



## In Focus

### Abortion (Disability Equality) Bill [HL] (HL Bill 16 of 2016–17)

#### Key Provisions

The [Abortion \(Disability Equality\) Bill \[HL\]](#) is a private member's bill introduced by Lord Shinkwin (Conservative). The Bill received its first reading in the House of Lords on 25 May 2016, and is scheduled to receive its second reading on 21 October 2016.

The Bill seeks to amend section 1 of the Abortion Act 1967; section 1 details the conditions, or grounds, under which a medical termination of a pregnancy can occur. The Bill would remove one of these grounds, “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”. Lord Shinkwin has said the following with respect to the Bill:

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 Such outdated discrimination, enshrined in law, is inconsistent with the spirit of equality legislation.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.<sup>1</sup>

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#### Background

The Abortion Act 1967, as amended by the Human Fertilisation and Embryology Act 1990, permits termination of a pregnancy by a registered medical practitioner subject to certain conditions. The Act applies in Great Britain, but not in Northern Ireland. As summarised by the Department of Health, a legally induced abortion must be certified by two registered medical practitioners as justified under one or more of the following grounds:

- A: the continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if the pregnancy were terminated (Abortion Act, 1967 as amended, section 1(1)(c))
- B: the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman (section 1(1)(b))

- C: the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman (section 1(1)(a))
- D: the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of any existing children of the family of the pregnant woman (section 1(1)(a))
- E: 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 (section 1(1)(d))<sup>2</sup>

As explained by the then Parliamentary Under Secretary of State for Health, Jane Ellison, in an April 2014 debate on the subject:

Abortions for fetal abnormality are listed as ground D in the Abortion Act 1967 but are set out differently in the regulations and certification forms, where they are listed as ground E. The grounds in the regulations are those most commonly referred to, but that is why there is sometimes a discrepancy with regard to grounds D and E.<sup>3</sup>

Grounds C and D are subject to a twenty-four week time limit. Grounds A, B and E are not time limited. Additional grounds, which apply in an emergency, are also specified by the 1967 Act. The proposed Bill would remove what is known as ground E.

The Department of Health release, [Abortion Statistics](#) shows that in 2015 in England and Wales 3,213 (two percent) of abortions were carried out under ground E. The publication notes “it is likely there is a significant undercount presented in the ground E notification tables in this publication”, due to issues regarding under-reporting.<sup>4</sup> The report includes statistics regarding the specific medical conditions for which the termination was obtained, as well as the gestation in weeks at which the termination occurred.<sup>5</sup> The statistics show that congenital malformations were reported as the principal medical condition in 45 percent (1,450) of the 3,213 cases undertaken under ground E. The most commonly reported malformations were of the nervous system (712; 22 percent) and the cardiovascular system (247; 8 percent). Chromosomal abnormalities were reported as the principal medical condition for 37 percent (1,179) of ground E cases. Down’s syndrome was the most commonly reported chromosomal abnormality (689; 21 percent). The average, or most common, age for a woman who had an abortion performed under ground E was 34, compared to age 21 for abortions performed under any grounds.

[Termination of Pregnancy Statistics](#) for Scotland are produced by the Information Services Division of NHS National Services Scotland, which note:

Terminations on the grounds where there was “[...] substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped” dropped to a ten-year low in 2011 (136 terminations) although this trend has reversed in recent years, reaching a peak in 2015 of 186. Of these, 78 were for chromosomal abnormalities (such as Down’s syndrome), 30 for congenital anomalies of the nervous system, and 47 for other specific congenital anomalies (such as of the cardiovascular or urinary systems).<sup>6</sup>

The 186 terminations which took place under ground E of the Abortion Act 1967 represent 1.5 percent of the total terminations which took place in Scotland in the year ending December 2015.

In its report, [The Law and Ethics of Abortion: BMA Views](#), the British Medical Association notes:

The 1967 Act is silent on the definition of “serious handicap”. It is therefore a matter of clinical judgment and accepted practice. The Royal College of Obstetricians and Gynaecologists (RCOG)

has detailed guidance for health professionals involved in late term abortions for fetal abnormalities. The BMA believes the types of factor that may be taken into account in assessing the seriousness of a handicap include the following:

- The probability of effective treatment, either in utero or after birth;
- The child's probable potential for self-awareness and potential ability to communicate with others; and
- The suffering that would be experienced by the child when born or by the people caring for the child.

In 2007, the House of Commons Science and Technology Committee examined the [Scientific Developments Relating to the Abortion Act 1967](#). As part of the inquiry, the Committee examined the definition of "fetal abnormality" and specifically "whether a scientific or medical definition of serious abnormality is required or desirable in respect of abortion allowed beyond 24 weeks".<sup>7</sup> The report concluded:

We do not consider that an exhaustive list of abnormalities is feasible or desirable, although guidance for professionals who are seeking to determine 'serious handicap' may be feasible and of some use to the medical profession. We invite Members of Parliament, when considering whether a clarification or a definition of 'seriously handicapped' is desirable and/or feasible, to consider our conclusions. The Department of Health should commission work to produce guidance that would be clinically useful to doctors and patients, and look at who is best placed to do so. We believe that consideration of these matters and the production of guidance would be enhanced by better collection of data relating to the reasons for abortion beyond 24 weeks for foetal abnormality, and appropriate analysis of such data, with due regard to the need to protect the confidentiality of patients.<sup>8</sup>

The then Government's response to the Committee was published on 29 November 2007, where it agreed that:

[A]n exhaustive list of abnormalities is neither feasible nor desirable on the face of the Act, but we accept that a review of the existing guidance for professionals who are seeking to determine 'serious handicap' may be timely and of use to the medical profession. We will therefore be commissioning the RCOG to review its 1996 guidance on the Termination of pregnancy for fetal abnormality.<sup>9</sup>

The RCOG was commissioned by the Department of Health to review and update its guidance *Termination of Pregnancy for Fetal Abnormality in England, Wales and Scotland (1996)*.<sup>10</sup> RCOG set up a working party to review all evidence submitted to the Science and Technology Committee relating to the Abortion Act 1967, and all other relevant evidence relating to advances in antenatal screening and fetal and neonatal management, including corrective surgery. The RCOG published its updated guidance in May 2010.<sup>11</sup>

In 2013, a cross-party group of MPs and Peers, chaired by Fiona Bruce (Conservative MP for Congleton) published a report [Parliamentary Inquiry into Abortion on the Grounds of Disability](#).<sup>12</sup> The group sought:

to look at how the law governing abortion on the grounds of disability was operating in light of the Equality Act 2010, which protects disabled people from discrimination, and to review the practical information and support available to parents expecting a child who may be disabled.<sup>13</sup>

The report recognised that “there continues to be strongly held and polarised views on how the law treats abortion for babies with disabilities”, and argued:

The vast majority of those who gave written evidence believe that allowing abortion up to birth on the grounds of disability is discriminatory, contrary to the spirit of the Equality Act, and does affect wider public attitudes towards discrimination.

The majority of those in medical bodies and involved in fetal medicine strongly argued that the law is right for the small number of difficult cases where parents face a late discovery of their child’s disability and that the law has no impact on wider public attitudes.

The report recommended that Parliament “should consider at the very least” either reducing the upper time limit for abortions on the grounds of disability from birth to make it equal to the upper limit for able bodied babies or repealing section 1(1)(d) altogether.

The Family Planning Association (FPA), a sexual health charity, questioned the balance of the group’s report and stated that it was ignoring both the advice of the medical profession and the woman’s right of choice regarding her own health and wellbeing.<sup>14</sup> The FPA said that:

In this difficult context, women and their partners need time and non-directive support and information to allow them to make the best choice for them, and not a time limit that only adds to the pressure of an incredibly difficult and often devastating situation.

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## Further Information

- House of Commons Library, [Statistics on Abortion](#), 14 March 2016
- [Debate on ‘Abortion \(Disability\)’](#), *HC Hansard*, 9 April 2014, cols 386–94

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<sup>1</sup> This text was provided by Lord Shinkwin on request from the Library. See also recent speeches by Lord Shinkwin about his private member’s bill at: [HL Hansard, 19 May 2016, cols 73–4](#) and [HL Hansard, 6 September 2016, col 997](#).

<sup>2</sup> Department of Health, [Abortion Statistics: England and Wales: 2015](#), May 2016, pp 6–7.

<sup>3</sup> [HC Hansard, 9 April 2014, col 390](#).

<sup>4</sup> Department of Health, [Abortion Statistics: England and Wales: 2015](#), May 2016, p 9.

<sup>5</sup> *ibid*, pp 33 and 31.

<sup>6</sup> Information Services Division, [Termination of Pregnancy Statistics: Year Ending December 2015](#), 31 May 2016, p 19.

<sup>7</sup> House of Commons Science and Technology Committee, [Scientific Developments Relating to the Abortion Act 1967](#), 6 November 2007, HC 1045–I of session 2006–07, p 5.

<sup>8</sup> *ibid*, p 31.

<sup>9</sup> HM Government, [Government Response to the Report from the House of Commons Science and Technology Committee on the Scientific Developments Relating to the Abortion Act 1967](#), November 2007, Cm 7278, p 6.

<sup>10</sup> Royal College of Obstetricians and Gynaecologists, [‘Q and A: Abortions for Fetal Abnormality’](#), July 2008.

<sup>11</sup> Royal College of Obstetricians and Gynaecologists, [Termination of Pregnancy for Fetal Abnormality in England, Scotland and Wales](#), May 2010.

<sup>12</sup> Such groups do not have the same status as a parliamentary select committee inquiry.

<sup>13</sup> [Parliamentary Inquiry into Abortion on the Grounds of Disability](#), July 2013, p 3.

<sup>14</sup> Family Planning Association, [‘Unofficial Parliamentary Inquiry into Abortion on Grounds of Fetal Disability’](#), 17 July 2013.