

Petitioner submission of 7 March 2023

PE1996/C: Take action to prevent discriminatory abortions for disability in Scotland

The Scottish Parliament Information Centre Briefing on Petition PE1996 indicated that Marie Stopes UK had published a position paper on disability equality and abortion in the UK in 2020.¹ This position paper suggested that an upper gestational limit for abortion on the ground of foetal abnormality should not be introduced. Indeed, since a diagnosis of foetal impairment generally takes place in the first 20 weeks of pregnancy, Marie Stopes UK suggested that a 24-week gestational limit for abortion may pressurise pregnant women into making a difficult decision in a relatively short period of time.² As a result, this may increase the number of abortions since women may feel that they do not have enough time to appropriately explore all their options.

However, the Marie Stopes UK position paper does not develop or emphasise the legal context of the 24-week limit of the *UK Abortion Act 1967* (as amended). Indeed, it is not just a convenient or practical limit before which a prenatal diagnosis should be undertaken. Instead, it is an important legal stage in which a *healthy foetus* is fully protected unless the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated.

Thus, for a *healthy foetus*, two important legal (and moral) stages in UK law exist with their corresponding protective provisions, namely (1) the 24-week limit after which the *healthy foetus* can no longer be terminated, and (2) birth after which it is considered to have full legal status and cannot be killed. This means that even if a woman believes that she is unable to cope with a *healthy child* in her actual or reasonably foreseeable environment, she can still not have a termination after 24 weeks of gestation - even if this healthy child may be considered to be more of a burden than a disabled child.

Thus the 24-week limit reflects an important and meaningful foetal development stage at which the UK Parliament considered a healthy

¹ Scottish Parliament Information Centre Briefing for the Citizen Participation and Public Petitions Committee on petition PE1996, page 2.

² <https://www.mschoices.org.uk/media/3346/marie-stopes-uk-position-paper-on-disability-equality-and-abortion-in-the-uk-jun-2020.pdf>

This is confirmed in literature:

<https://www.gov.uk/government/publications/fetal-anomaly-screening-programme-handbook/prenatal-diagnosis>
<https://webpath.med.utah.edu/TUTORIAL/PRENATAL/PRENATAL.html#:~:text=Prenatal%20diagnosis%20employs%20a%20variety,to%2025%25%20of%20perinatal%20deaths>

foetus as deserving protection whether or not this foetus may eventually become a burden. This means that since an *infant who is born* with, or without, a disability is protected in law whether or not he or she may become a burden, it is possible to ask why a 24-week foetus with, or without, a disability should not also be protected in law whether or not the resulting child may become a burden.