

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1996](#): ‘Take action to prevent discriminatory abortions for disability in Scotland’, lodged by Calum MacKellar on behalf of the Scottish Council on Human Bioethics

Brief overview of issues raised by the petition

[PE1996](#) calls on the Scottish Parliament to urge the Scottish Government to legislate to ensure that abortions cannot take place after 24 weeks in circumstances where the child is likely to have a disability.

Current status of abortion law in Scotland

Under Section 1(1)(d) of the [Abortion Act 1967](#), which currently applies to Scotland, England, and Wales, an abortion can legally be accessed up to 24 weeks of pregnancy if continuing with a pregnancy would pose a greater risk to the pregnant person’s mental or physical health than accessing an abortion. Beyond 24 weeks’ gestation, abortions can only be conducted if there is a significant risk to the life of the pregnant person, or evidence of foetal abnormality.

Abortion law was devolved to Scotland under the [Scotland Act 2016](#). As such, it is likely that the Scottish Government could introduce legislation to amend the 1967 Act. A Bill would be needed to do this as Ministers do not have a power to change the Act through secondary legislation.

However, the [Human Fertilisation and Embryology Act 1990](#), referenced by the petitioner, is reserved under the [Scotland Act 1998](#), which remains in force. Therefore, the Human Fertilisation and Embryology Act 1990 and its subject matter (i.e. topics not necessarily within the Act but which relate to the subject matter of the Act) would not be within the legislative competence of the Scottish Parliament.

Context of the petition

PE1996 argues that by permitting abortion after 24 weeks’ gestation if “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) of the Abortion Act 1967 expresses a discriminatory message that the life of a non-disabled child has more value than that of a child with a disability.

This position is supported by [Disability Rights UK](#), which argued that Section 1(1)(d) of the Abortion Act 1967 undervalues the lives of disabled people. [Don't Screen Us Out](#), an organisation that campaigns against routine screening for Down's syndrome and high rates of termination of fetuses diagnosed with the condition, claims that UK legislation and policy singles out and discriminates against fetuses with Down's syndrome. In 2017, the [United Nations Convention on the Rights of People with Disabilities](#) stated that this section of the Act stigmatises people with disabilities, and recommended that the UK amends its abortion law. The Convention stated that "women's rights to reproductive and sexual autonomy should be respected without legalizing selective abortion on the ground of foetal deficiency."

Marie Stopes UK [published a position paper](#) on disability equality and abortion in the UK in June 2020. The paper argued against introducing an upper gestational limit for abortion due to foetal abnormality, as diagnoses of foetal impairment are often made during the 20-week scan or later in pregnancy. Introducing a 24-week gestational limit for abortion in these circumstances may therefore risk rushing pregnant people and their families into making a difficult decision without time to obtain complete information and access support. This may lead to an increase in the number of abortions being performed under such circumstances, as people may feel less able to take sufficient time to explore their options, and may consequently choose to opt for termination. The position paper stated that the decision to access abortion after a foetal impairment did not represent a devaluing of disabled people, but rather a difficult individual decision informed by a variety of complex personal factors. [Abortion Rights further highlighted](#) that introducing a 24-week gestational limit for abortions in cases of foetal abnormality would also include cases in which there is no realistic possibility of the baby surviving after birth.

According to [Public Health Scotland's most recent data](#), 0.9% of abortions conducted during 2021 took place at 18 weeks' gestation or later. 73 of the 13,758 abortions conducted in Scotland in 2021 were due to chromosomal conditions such as Down's syndrome, and 39 were due to nervous system conditions such as spina bifida. Public Health Scotland's report notes that multiple conditions can be recorded in relation to the same termination event, meaning that these figures do not necessarily represent individual terminations.

Scottish Government actions

In response to question [S5W-16699](#), lodged on 18 May 2018, the then Minister for Public Health and Sport, Aileen Campbell MSP, stated that the Scottish Government "had no current plans to change the law on abortion."

Scottish Parliament actions

PE1996 states that an MSP was contacted to initiate a Member's Bill on this issue but declined to take the proposal further.

Actions taken in the rest of the UK

In October 2021, two individuals affected by Down's syndrome [brought a case to the High Court](#) against the UK Secretary of State for Health and Social Care. The claimants asked the court to rule that Section 1(1)(d) of the Abortion Act 1967 was incompatible with the European Convention on Human Rights, and that Down's syndrome should not be considered a "serious handicap" under the Act. The High Court [found Section 1\(1\)\(d\) to be lawful](#) in the context of permitting abortion of fetuses with Down's syndrome after 24 weeks. The Court dismissed the argument that this section of the Act perpetuated negative stereotypes of people with disabilities, as it focused on the rights of the pregnant person and their medical treatment. The claimants also contended that this Section of the Act is incompatible with Articles 2, 3, 8, and 14 of the European Convention on Human Rights (ECHR). The Court rejected this position, as the ECHR has never decided that a foetus is a bearer of ECHR rights. The claimants appealed against this decision, and the case was [dismissed by the Court of Appeal](#) in July 2022.

In November 2021, the UK Parliament's Health and Social Care Committee [proposed a series of amendments to the Health and Care Bill](#), including reducing the gestational limit for abortions from 24 to 22 weeks, and introducing an upper gestational limit for abortion on the grounds of disability. This amendment was [debated in November 2021](#) at the Report Stage of the Health and Care Bill, but has yet to progress further through the House of Commons.

Sarah Swift
Researcher

7 February 2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public.

However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP