

SEVERE FETAL IMPAIRMENT ABORTION (AMENDMENT) BILL

I. Background information

- The Bill was introduced by Paul Givan MLA on 16 February 2021

→ amends the Abortion (Northern Ireland) (No. 2) Regulations 2020 to remove the grounds for an abortion in cases of severe fetal impairment.

Today, a woman can have an abortion with no time restrictions if:

- *if* “**two registered medical** professionals are of the opinion – formed in good faith – that: there would be a ‘substantial risk’ if the pregnancy went to term;
- the birth would result in a ‘seriously disabled’ child.

SFIAA Bill seeks to make severe fetal impairment abortion unlawful in Northern Ireland by amending the Abortion Regulations (Northern Ireland) (No. 2) 2020 (‘2020 Regulations as amended’).

- Amended version

Fatal fetal abnormality

7.— (1) A registered medical professional may terminate a pregnancy where two registered medical professionals are of the opinion, formed in good faith, that there is a substantial risk that the condition of the fetus is such that—

(a) the death of the fetus is likely before, during or shortly after birth;

(2) In the case of a woman carrying more than one fetus, anything done to terminate the pregnancy as regards a particular fetus is authorised by paragraph (1) only if that paragraph applies in relation to that fetus.

I. Recommendations regarding following clauses in view of legal obligations of Northern Ireland

The following are recommendations to make the amendment compliant with international human rights obligations of Northern Ireland, based on

- (i) Teleological argument - In the spirit of international human rights law which **focuses on the mother as an individual with rights rather than seeing her as her social role of progenitor.**
- (ii) Right-based argument - Ensuring that the mother expecting a disabled child is not disproportionality impacted by (i) the disease of their child due to an absence of safeguards and guarantees provided by the state and (ii)

1. Restricting the scope of the notion of “Fetal Impairment” rather than banning the abortion on this ground

The current amendment has a scope which is too broad – rather than a general ban on fetal impairment, the clause should be circumstantial and provide for a **case-by-case basis** to focus on the rights of the **pregnant woman**.

The approach is further supported by the reality. As found in the *Research and Information Service Bill Paper, 5 March 2021*[page 23]:

In 2019 in England and Wales, there were 3,183 abortions under Ground E, or 2% of all abortions. Of these: 53% were for congenital malformations, including cardiovascular and musculoskeletal malformations, and anencephaly; 29% were for chromosomal abnormalities including Down’s, Edwards’ and Patau’s syndrome; and, should be provided before and after the termination incomplete information and 18% for other conditions.

Thus, this clause would create a discrimination since it is not justified by reasonable and proportionate grounds. Indeed, the Committee on the Elimination of Discrimination against Women defines gender-based violence as violence that is directed against a woman because she is a woman or that affects women disproportionately.

a. Primacy of right to life/physical integrity of the woman as holder of rights

When it comes to physical integrity of the mother, it prevails over the right of the unborn Human rights committee has never recognized rights to the unborn. The first draft of the **General Comment on the right to life**, does not address life before birth. The Committee has never explicitly recognized the application of the covenant for them.

The right based approach focuses on the woman as an individual entitled to rights rather than focusing on their reproductive role. As evidenced in *Mellet v. Ireland (Human Rights Committee)*, women should not be seen as reproductive vessels. We are of the opinion that **it is not for one woman to carry on the weight of stereotypes engrained in a given society and her individual rights should not be threatened to solve a systemic issue**, hence making her carry the burden of greater issues shrinking the scope of her own individual rights. **The right to abort should still be granted for fetal impairment depending on circumstances.**

b. Avoid discrimination between women

As currently drafted, the amendment would create a discrimination between women between those ready to accept a child. It would recreate a discrimination based on socio-economic circumstances, which disadvantages women who cannot readily afford to travel abroad to obtain an abortion.

- c. The amendment creates a disproportionate impact on women's integrity and would likely create situations of torture/inhumane and degrading treatment

Forcing a woman - who is unable to travel due to limited resources - to carry a pregnancy to term against her will would amount to torture and inhuman and degrading treatment. The amendment as such is likely to create situations where a woman would then suffer a disproportionate impact on her own rights and physical integrity. The amendment would need to be based on a subjective test, primarily focusing on the woman's physical and mental health – before authorizing the interruption of her pregnancy.

2. The reduction of the scope of the clause is balanced with safeguards that ensure the mother's human rights

- In line with recommendation of 2018 CEDAW Committee:¹

In cases of severe foetal impairment, the Committee aligns itself with the Committee on the Rights of Persons with Disabilities in the condemnation of sex-selective and disability-selective abortions, both stemming from the need to combat negative stereotypes and prejudices towards women and persons with disabilities. While the Committee consistently recommends that abortion on the ground of severe foetal impairment be available to facilitate reproductive choice and autonomy, States parties are obligated to ensure that women's decisions to terminate pregnancies on this ground do not perpetuate stereotypes towards persons with disabilities. Such **measures should include the provision of appropriate social and financial support for women who choose to carry such pregnancies to term**

- does Northern Ireland take charge of the persons with Down Syndrome/other disabilities?
- does Northern Ireland ensure schooling of child and non-discrimination at employment?
- right to information of the future mothers and awareness to make sure they do not undergo distress due to the lack of awareness by public policies?
- Are women in rural communities covered by the same protections and guarantees than Irish citizens?
- Are women refugees/asylum seekers and undocumented immigrants covered by the same protections and guarantees than Irish citizens?

¹ United Nations Committee on the Elimination of Discrimination against Women, 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 (2018).