



Northern Ireland
Assembly

Research and Information Service Bill Paper

18th March 2021

RaISe

Severe Fetal Impairment Abortion (Amendment) Bill: Motion under Assembly Standing Order 34

NIAR 72-21

This paper supplements section 5 of the RaISe Bill Paper entitled ‘Severe Fetal Impairment Abortion (Amendment) Bill’, dated 5th March 2021 (Paper 16/21, NIAR 54-21). It details the Assembly debate on the 8th March 2021 regarding a Member’s motion under Standing Order 34, which sought the Bill’s referral to the Northern Ireland Human Rights Commission for advice on its human rights compatibility. Although the Assembly passed this motion, the Bill still progressed to its Second Stage, and has since passed this before being referred to the Committee for Health.

Paper 17/21

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Key Points

- On the 16th February 2021, the Severe Fetal Impairment Abortion (Amendment) Bill as proposed ('the SFIAA Bill') had its First Stage in the Assembly. At that time, Paula Bradshaw MLA raised a point of order, and sought written evidence on the Bill's content from the Northern Ireland Human Rights Commission (NIHRC), before it was further scrutinised by the Assembly. As this request was made under a point of order – and not under Standing Order 34 – NIHRC advice was not requested at this stage.
- Standing Order (SO) 34 of the Assembly permits Public Bills, draft Bills and proposals for legislation to be referred to the Northern Ireland Human Rights Commission (NIHRC). It enables the Assembly to seek the NIHRC's advice on whether a Bill, draft Bill or proposal is compatible with current human rights law. This SO has been used on only two occasions - most recently in relation to the Severe Fetal Impairment Abortion (Amendment) Bill ('SFIAA Bill'), as explained in this paper.
- On the 8th March 2021, MLA Bradshaw brought a motion to the Assembly under SO 34, seeking the NIHRC's advice on the SFIAA Bill's compatibility with human rights. In response, Jim Allister MLA opposed her motion. The Assembly then passed the motion and so referred the SFIAA Bill to the NIHRC.
- Following this, Jonathan Buckley MLA raised a point of order and sought to clarify two points relating to the motion. These were:
 - (i) Whether the NIHRC automatically receives all legislation that is introduced in the Assembly?; and
 - (ii) Whether the Assembly's passing of MLA Bradshaw's SO 34 motion would impact on the Bill proceeding to Second Stage?

The Speaker confirmed that the NIHRC is advised of every Bill immediately after a Bill's tabling; and that the passage of the motion under SO 34 would have no effect on the SFIAA Bill progressing to Second Stage.

Introduction

The Assembly's Research and Information Service produced a Bill Paper entitled 'Severe Fetal Impairment Abortion (Amendment) Bill',¹ dated 5th March 2021 (Paper 17/21, NIAR 54-21).

This paper supplements section 5 of that earlier Bill Paper. It details the Assembly's consideration of a motion brought under Standing Order 34 on the 8th March 2021. This motion sought the Bill's referral to the Northern Ireland Human Rights Commission (NIHRC), for its advice on the Bill's compatibility with prevailing human rights law.²

This paper first details the background to this SO 34 motion by specifying what SO 34 permits, and the initial request from an MLA for NIHRC advice under a point of order at the Bill's First Stage (section 1). The Assembly's consideration of the SO 34 motion on the 8th March is then detailed (section 2).

¹ RaISe, *Severe Fetal Impairment Abortion (Amendment) Bill* (2021)

² Northern Ireland Assembly, *Standing Orders* (2021) SO 34 – see <http://www.niassembly.gov.uk/assembly-business/standing-orders/standing-orders-08-mar-2021/>, retrieved 18th March 2021

1 Background

This section details motions that can be brought under Assembly SO 34, and an initial request for NIHRC advice made at the Bill's First Stage.

1.1 Northern Ireland Assembly Standing Order 34

SO 34 details how and when the Assembly may consider a motion referring a Public Bill, draft Bill or proposal for legislation, to the NIHRC for advice on its compatibility with human rights. The SO states:

34. Public Bills: Human Rights Issues

(1) For the purpose of obtaining advice as to whether a Bill, draft Bill or proposal for legislation is compatible with human rights (including rights under the European Convention on Human Rights) the Assembly may proceed on a motion made in pursuance of paragraph (2).

(2) Notice may be given by any member of a motion "That the Northern Ireland Human Rights Commission be asked to advise whether the.....Bill (or draft Bill or proposal for legislation) is compatible with human rights".

(3) In the case of a draft Bill or proposal for legislation, notice of such a motion may be given at any time after the draft Bill or proposal for legislation is published for public consultation.

(4) In the case of a Bill, notice of such a motion may be given at any time after the Bill's introduction.

(5) On a motion being made under paragraph (2) a brief explanatory statement may be made by the member who proposes the motion and by a member who opposes it, and the Speaker shall then put the question without further debate.

(6) Any advice tendered to the Assembly by the Northern Ireland Human Rights Commission in response to a request made in pursuance of paragraph (2) shall be circulated to all members of the Assembly and published in a manner determined by the Speaker.³

³ Northern Ireland Assembly, *Standing Orders* (2021) SO 34 – see <http://www.niassembly.gov.uk/assembly-business/standing-orders/standing-orders-08-mar-2021/>, retrieved 18th March 2021

1.2 Request for NIHRC advice at First Stage

At the SFIAA Bill's First Stage on the 16th February 2021, Paula Bradshaw MLA raised a point of order. This sought to request that the NIHRC provide written evidence on the Bill's human rights compatibility, before the Bill proceeded to Assembly scrutiny. Her request was made 'with reference to Assembly Standing Orders (SOs) 30(5-6) and 34'.⁴

SO 30(6) states:

*The Speaker shall, as soon as is reasonably practicable after the introduction of a Bill, send a copy of it to the Northern Ireland Human Rights Commission.*⁵

The Speaker's response to MLA Bradshaw's point of order confirmed that:

*The Bill will be printed, and, through the Business Committee, it will go through the normal, ongoing process by which legislation always proceeds. In my role as Speaker, I will ensure that the legislation will be governed, processed and managed properly.*⁶

As this initial request was made under point of order, and not a formal motion prescribed by SO 34, NIHRC advice was not sought at this stage. Following this point of order, MLA Bradshaw then brought a motion under SO 34, as detailed below.

⁴ NIA OR 16 Feb 2021, p3

⁵ Northern Ireland Assembly, *Standing Orders* (2021) SO 30(6) – see <http://www.niassembly.gov.uk/assembly-business/standing-orders/standing-orders-08-mar-2021/>, retrieved 18th March 2021

⁶ As cited in footnote 4

2 Motion under Standing Order 34: 8th March 2021

This section details the Assembly's consideration and approval of the SO 34(2) motion brought by MLA Bradshaw, and a further point of order raised by another MLA following this.

2.1 Assembly consideration and approval of motion

On the 8th March 2021, MLA Bradshaw brought a motion under SO 34(2) to the Assembly. At that time, the Speaker noted that this was only the second time such a motion had been considered by the Assembly,⁷ and therefore explained the procedure as follows:

Mr. Speaker: As this is only the second time that the Assembly has considered a motion under Standing Order 34, I will explain the procedure. Standing Order 34(5) restricts the debate to two Members. Only the proposer of the motion and a Member who opposes it may make a brief statement. I have ruled that the time limit for each statement will be five minutes, as was the case on the first occasion. Standing Order 34 also states that, after both statements have been made, the Question must be put without further debate. Members should not try to make interventions, and I will not take any points of order until this item has concluded. The motion does not require cross-community support.

MLA Bradshaw then stated:

*Ms. Bradshaw: I beg to move
That the Northern Ireland Human Rights Commission be asked to advise whether the Severe Fetal Impairment Abortion (Amendment) Bill is compatible with human rights.*

Mr. Speaker: You have five minutes to propose the motion.

Ms. Bradshaw: Thank you, Mr. Speaker. I am particularly grateful, on International Women's Day, to those women who have campaigned so courageously for women's rights.

The proposer of the Bill argues, fundamentally, that the current regulations are discriminatory and therefore a breach of human rights under the United Nations Convention on the Rights of Persons with Disabilities 2006 and the Disability Discrimination Act 1995.

Since it is entirely right to establish what those rights are and legislate accordingly, it is essential, before proceeding with the legislation, to explore the Northern Ireland Human Rights Commission's view on whether the Bill is compatible with human rights obligations and whether Northern Ireland

⁷ The first and only other instance of a motion under SO 34 was when Fra McCann MLA sought to refer the Welfare Reform Bill to the NIHRC, on 22nd October 2012. On this occasion, the Assembly divided and the motion was defeated, with 40 Ayes and 44 Noes. See NIA OR 22 October 2012, p11

may currently be in breach of the convention with regard to the rights of the unborn child.

All human rights are a balance, and it should be noted that, in 2008, the chair of the convention, Theresia Degener, said:

"Disability rights and gender equality are two components of the same human rights standard that should not be construed as conflicting".

She also noted that using the convention in any effort to restrict or prohibit access to safe abortion:

"constitutes a misinterpretation of the Convention on the Rights of Persons with Disabilities."

The question arises as to how the convention should be interpreted in that regard.

One further UN convention is of relevance to the Bill, as it specifically seeks to amend regulations arising from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It was adopted by the United Nations General Assembly in 1979 and applied in the United Kingdom since 1986, with reference to the report on 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' of 2018. To be compatible with international human rights standards, therefore, Members will want to be assured that the amendments to the relevant regulations proposed in the Bill are compatible with the recommendations to the CEDAW report, as contained in paragraphs 85 and 86 and as explicitly required in Westminster legislation.

Mr. Speaker, will you ask the gentleman behind me to stop speaking, please?

A Member: *Hear, hear.*

Mr. Allister: *Apologies.*

Ms. Bradshaw: *Section 9(1) of the Northern Ireland (Executive Formation etc) Act 2019 is specific in requiring the Secretary of State to ensure the implementation of paragraphs 85 and 86 of the CEDAW report. Paragraph 85(b)(iii) of the report directly addresses the balance of rights in this legislation. It requires legislation to allow access to abortion in the case of:*

"Severe fetal impairment, including fatal fetal abnormality, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term."

As such, it needs to be noted that this piece of legislation does not distinguish between severe and fatal, but it does require the ending of stereotypes and ongoing social and financial support for women who decide to carry such pregnancies to term. It is right to seek advice on exactly how that is to be understood in terms of the international human rights obligations arising from it.

Members may also welcome advice on the human rights implications of the Supreme Court judgement of 7 June 2018, even though it was, at the time, obiter dictum. It was endorsed by the High Court in Belfast in October 2019, and it clarified the incompatibility of the then existing law on abortion in Northern Ireland with human rights obligations. Moreover, Members may welcome advice on any potential implications for economic and social rights arising as an unintended consequence of the Bill.

The motion is not a commentary on the intention of the Bill, which provides for a welcome discussion on how best to ensure the ongoing support for women to take babies to term, if available, as well as around the urgent need to stop the perpetuation of stigma around such conditions as Down's syndrome. Rather, it is a request for clarity on the best way to ensure that disability rights and gender equality are treated and advanced in legislation and public policy as part of the same internationally recognised human rights standards.

In closing, it is appropriate, on this day, to note that women's rights are central to the issue. The question is about how they are to be interpreted. We should never underestimate how important that is. In addition to the lack of support throughout their life for women who choose to carry pregnancies to term in the event of a diagnosis of severe impairment, there is clear evidence that the impact of female-specific health conditions, such as heavy menstrual bleeding, endometriosis and pregnancy-related issues on women's lives, including on workforce participation, productivity and years lived in good health, is overlooked. Furthermore, since the Bill is predicated on disability rights, it is to be hoped that the motion will have the full support of the Assembly —

Mr. Speaker: *Time is up.*

Ms. Bradshaw: — *and that the advice of the Human Rights Commission can be provided promptly. Thank you, Mr. Speaker.*⁸

Then, Jim Allister MLA was called by the Speaker and opposed the motion as follows:

Mr. Speaker: *I call Jim Allister, who seeks to oppose the motion. The Member has five minutes in which to do so.*

Mr. Allister: *There is such a compelling irony in someone rising in the House to invoke the cause of human rights in order to protect the bringing*

⁸ NIA OR 8 March 2021, pp10-11

of death to the womb. The unborn should be in the safest possible place when they are in the womb, yet abortion, of course, makes it the most dangerous place for some. Then, to suggest that, somehow, one should invoke the issue of human rights in order to protect the bringing of death to the womb is not just absurd but an irony beyond description.

It is an irony that is added to by the very bringing of this motion in circumstances in which it makes no difference. A motion under Standing Order 34 will not stop the Second Stage debate on the Bill. It will not, if the House approves the Second Stage, cause the Bill to be stopped from proceeding to Committee Stage. It will not bring into play views that otherwise would not be heard, because every Bill that comes to the House, particularly one of this nature, as of right and of necessity, will go to the Northern Ireland Human Rights Commission for its views as a consultee.

Here we have a motion demanding that something that will inevitably have to happen anyway be done. It really is such empty grandstanding to bring such a motion to the House. The Human Rights Commission will be consulted. It will have its say. It does not take Ms. Bradshaw to table a motion to cause it to have its say, so it really is grandstanding of a particular nature on this occasion. When you add to that the invocation of the very notion of human rights in the context of bringing death to human beings, it is quite, quite out of place.⁹

Following this, the question of whether to approve or reject the motion was put to the Assembly. The motion was agreed as follows:

Resolved:

That the Northern Ireland Human Rights Commission be asked to advise whether the Severe Fetal Impairment Abortion (Amendment) Bill is compatible with human rights.¹⁰

2.2 Further point of order

Following the approval of the motion, Jonathan Buckley MLA raised a point of order. MLA Buckley sought to confirm that the NIHRC had already received a copy of the Bill, and that the passage of the SO 34 motion would have no effect on the Bill's proceeding to Second Stage. The Speaker responded to this further point of order as follows:

Mr. Buckley: *On a point of order, Mr. Speaker. I share the concerns of the Member who spoke previously about the grandstanding nature of the motion. The Speaker will know that the Health Committee has already requested the views of the Northern Ireland Human Rights Commission, something that my party supported. That therefore begs the question of why*

⁹ NIA OR 8 March 2021, p11

¹⁰ As cited immediately above

the Member felt it necessary to bring the motion to the House today. Can the Speaker confirm that the Human Rights Commission, as a statutory consultee, automatically receives all legislation that is introduced in the Assembly? Furthermore, will he confirm that the passing of this motion has no impact on the Bill's proceeding to Second Stage?

Mr. Speaker: *I thank the Member for his point of order. I have already made it very clear that the Human Rights Commission is advised of every Bill that comes to the Chamber immediately after its tabling. The Human Rights Commission therefore was advised of the Bill on the afternoon that it had its First Stage.*

Mr. Buckley: *Further to that point of order, Mr. Speaker, can you also clarify that it will have no effect on its moving to Second Stage?*

Mr. Speaker: *It will not have any effect on the timing of the Bill's Second Stage. That is correct. I suppose that, in one sense, it means that, although the Human Rights Commission is a formal statutory consultee and will no doubt make its contribution to the debate in due course, under the Standing Order 34 action, once the Human Rights Commission provides a document, it will be provided to the Speaker. I will then make sure that that is delivered to every Member of the Assembly.¹¹*

In sum, the Speaker confirmed that the NIHRC is advised of every Bill immediately after a Bill's tabling; and that the passage of the SO 34 motion would have no effect on the SFIAA Bill progressing to Second Stage.

¹¹ NIA OR 8 March 2021, pp11-12