



The Abortion Rights Campaign (ARC) is a movement for choice and change in Ireland. We aim to promote broad national support for free safe legal and local abortion access; to ensure the health and rights of pregnant people are protected in line with international human rights standards; and to fight abortion stigma across the island of Ireland

**Submission in response to call for evidence on Severe Fetal Impairment Abortion (Amendment) Bill, Northern Ireland.
6th May 2021**

Executive Summary

The Abortion Rights Campaign (ARC) opposes the Severe Fetal Impairment Abortion (Amendment) Bill. The presentation of this Bill is designed to restrict abortion access and undermine the human rights of the women and pregnant people of Northern Ireland, including disabled pregnant people. We have seen across the island of Ireland that overly strict and prescriptive legislation places doctors and pregnant people in impossibly difficult situations, and perpetuates the need to travel for access. In turn this perpetuates harm, stigma and exclusion. We believe that the people of Northern Ireland can no longer be left behind and deserve the right to access abortion care in their own jurisdiction.

Failure to uphold human rights

The Committee on the Elimination of All forms of Discrimination against Women (CEDAW) recommended in 2018 that the Northern Ireland's abortion provision must include access for 'severe foetal impairment, including FFA (fatal foetal anomaly)¹. This Bill would remove that ground for access and therefore be in breach of the minimum standard for human rights as set out by CEDAW. These elements of the CEDAW report have now been integrated into domestic law through the Northern Ireland (Executive Formation etc) Act 2019², which in addition repealed sections 58 and 59 of the Offences Against the Person Act 1861, serving to decriminalise abortion. As this is now the established minimum standard for reproductive

¹ CEDAW/C/OP.8/GBR/1 Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fOP.8%2fGBR%2f1&Lang=en

² Northern Ireland (Executive Formation etc) Act 2019
<https://www.legislation.gov.uk/ukpga/2019/22/section/9>

rights in Northern Ireland, the passage of this Bill would narrow those rights, and indicate a failure by the Executive to uphold these internationally accepted standards.

The experience in the Republic of Ireland and the complexities of fetal medicine

In the Republic of Ireland (ROI), it is nearly three years since the passage of legislation that legalised abortion access on specific grounds, including a fetal diagnosis that is “likely to lead to the death of the foetus either before, or within 28 days of, birth”³. During the Citizens’ Assembly and Joint Oireachtas Committee discussions, experts in fetal medicine warned Irish legislators against being prescriptive and the exclusive use of the terms fatal or lethal. Dr Peter Thompson, a fetal medicine consultant in Birmingham, argued that to do so would force discussions around fetal anomalies into a binary situation which does not reflect the complex reality of risk and probability that is involved in pregnancies with a severe abnormality⁴. This has been borne out through the experiences of those faced with complex fetal diagnoses in Ireland since 2019, where couples have been informed the condition is ‘not fatal enough’⁵. Terminations for Medical Reasons (TFMR) told The Journal that of the around 30 women or couples who came to the support group last year following a diagnosis, 85% had to travel for a termination. Additionally, we have seen that although there is a reduction in the number of people travelling to England for abortion, over 100 still travelled following severe and fatal fetal diagnoses in 2019⁶.

This Bill would remove ‘severe’ from the legislation, and therefore place medical professionals in a difficult situation when diagnosing which fetal abnormalities are eligible for abortion. Uncertainty over legal definitions of ‘fatal’ means healthcare professionals are forced to focus on interpreting the law rather than focusing on providing care and information to their parents. Evidence indicates that the legal context in which a diagnosis occurs has a significant impact on the nature of the clinical advice and care given, which in turn affects the rights and choices available to pregnant people during a vulnerable time⁷.

Intersectionality of disability rights and reproductive rights

Restrictions on reproductive rights do not serve to uphold or extend the rights of disabled people. Restrictions on abortion place restrictions on the reproductive rights and freedoms of disabled people, who face additional barriers when forced to travel for abortion care.

³Health (Regulation of Termination of Pregnancy) Act 2018

<http://www.irishstatutebook.ie/eli/2018/act/31/enacted/en/print#sec11>

⁴ Peter Thompson, Joint Committee on the Eighth Amendment of the Constitution debate, 29 Nov 2017,

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_the_eighth_amendment_of_the_constitution/2017-11-29/speech/52/

⁵ “‘Two-tier system’ means couples still forced to travel for termination after severe foetal diagnoses”, Michelle Hennessy, The Journal, 21 March 2021

<https://www.thejournal.ie/fetal-diagnosis-5386250-Mar2021/>

⁶Abortion Statistics, England and Wales, 2019, Department of Health and Social Care, 11 June 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/891405/abortion-statistics-commentary-2019.pdf

⁷ Lotto R, Smith LK, Armstrong N. ‘Clinicians’ perspectives of parental decision-making following diagnosis of a severe congenital anomaly: a qualitative study.’ *BMJ Open* 2017;7:e014716. doi:10.1136/bmjopen-2016-01471 <https://bmjopen.bmj.com/content/bmjopen/7/5/e014716.full.pdf>

It is essential to note that the Committee on the UN Convention on the Rights of People with Disabilities (CRPD), with the CEDAW Committee, has emphasised that using disability rights as an argument to oppose safe abortion is a misinterpretation of the CRPD. They stress that “disability rights and gender equality are two components of the same human rights standard that should not be construed as conflicting. Furthermore, CRPD and CEDAW clarify that States must take effective measures to enable women, including women with disabilities, to make autonomous decisions about their sexual and reproductive health and ensure that women have access to evidence-based and unbiased information in this regard.”⁸

Disabled people have historically been denied full access to their reproductive rights, and this Bill would continue that denial. CEDAW have also remarked that while abortion in cases of severe fetal impairment should be available, States are obliged to ensure that this is not used to perpetuate stereotypes towards disabled people⁹. Legislators who are concerned with disability rights would do well to focus on meaningful social and financial support for disabled people and their families throughout their lifespan. A focus on fetal impairment to the exclusion of disabled adults perpetuates an infantilised formulation of disability rights and does not benefit disabled people.

Travelling for abortion does not meet requisite standards of health care and human rights

Research has shown that travelling for abortion care has negative consequences for patients including additional distress and financial burden¹⁰. It also stigmatises the experience.

Travel for abortion means people often must go through the experience without their partners or family support systems. People who have travelled from Ireland to Great Britain for abortion lack continuity of care and have experienced lack of pre- and post-abortion support which can have serious impact on their physical and emotional health.¹¹ The negative consequences of travel are further compounded for people who are already marginalised by society, including disabled people, people living in poverty, migrants and ethnic minorities, those in controlling relationships and teenagers. For some people travel is not an option due to their personal circumstances.

In addition the public health emergency brought on by COVID-19 shows that travel can be shut off or made more arduous at a moment’s notice by external events.

Northern Ireland deserves full realisation of reproductive rights

⁸ CEDAW and CRPD Committees (August 2018). ‘Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities’: Joint statement by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)

⁹ CEDAW, *ibid*

¹⁰ Barriers to Abortion Care and Their Consequences For Patients Traveling for Services: Qualitative Findings from Two States, Guttmacher Institute, 2017
<https://www.guttmacher.org/journals/psrh/2017/04/barriers-abortion-care-and-their-consequences-patients-traveling-services>

¹¹ Experiences of women in Ireland who accessed abortion by travelling abroad or by using abortion medication at home: a qualitative study; Aiken et al 2018; <https://pubmed.ncbi.nlm.nih.gov/29972360/>

The removal of access on the grounds of severe fetal impairment would once again place Northern Ireland behind Great Britain in terms of access to reproductive healthcare. As there is the option of funded care in Great Britain for those who cannot access abortion in Northern Ireland, this Bill would not prevent these abortions from happening, but rather simply ensure that they happen elsewhere. As already noted, travel is an inadequate solution to the issue of abortion access, and fails to fulfill the CEDAW recommendations for minimum human rights standards. This Bill would leave the people of Northern Ireland without the full access to healthcare and human rights that is afforded to those in Great Britain - this is unacceptable. We strongly oppose this Bill on the grounds that it reduces the human rights of the people of Northern Ireland.

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