



HL Bill 15 of 2023–24

Foetal Sentience Committee Bill [HL]

Author: House of Lords Library Staff

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The [Foetal Sentience Committee Bill \[HL\]](#) is a private member's bill introduced by Lord Moylan (Conservative). It is due to have its second reading in the House of Lords on 22 March 2024.

The bill would require the secretary of state to establish a Foetal Sentience Committee. The committee's purpose would be to provide evidence-based, scientific expertise on the sentience of the human foetus in light of developments in scientific and medical knowledge. It would advise the government on the formulation of relevant policy and legislation. The bill would require the secretary of state to respond to the committee's advice on formulating relevant policy or legislation.

There are ongoing scientific, medical and ethical debates about foetal sentience and foetal pain and the implications for issues such as pain relief for the foetus during in utero surgery and the law and practice around abortion. Expert views have differed regarding at what stage of development a foetus can feel pain.

The Royal College of Obstetricians and Gynaecologists (RCOG) published a review in December 2022 which concluded that "evidence indicates that the possibility of pain perception before 28 weeks of gestation is unlikely". The government has tended to refer to an earlier RCOG review carried out in 2010 when responding to parliamentary questions about foetal sentience and foetal pain. It does not appear to have commented on the latest RCOG review.





I. Provisions in the bill

Clause 1 would require the secretary of state to establish a Foetal Sentience Committee within 12 months of the act being passed, and to maintain this committee thereafter.¹ The secretary of state would appoint the members of the committee and determine the terms of membership.

Clause 1(4) specifies that the purpose of the committee would be “to be a source of evidence-based, scientific expertise on the sentience of the human foetus in the light of developments in scientific and medical knowledge, and to advise the government on the formulation of relevant policy and legislation”.

Clause 2(1) of the bill would enable the committee to publish reports in accordance with this purpose “in such a manner as it thinks appropriate”. Clause 2(2) would require the committee to report annually on its activities and expenditure.

Clause 2(3) specifies that references in the bill to government policy relate to UK government policy and would not include policy relating to legislative provision falling within devolved competence. Clause 2(4) sets out a definition of legislative provision falling within devolved competence.

Clause 3 would require the secretary of state to respond within three months to any report the committee published under clause 2(1) that contained advice pertaining to the formulation of relevant policy or legislation. The secretary of state would have to lay their response before Parliament.

Clause 4 would make the records of the Foetal Sentience Committee public records. This would mean that the chief executive of the National Archives (as keeper of the public records) would have a responsibility to coordinate and supervise the selection and transfer of the committee’s records to the National Archives in line with the 20-year rule.² Clause 4 would also make the Foetal Sentience Committee a public authority for the purposes of the

¹ This briefing uses the spellings ‘foetal’ and ‘foetus’ in line with the bill. However, where other sources have used the spellings ‘fetal’ and ‘fetus’, this has been retained.

² National Archives, [‘What are public records and who is responsible for them?’](#), 2021.



Freedom of Information Act 2000. This would give the public certain rights to request information from the committee.³

Clause 5 sets out provisions on extent and commencement. The bill would extend to England and Wales, Scotland and Northern Ireland. It would come into force on the day it received royal assent.

2. Debates around foetal sentience and foetal pain

There are ongoing scientific, medical and ethical debates about foetal sentience and foetal pain. Determining the point at which a foetus has awareness of or feels pain could have implications for issues such as pain relief for the foetus during in utero (while in the womb) surgery and the law and practice around abortion. Sentience in this context has been defined in terms of “the ability to detect and experience a sensory stimulus”⁴ or “how much a foetus experiences in the womb”.⁵ How to define pain in this context has been an integral part of the ongoing debate amongst academics, clinicians and others about how to determine when a foetus is capable of feeling pain.

Working parties established by the Royal College of Obstetricians and Gynaecologists published reviews in 1997, 2010⁶ and 2022⁷ of the evidence around foetal awareness and foetal pain. Setting the scene in the 2022 review, the RCOG explained that:

The Royal College of Obstetricians and Gynaecologists (RCOG) has on two previous occasions reviewed the evidence surrounding fetal awareness. A working party report in 1997 was followed by extensive review of the scientific and clinical practice relevant to the issue, with a second working party report published in 2010. That report concluded, based on scientific evidence, that the cortex is necessary for pain perception, that connections from the periphery to the cortex are not intact before 24 weeks of gestation, and thus it was reasonable to conclude that the fetus cannot experience pain in any sense prior to this gestation.

³ Information Commissioner’s Office, ‘[How to access information from a public authority](#)’, accessed 11 March 2024.

⁴ Royal College of Obstetricians and Gynaecologists, ‘[Fetal awareness: Review of research and recommendations for practice](#)’, March 2010, p vii.

⁵ All Party Parliamentary Pro-Life Group, ‘[Foetal sentience and pain: An evidence review](#)’, March 2020, p 10.

⁶ Royal College of Obstetricians and Gynaecologists, ‘[Fetal awareness: Review of research and recommendations for practice](#)’, March 2010.

⁷ Royal College of Obstetricians and Gynaecologists, ‘[RCOG fetal awareness evidence review](#)’, December 2022.



Since then, there have been considerable developments in in utero surgery, and in the neuroscientific study of pain perception. In the light of ongoing scientific developments and interest in fetal awareness, including from the Department of Health and Social Care in England, the RCOG agreed it would be timely to review the 2010 working party report.

The RCOG has therefore undertaken a further review of the literature since 2010 to assess whether developments in the understanding of fetal awareness and pain might impact clinical practice.⁸

The latest review reached the following conclusions:

- To date, evidence indicates that the possibility of pain perception before 28 weeks of gestation is unlikely.
- At present, there is no basis for considering the administration of analgesia or anaesthesia to a fetus before termination of pregnancy in the first or second trimester to prevent fetal perception of pain.
- While direct evidence for benefit during in utero surgery is lacking, this does not preclude the potential for benefit over risk in administering fetal analgesia for some therapeutic fetal procedures. However, the risk to both mother and fetus need to be considered on an individual case-by-case basis.
- It is not routine practice to administer fetal analgesia in obstetric procedures (eg operative birth) or during birth, even though fetal tissue damage is likely. This will usually occur when the fetus is fully developed and will shortly gain awareness of external environmental stimuli after birth. The use of fetal analgesia during labour and birth would require good evidence to define benefit and risk before any change in practice could be considered.⁹

The All Party Parliamentary Pro-Life Group (APPPG) had called in 2020 for the RCOG to review its guidance.¹⁰ The APPG made this recommendation in a report following its own review of the evidence on foetal sentience and pain. The APPPG said it had “identified a huge diversity of opinion between experts about when the foetus can experience pain” and this

⁸ Royal College of Obstetricians and Gynaecologists, '[RCOG fetal awareness evidence review](#)', December 2022, p 1.

⁹ As above, p 9.

¹⁰ All Party Parliamentary Pro-Life Group, '[Foetal sentience and pain: An evidence review](#)', March 2020, p 7. All party parliamentary groups have no official status within Parliament. They are informal, cross-party groups of members of both Houses who have an interest in a particular subject.



made it impossible to arrive at a “distinct position on when it is possible to assert the earliest gestation at which the foetus can feel pain”. The APPPG said it was “very clear, however, that the foetus does manifest stress responses from around 18 weeks gestation of a kind that can be seen in children and adults in relation to whom the stress responses would certainly be associated with pain”.

In its report, the APPPG also highlighted changes in clinical practice. It noted that in 2019, the government had announced that spinal surgery for spina bifida for babies in the womb would routinely be available on the NHS for the first time.¹¹ The surgery would take place between 20 and 26 weeks’ gestation and pain relief for the unborn baby would be delivered during the operation. The APPPG argued that this raised questions “about the RCOG position on foetal pain and the guidance for abortion and the lack of analgesia at similar gestation”.¹²

As well as calling for the RCOG to update its guidance, the APPPG recommended there should be further examination of how the law, guidance and support for practitioners and families could be developed to reflect current evidence regarding foetal development and activity. This included a call for an “independent group of experts drawn from a wide range of organisations/medical practitioners” to conduct a further review of the scientific evidence on foetal pain and awareness.¹³ It said this should be carried out “in open session so there is full transparency”.

The British Medical Association (BMA) published its views on the law and ethics of abortion in March 2023. On the subject of foetal pain, it said that:

Whether, and at what stage a fetus feels pain has been a matter of much debate. The RCOG 2022 report ‘Fetal awareness evidence review’ concluded that the “evidence indicates that the possibility of pain perception before 28 weeks of gestation is unlikely”.

The BMA recommends that doctors should give due consideration to the appropriate measures for minimising the risk of pain, including assessment of the most recent evidence. The BMA suggests that even if there is no incontrovertible evidence that the fetus feels pain the use of fetal analgesia when carrying out any procedure (whether an

¹¹ House of Commons, ‘[Written question: Foetuses: Surgery \(214478\)](#)’, 6 February 2019.

¹² All Party Parliamentary Pro-Life Group, ‘[Foetal sentience and pain: An evidence review](#)’, March 2020, p 7.

¹³ As above, p 25.



abortion or a therapeutic intervention) on the fetus in utero may go some way in relieving the anxiety of the woman and health professionals.¹⁴

3. Government policy

In recent years, the government's standard response to parliamentary questions about policy on foetal sentience and foetal pain is to state that it is not responsible for setting clinical practice in these areas.¹⁵ It then usually refers to the RCOG reviews, either referring to the 2010 review or noting that an updated review was being carried out.

In answer to questions in 2019 about the difference in clinical practice around the use of analgesia for in utero spina bifida surgery and terminations, the government said it had drawn the issue to the attention of the RCOG.¹⁶ The government said it was for the RCOG to consider whether to revise its guidelines having considered the available evidence.

In 2020, the government said it had brought the RCOG's attention to a journal article, 'Reconsidering fetal pain', published by Dr Stuart WG Derbyshire and John C Bockmann.¹⁷ Again, the government said it was for the RCOG to consider whether to revise the guidelines, having looked at the available evidence. In this article, the authors argued that "the neuroscience cannot definitively rule out fetal pain before 24 weeks".¹⁸ They suggested that "the issue of fetal pain has little ethical significance during therapeutic fetal surgical procedures" as "pain can be acceptable if the inflicted pain is part of a good faith effort to save or improve the life of a patient". However, they said they were "not aware of any procedures where invasive fetal intervention proceeds without anaesthesia or analgesia, except for abortion". Despite the two authors taking different moral positions on abortion, they agreed that "it is reasonable to consider some form of fetal analgesia during later

¹⁴ British Medical Association, '[The law and ethics of abortion: BMA views](#)', March 2023, p 8.

¹⁵ See for instance: House of Commons, '[Written question: Abortion: Analgesics \(47575\)](#)', 21 September 2022; House of Commons, '[Written question: Abortion: Analgesics \(2703\)](#)', 23 May 2022; House of Commons, '[Written question: Foetuses: Pain \(2662\)](#)', 23 May 2022; House of Commons, '[Written question: Foetuses: Pain \(606\)](#)', 20 May 2022; House of Commons, '[Written question: Foetuses: Pain \(124159\)](#)', 14 December 2020; House of Commons, '[Written question: Abortion: Analgesics \(110128\)](#)', 1 December 2020.

¹⁶ House of Commons, '[Written question: Abortion \(269708\)](#)', 1 July 2019.

¹⁷ House of Commons '[Written question: Abortion \(106898\)](#)', 4 November 2020.

¹⁸ Stuart W G Derbyshire and John C Bockmann, '[Reconsidering fetal pain](#)', *Journal of Medical Ethics*, 2020, vol 46, pp 3–6.



abortions”. Dr Derbyshire was a member of the RCOG working party that produced the 2022 review.¹⁹

The government’s most recent response to a parliamentary question on these issues was in October 2022, when it noted that the RCOG had “established a review group to consider the latest evidence on foetal pain and awareness, which is expected to report on its findings by the end of 2022”.²⁰ The government does not appear to have commented on the 2022 RCOG review since its publication in December of that year.

4. Reaction to the bill

The bill itself does not explicitly mention abortion, but groups on both sides of the abortion debate have viewed it as a potential step towards changing the current rules on abortion.

Right to Life UK, a charity focused on issues such as abortion, assisted suicide and embryo research, described the bill as an “important, pro-life” bill.²¹ It said the bill was “significant given developments in scientific knowledge and medical science”.²² Catherine Robinson, a spokesperson for the charity, said that expert evidence “suggests that unborn babies may feel pain from as early as 12 weeks gestation, well before our current 24-week abortion limit [...] should be taken into account in our abortion law and when the government is developing policy”.²³ Right to Life UK provides the secretariat for the All Party Parliamentary Pro-Life Group.²⁴

Humanists UK characterised the bill as part of “an attack on abortion rights”.²⁵ Commenting before the full text of the bill had been published, Humanists UK said the title of the bill gave “clear indications” it was “targeting existing legal rights which women depend on in England and Wales”. Humanists UK’s public affairs and policy manager, Karen Wright, said humanists would “always fight to defend” reproductive rights and freedoms.

¹⁹ Royal College of Obstetricians and Gynaecologists, ‘[RCOG fetal awareness evidence review](#)’, December 2022, p 11.

²⁰ House of Lords, ‘[Written question: Abortion: Analgesics \(HL2096\)](#)’, 5 October 2022

²¹ Right to Life UK, ‘[Three important pro-life bills to be introduced to the House of Lords](#)’, 9 November 2023.

²² Right to Life UK, ‘[Foetal Sentience Committee Bill receives first reading in the House of Lords](#)’, 27 November 2023.

²³ As above.

²⁴ Right to Life UK, ‘[All-Party Parliamentary Pro-Life Group](#)’, accessed 13 March 2024.

²⁵ Humanists UK, ‘[Anti-choice Christians in Parliament launch triple attack on abortion rights](#)’, 29 November 2023.

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