee condemns disability discrimination before birth**
 - The UN Committee on the Rights of Persons with Disabilities have consistently criticised⁴ countries which provide for abortion in a way which distinguishes between foetuses on the basis of disability, most notably Austria, Hungary and Spain, citing Article 5 of the UN Convention on the Rights of Persons with Disabilities (equality and non-discrimination provision).
- **The law reinforces negative stereotypes**
 - The Disability Rights Commission (succeeded the Equality and Human Rights Commission) have said this aspect of the Abortion Act
 - *“is offensive to many people; it reinforces negative stereotypes of disability... [and] is incompatible with valuing disability and non-disability equally”.*⁵
- **UK report on the UN Convention of the Rights of Persons with Disabilities (CRPD)**
 - The UK Initial Report on the CRPD noted the concerns of disability rights organisations under Article 10 UNCRPD (right to life):

⁴ http://www.ohchr.org/Documents/HRBodies/CRPD/6thsession/CRPD.C.ESP.CO.1_en.doc

⁵ <http://news.bbc.co.uk/1/hi/health/1502827.stm>

Abortion (Disability Equality) Bill
Briefing for Committee Stage on 26th January 2017 (first business)

- *“concerns were expressed around the approach to abortion in the UK, where disabled people have suggested a bias towards termination of pregnancies if a child is likely to be disabled”.*⁶
- **Parliamentary Inquiry into abortion for disability**
 - The 2013 parliamentary inquiry into abortion for disability found the vast majority of those who gave evidence believed allowing abortion up to birth on the grounds of disability is discriminatory, contrary to the spirit of the Equality Act and affects wider public attitudes towards discrimination.
 - The inquiry recommended Parliament reviews the question of allowing abortion on the grounds of disability and should consider repealing section 1(1)(d) of the Abortion Act which allows for it.
- **How the law has been used in practice is not what Parliament intended**
 - How the law has been used in practice to discriminate and introduce informal eugenics by stealth goes far beyond what Parliament intended when it passed the Abortion Act 1967 and the Human Fertilisation and Embryology Act 1990. The sheer scale of discrimination is borne out by Department of Health statistics published in May 2016, which show a marked increase across the board in terminations carried out on grounds of disability and after 24 weeks. The statistics section below provides more detail.

4) Relevant statistics – England and Wales

Important note: A 2014 Department of Health review⁷ found evidence that there is significant under-reporting on the number of abortions

⁶ http://www.ohchr.org/Documents/HRBodies/CRPD/6thsession/CRPD.C.ESP.CO.1_en.doc

⁷

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314006/data_matching_and_under_reporting_HSA4s_final_230514.pdf

Abortion (Disability Equality) Bill
Briefing for Committee Stage on 26th January 2017 (first business)

for some foetal disabilities. These numbers are therefore likely to be significantly higher. See under-reporting section below for more details.

Disability-selective abortions - 24-weeks through to birth

- **230⁸ - terminations after 24 weeks on ground of disability in 2015**
 - **56% - increase in the number of terminations on grounds of disability after 24 weeks over the last 5 years (2010-2015) from 147 to 230.**
 - **271% - increase in the number of terminations on grounds of disability after 24 weeks over the last 20 years (1995-2015) from 62 to 230.**

⁸ <https://www.gov.uk/government/statistics/report-on-abortion-statistics-in-england-and-wales-for-2015>

Abortion (Disability Equality) Bill
Briefing for Committee Stage on 26th January 2017 (first business)

Disability-selective abortion - general

- **3,213⁹ - terminations on grounds of disability in 2015**
 - **68% - increase in the number of terminations on grounds of disability over the last 10 years (2005-2015) from 1,916 to 3,213**
 - **Some years (2014 and 2012) have shown increases of more than 10% on the previous year.**
- **689¹⁰ - terminations for Down's syndrome in 2015**
 - **43% - increase in the number of terminations for Down's syndrome over the last 5 years (2010-2015) from 482 to 689**
 - **143% - increase in the number of terminations for Down's syndrome over the last 20 years (1995-2015) from 283 to 689**
- **11¹¹ - terminations for cleft lip/palate in 2015**
 - **In 2013, the number of terminations for cleft lip/palate increased by 56%. Cleft lip/palate is an easily surgically rectifiable condition.**

The rapid increases in terminations on disability grounds above contrasts with overall abortion numbers, which have slightly decreased by 0.32% over the last decade (2005-2015).

Under-reporting of statistics:

- **Down's syndrome and general statistics**
 - **A 2014 Department of Health review¹² found evidence that there is significant under-reporting on the number of abortions for some foetal disabilities. These numbers are therefore likely to be significantly higher.**
 - **2013 Parliamentary Inquiry into Abortion on the Grounds of Disability¹³ - *“that approximately 53% of TOPs recorded***

⁹ *ibid*

¹⁰ *ibid*

¹¹ <https://www.gov.uk/government/statistics/report-on-abortion-statistics-in-england-and-wales-for-2015>

¹²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314006/data_matching_and_under_reporting_HSA4s_final_230514.pdf

¹³ <http://dontscreenusout.org/wp-content/uploads/2016/02/Abortion-and-Disability-Report-17-7-13.pdf>

Abortion (Disability Equality) Bill
Briefing for Committee Stage on 26th January 2017 (first business)

by EPICure2 are presented in DH abortion statistics for NHS hospitals” and that “substantial differences in the numbers of reported [abortions] remain unaccounted for.” - Draper E et al, BJOG 2012;119:710–715

- *Telegraph report¹⁴ - “...the group also found the number of babies aborted in 2010 for Down’s Syndrome was double that recorded officially - 886 compared to 482”*

¹⁴ <http://www.telegraph.co.uk/news/health/news/9845780/Cleft-lip-abortions-10-times-as-common-as-reported.html>

Abortion (Disability Equality) Bill
Briefing for Committee Stage on 26th January 2017 (first business)

- **Cleft lip -**
 - *Telegraph* report¹⁵ - “More than 10 times as many abortions take place for cleft lip than are recorded in Department of Health statistics, according to European researchers.”

5) Further information

- **BBC - Ethics Guide: Disability in the Foetus -**
<http://www.bbc.co.uk/ethics/abortion/philosophical/disability.shtml>
- **BBC Two documentary: Sally Phillips - A World Without Down's Syndrome?**
<http://www.bbc.co.uk/programmes/b07ycbj5>
- *Telegraph* - Cleft lip abortions '10 times as common as reported'
<http://www.telegraph.co.uk/news/health/news/9845780/Cleft-lip-abortions-10-times-as-common-as-reported.html>
- **6th September, Debate on the report of the Committee on the Equality Act 2010 and Disabled People (final two paras of my speech, Col 997) -**
<https://hansard.parliament.uk/Lords/2016-09-06/debates/16090640000439/CommitteeOnTheEqualityAct2010AndDisabilityReport#contribution-16090655000034>
- **19th May, Debate on The Queen's Speech (first three paras of my speech, Cols 73-74) -**
<https://hansard.parliament.uk/Lords/2016-05-19/debates/16051963000247/Queen%E2%80%99SSpeech#contribution-16051981000043>

¹⁵ <http://www.telegraph.co.uk/news/health/news/9845780/Cleft-lip-abortions-10-times-as-common-as-reported.html>