



We're All Equal (WAE)

Submission to the United Nations
Universal Periodic Review

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Group on the UPR

Human Rights Council

Single NGO Submission

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Executive Summary

1. This submission provides information about the legal discrimination which exists towards people with disabilities in England and Wales, since the 1990 amendment to the Abortion Act 1967¹.
2. Section 1(1)(d) of the Abortion Act states that a person will not be guilty of an offence under the law relating to abortion when a pregnancy is terminated if two doctors are of the opinion, formed in good faith that “**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**” (Ground E).
3. We're All Equal (WAE) consider this section to be a violation of the human rights of people with disabilities because:
 - a. Fetuses with disabilities are the *only* minority group singled out for differential treatment in the 1967 Act. It would be quickly condemned if a state's abortion legislation singled out fetuses on the ground of gender or skin colour.
 - b. There is a difference in 'time limits' for terminations of fetuses with disabilities in the Abortion Act, i.e. those diagnosed with a disability can be aborted **up to birth**, whereas 'healthy' or unaffected fetuses can only be aborted up until 24 weeks of pregnancy (s 1(1)(a) or Ground C).
4. WAE notes with concern that this discrimination has, in practice, worsened over the last 10 years as the Department of Health's annual abortion statistics have demonstrated:
 - a. Between 2005 and 2015, abortions on the ground of disability have increased by 40%.²
 - b. Disabilities which are not considered to be 'serious handicaps' (e.g. cleft lip and palate) are being sighted as grounds for abortion under s1(1)(d).
5. WAE is also concerned by the impact that such discrimination is having on those living with disabilities.
6. We therefore recommend that in order to correct the discrimination in the current law, **section 1(1)(d) must be abolished from the Abortion Act.**

I. Background and Framework

¹ Section 37 of the of Human Fertilisation and Embryology Act 1990 amended the 1967 Abortion Act.

² Abortion Statistics, England and Wales, *Department of Health*

<https://www.gov.uk/government/collections/abortion-statistics-for-england-and-wales>

7. 'We're All Equal' (WAE) is an initiative run by people with disabilities, their families and supporters. We're All Equal is opposed to institutionalised inequality before and after birth and is committed to making disability equality a reality and consigning disability discrimination to the past. This is the first report to the UPR by WAE.
8. The initiative was formed in June 2016 to call on the UK Government to give Lord Shinkwin's Disability Equality Bill (which seeks to remove s1(1)(d) from the Abortion Act) enough time to proceed to the House of Commons and be voted on by MPs. WAE intend to raise public awareness as to the lethal discrimination that exists for those with disabilities from the very outset of life.

II. Promotion and Protection of Human Rights on the Ground

9. As a result of the implementation of the Equality Act 2010 disability equality legislation in Britain has been harmonised and strengthened providing a greater level of protection for disabled people in England, Scotland and Wales³.
10. Prior to this significant human rights development, the UK ratified the UN Convention and Optional Protocol on the Rights of Persons with Disabilities in July 2009. By ratifying CRPD in 2009, the UK is committed to promoting and protecting the full enjoyment of human rights by disabled people and ensuring they have full equality under the law.⁴

A. Equality and Non-Discrimination for disabled fetuses

11. Section 1(1)(d)/Ground E of the Abortion Act 1967 directly discriminates fetuses on the ground of disability. It specifically permits abortion 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*". For no other reason is a fetus singled out because of its quality, i.e. there is no similar provision for abortion on the grounds of gender or skin colour. All other grounds in the 1967 Act relate to the circumstance of the mother (her psychological state etc), not the child.
12. The right to non-discrimination is enshrined in Article 7 of the Universal Declaration of Human Rights: "All are equal before the law and are entitled without any discrimination to equal protection of the law", as well as Article 14 of the European Convention on Human Rights.
13. Similarly, Article 5 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) holds that:
 - a. "*States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law*"; and that

³ 'Monitoring the Implementation of UN Convention on the Rights of Persons with Disabilities' (December 2014) Equality and Human Rights Commission, p.8.

⁴ <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities>

- b. “*States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds*”.
14. The UN Committee on the Rights of Persons with Disabilities, where it has addressed the issue of abortion, has consistently criticised laws which differentiate between fetuses on the ground of disability, citing Articles 1-4 (General Principles and Obligations) and Article 5 (Equality and Non- Discrimination).
15. In Spanish law, Act 2/2010 allows for voluntary termination of pregnancy up to 14 weeks, but permits abortion until 22 weeks of gestation provided there is a “risk of serious anomalies in the fetus”, and beyond 22 weeks when “an extremely serious and incurable illness is detected in the fetus”. In the Committee’s 2011 report on the Rights of Persons with Disabilities in relation to Spain, it stated in paragraph 18, that “*the Committee recommends that the State party abolish the distinction made in Act 2/2010 in the period allowed under law within which a pregnancy can be terminated based solely on disability*”⁵. The exact same recommendation was made with regard to Hungary’s abortion laws in 2012⁶.
16. In Austrian law, like in the UK, it is legal for a fetus to be aborted up to the onset of birth if serious damage to the health of the fetus can be expected. In a similar vein, the 2013 CRPD Committee report for Austria recommended that “*the State party abolish any distinction in the period allowed under law within which a pregnancy can be terminated based solely on disability*”⁷.

B. Right to Life for disabled foetuses

17. Article 10 of the UNCRPD states that: “*States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others*”.
18. Article 10 of the CRPD does not restrict the right to life to those who are born. It is noteworthy that the Convention uses the term ‘*human being*’ instead of ‘*person*’. Given that a human fetus belongs to the human family (as it has human DNA), we can assume, therefore, that Article 10 seeks to protect the lives of fetuses with disabilities also.
19. The UK Initial Report on the UNCRPD in 2011 noted the concerns of disability rights organisations under Article 10: “*concerns were expressed around the approach to abortion in the UK, where disabled people have suggested a bias towards termination of pregnancies if a child is likely to be disabled*”⁸.

⁵ CRPD Committee, *Concluding Observations: Spain*, paras. 17-18, U.N. Doc. CRPD/C/ESP/CO/1 (2011).

⁶ CRPD Committee, *Concluding Observations: Hungary*, paras. 17-18, U.N. Doc. CRPD/C/HUN/Q/1 (2012).

⁷ CRPD Committee, *Concluding Observations: Hungary*, paras. 17-18, U.N. Doc. CRPD/C/AUT/1 (2013).

⁸ *UK Initial Report on the Convention of Rights of Persons with Disabilities* (2011), Office for Disability Issues, HM Government, p.114.

20. This echoes a statement made by the Disability Rights Commission (DRC) in 2001 which argues that section 1(1)(d) of the Abortion Act in the UK *“is offensive to many people; it reinforces negative stereotypes of disability and there is substantial support for the view that to permit terminations at any point during a pregnancy on the ground of risk of disability, while time limits apply to other grounds set out in the Abortion Act, is incompatible with valuing disability and non-disability equally. In common with a wide range of disability and other organisations, the DRC believes the context in which parents choose whether to have a child should be one in which disability and non-disability are valued equally.”*⁹

Recommendations

21. **Remove Section 1(1)(d) of the Abortion Act 1967.**

⁹ <http://news.bbc.co.uk/1/hi/health/1502827.stm>