



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Colm Gildernew  
Committee Chair**

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01 October 2021

Dear Colm,

**Northern Ireland Human Rights Commission's Submission to Northern Ireland Committee on Health on the Severe Foetal Impairment Abortion (Amendment) Bill**

The Northern Ireland Human Rights Commission (NIHRC), pursuant to Section 69(4) of the Northern Ireland Act 1998 and its statutory function to provide advice on human rights compatibility, advised the Committee on Health on the Severe Foetal Impairment Abortion (Amendment) Bill on 7 May 2021.

In that advice the Commission (at paragraphs 3.33 & 3.49) referred to ongoing litigation in England and Wales in cases of severe foetal impairment or disability. That litigation has now concluded, with judgment handed down from the Divisional Court on 23 September 2021. It is reported at *Crowter, Lea-Wilson & A v Secretary of State for Health and Social Care* [2021] EWHC 2536 (Admin). In *Crowter*, it was argued unsuccessfully that the Abortion Act 1967, insofar as it relates to cases of serious disability, is contrary to Articles 2,3,8 and 14 of the European Convention on Human Rights (ECHR). As you know, the ECHR has been incorporated into domestic law by the Human Rights Act 1998. The applicant's argument was dismissed on all grounds. Essentially, the argument was that it is impermissible to differentiate, as the 1967 Act does, between pregnancies where there is a substantial risk that, if born, a child would be "seriously handicapped" (the terminology used in the Act) and those where it would not.

The judgment is worth reading in full, but for convenience I summarise the findings as follows.

The UN Convention on the Rights of Persons with Disabilities (UNCPRD) does not define “persons” and it is far from obvious that it includes a foetus. No judicial decisions were raised with the court which held otherwise (see para. 42). Moreover, statements made by the UNCPRD Committee and the Committee on the Elimination of all forms of Discrimination against Women (CEDAW) do not permit a firm foundation for further conclusions to be drawn (see para. 47).

The Court also found that section 1(1)(d) of the 1967 Act does not perpetuate and reinforce negative cultural stereotypes to the detriment of people with disabilities. It did not find any causal connection between that provision and any discrimination that might be suffered by people with Down’s Syndrome (para. 102).

The Court observed that the European Court of Human Rights (ECtHR) has never held a foetus to be the bearer of ECHR rights and that to hold otherwise would go against the *Ullah* principle (see paras. 62 to 66 and 80 to 81). It noted there is no international consensus in the Council of Europe on this issue (see para. 123).

The Court went on to recall the clear evidence that there are conditions that can only be identified late in pregnancy, i.e., after 24 weeks (see para. 126). Conversely, it noted that there had not been an opportunity to consider evidence from people whose lives will be affected by any change to the law on abortion, such as those whose choices would be curtailed (and potentially criminalised). By way of example, it noted that women might be compelled to give birth to a child with serious disabilities because of the fear of criminal sanctions (see para. 130).

Accordingly, abortions in cases of severe foetal impairment continue to be available in Great Britain. The effect of the Bill in Northern Ireland, if passed, will be to compel women in those circumstances to travel to Great Britain. Women in Northern Ireland will be disadvantaged.

The Commission repeats its advice (at para. 3.9) that the proposal to remove access to abortion services in cases of serious foetal impairment is incompatible with the UK’s obligations under UN CEDAW.

We hope this information assists the Committee. We remain at your disposal for further advice or engagement as necessary.

Yours sincerely,



**Alyson Kilpatrick**  
**Chief Commissioner**