Members of Parliament
House of Commons
London
SW1A 0AA

10 May 2024

Specialists in Fetal Medicine – concerns over amendments to alter abortion limits

Dear Members of Parliament,

We are writing to you as UK specialists in fetal and maternal-fetal medicine and doctors who provide care for women who need abortion at later gestations. We are concerned about amendments to the Criminal Justice Bill, specifically amendment NC15 which seeks to reduce the abortion time limit from 24 weeks to 22 weeks and amendment NC41 which would make it illegal for doctors to provide an abortion beyond the 24 week time limit where a diagnosis of Down's syndrome has been made.

Please can we:

- Strongly urge you to oppose NC15 and NC41 and any attempt to remove or reduce abortion access for women in England and Wales;
- Share the evidence which shows why there is no clinical justification for reducing the time limit based on national outcomes data and our own experience as specialist clinicians;
- Explain why women may need abortions beyond 22 weeks including for fetal anomaly, their own health issues, and serious personal issues which impact their ability to continue a pregnancy; and
- Outline why a diagnosis of Down's syndrome should not be a reason to stop providing abortion care for women post-24 weeks' gestation and the implications of the amendment on wider post-24 week abortion care.

If you wish to contact us, you can do so via our professional organisation the Royal College of Obstetricians and Gynaecologists (RCOG) – policy@rcog.org.uk and one of the signatories will get back to you.

Amendment NC15

Amendment NC15 seeks to reduce the abortion time limit from 24 weeks to 22 weeks in the Infant Life (Preservation) Act 1929 and The Abortion Act 1967.

The Abortion Act 1967 originally set the abortion time limit at 28 weeks. Following extensive reviews of the medical evidence this was reduced to 24 weeks in 1990 to reflect medical advances. While there has been further progress made within perinatal medicine, progress regarding gestational age and viability has been small and it is disingenuous to use this to justify further reductions in the time limit.

The most up to date paper published in the British Medical Journal[1] on the impact of British Association of Perinatal Medicine's Extreme Prematurity framework on survival for babies born at less than 27-weeks' gestation in England and Wales found that in 2020-2021, only 5% of babies born

[1] https://bmjmedicine.bmj.com/content/2/1/e000579

at 22 weeks survived to discharge from neonatal care. Previous iterations of this data have found that of those babies who survive to discharge, only approximately 50% will survive to 1 year old.

Babies are unable to survive pre-22 weeks and a significant number who are born at 22-24 weeks will be stillborn. The study in the BMJ also found that all babies born at 22 weeks who survived had a major morbidity. Babies born at such low gestations will often have severe disabilities and require life-long care.

It remains the case, therefore, that despite some progress since 1990, survival rates of babies born at 22 weeks have not significantly increased and there is no justification for reducing the abortion time limit to 22 weeks on this basis.

Impact of this amendment on women's care

If passed this amendment will have a devastating impact on abortion care provided to women across the country. Later gestation abortions are very rare. In the latest complete annual government statistics for abortions in England and Wales (2021)[2] only 1% (2686) of abortions took place after 20 weeks' gestation. Overall, roughly 1500 women a year access care at 22 and 23 weeks.

The majority of abortions performed at later gestation are for fetal anomaly. Serious fetal anomalies that proceed to abortion at later gestation are often first detected via ultrasound scans performed between 18 to 21 weeks' gestation. However they may be performed up to 23 weeks' gestation if there are difficulties with diagnosis and the scan needs to be repeated. Following this, diagnostic tests to confirm a diagnosis, such as amniocentesis, can take over three weeks to give a reliable result, and it can be even longer with newer technologies such as exome sequencing. Furthermore, specialist scans such as cardiac scans or MRI scans for fetal brain anomalies may be required to provide a diagnosis and prognosis.

To add to this, tests can fail to give definitive results or may need to be repeated. **This means that were the gestation limit reduced to 22 weeks a woman will have passed the abortion time limit before she has even received a diagnosis and will result in her having no time to come to terms with the diagnosis or to consider her options.** This could lead to a woman who is told of a possible significant fetal anomaly from a scan potentially feeling forced to proceed with an abortion before she has all of the available information.

While an abortion on the grounds of fetal anomaly may still appear to be available at this point, as practitioners we know that the moment the broader time limit passes, the willingness of doctors to certify an abortion as meeting these stringent grounds decreases significantly. The reality is that what counts under ground E is open to interpretation and the removal of Grounds C and D at 22-24 weeks will force women to make a decision on terminating the pregnancy before the diagnostic pathway has been completed.

Women and girls who access abortion care at 22-24 weeks' gestation

Women who need an abortion overwhelmingly access care at the early stages in their pregnancy. 90% of abortions occur before 10 weeks, and those who do present at 22-24 weeks, who are not having an abortion due to fetal anomaly, are frequently very vulnerable. If their ability to access

[2] https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2021

safe abortion care up to 24 weeks is removed, this can have a lasting detrimental impact and may even be life-threatening.

Research by one provider[3] found, in line with our own experiences, that the most common reasons other than fetal anomaly for needing an abortion at later gestations were:

- Domestic abuse, particularly abuse which has worsened during pregnancy;
- Health problems of the woman herself, both mental and physical;
- A change in circumstances during pregnancy such as the loss of a partner or a serious illness diagnosis for an existing child;
- Late detection of pregnancy, often as a result of health conditions or hormonal contraception;
- Young women under the age of 18 who may have not realised they were pregnant or concealed it through fear.

Reducing the abortion time limit from 24 weeks to 22 weeks will target these especially vulnerable women and girls, forcing them to continue with a pregnancy that they do not want, which can have a detrimental and lasting impact on their health, safety, and wellbeing. No one would want to underestimate the difficulty in making a decision to end a pregnancy at such a late stage. However, forcing someone to continue an unplanned or unwanted pregnancy in these circumstances may put their life at risk.

Amendment NC41 – Essential to maintain post-24 week abortions for Down's syndrome diagnosis

Amendment NC41 would make it illegal for doctors to provide an abortion post-24 weeks if a diagnosis of Down's Syndrome has been made. A diagnosis of Down's syndrome includes increased risk of specific heart problems, digestive system anomalies and ventriculomegaly (fluid on the brain) which can have a significantly negative impact on the long term viability of a fetus.

Currently women have the choice to access screening tests for Down's syndrome at specific stages during their pregnancy, and can choose to continue with a pregnancy or have an abortion depending on the results. They can also choose not to access the test – and national figures indicate approximately 40% of women opt not to undergo antenatal diagnosis. This choice should be supported and maintained.

However for those that do wish to know, the completion of the diagnostic pathway for fetal anomaly can take time, and women may pass the current time limit before receiving a final diagnosis. Allowing the woman time to come to terms with a diagnosis and make a decision about whether to end or continue with a pregnancy based on her personal circumstances is an important part of providing safe and supportive care, which is why maintaining the option for an abortion post-24 weeks is so essential.

Data from the NCARDRS Congenital Anomaly Statistics[4] shows that in 2021, 700 babies were born with Down's syndrome compared to 1049 pregnancies which resulted in abortion following screening tests during the antenatal period. Almost all pregnancies that are ended as a result of antenatal testing are ended prior to the 24 week limit. The current abortion law enables doctors to

[3] https://www.bpas.org/media/dmjf3y0l/why-do-women-need-abortions-after-20-weeks.pdf
[4] https://digital.nhs.uk/data-and-information/publications/statistical/ncardrs-congenital-anomaly-statistics-annual-data/ncardrs-congenital-anomaly-statistics-report-2021#resources

make decisions about the likely impact of screening test results on a case-by-case basis, allowing women and their families to make the right decision based on their own particular diagnosis.

We are concerned about the impact that this amendment would have on providing post-24 week abortion care, and the cruelty that would be inflicted upon women forced to continue with a pregnancy and to give birth against their wishes. There are many reasons why a woman may decide to end their pregnancy upon receiving a diagnosis of Down's syndrome, including that she may already have a child with Down's syndrome or another disability and feel unable to provide fully supportive care to them both.

We are further concerned that this amendment would move away from the principle of medical decision-making on a case-by-case basis in relation to reasons why women may need or want to end a pregnancy – and instead substitute this expert opinion with that of a blanket decision by MPs in specific cases. There is a very real risk that starting down this path will harm individual women who may not present 'typically' and pregnancies where the prognosis is significantly worse than may usually be expected.

It is vital that women's right to choose is maintained, as only a woman, supported with the advice of her doctors, should be able to decide whether to continue or end her pregnancy.

Specialist Doctors urge MPs to vote against NC15 and NC41

As medical professionals who care for patients who need later gestation abortions we are alarmed that these amendments has been tabled to the Criminal Justice Bill.

They would have a catastrophic impact on the care that we are legally allowed to provide to our patients, as well as on women's ability to make decisions about their pregnancy. While the numbers of women affected is small, if passed these amendments will deprive the most vulnerable and high risk girls and women of access to essential and potentially life-saving healthcare. It will force other women to make a decision to end or continue a much wanted pregnancy before the diagnostic pathway is completed. This goes against best practice guidance and basic medical care decision making.

We strongly ask that all Members of Parliament vote against amendments NC15 and NC41 if pushed to a vote at Report Stage.

Yours faithfully,

Professor Katie Morris, Professor of Maternal Fetal Medicine, University of Birmingham and President of the British Maternal and Fetal Medicine Society

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Professor Basky Thilaganathan, Director of Fetal Medicine, St George's University Hospital

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Professor Anna David, Consultant in Maternal Fetal Medicine, University College London Hospital

Professor Gordon C S Smith, Professor of Obstetrics & Gynaecology and Honorary Consultant in Fetal Medicine, University of Cambridge and The Rosie Hospital, Cambridge

Professor James Walker, Professor Emeritus, Obstetrics and Gynaecology, University of Leeds

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