Thank you, Mr President. I now move amendment 27 which refers to page 12 and asks that we omit lines 19 and 20. Mr President, I am very pleased to move this amendment which would remove clause 6(8)(d)(ii) from the Bill. As the law currently stands as defined by the 1995 Act, it is legal to terminate from 24 weeks to full term when the unborn has what is described as a ‘fatal foetal abnormality’ such as they are deemed incompatible with life – that means that they have something fatally wrong with them and that they are unlikely either to survive birth, or are likely to die soon afterwards. And I am not proposing to change the law in that regard. But the Bill before us today maintains provision for termination in the case of fatal foetal abnormality in clause 6(8)(d)(i), but it also introduces an entirely new provision in clause 6(8)(d)(ii). This proposes allowing abortions to be permitted from 24 weeks right up to birth in cases of disability. What the Bill refers to as ‘a serious impairment’ which would ‘limit both the length and quality of the child’s life’.

When challenged on this point in the other place, Dr Allinson made two key points. First, he argued that the Isle of Man Law needs to be brought up to date with that of Britain, referring to the 1990 innovation for allowing abortion on the basis of disability in Great Britain from 24 weeks to term. I believe, and for reasons that I will set out, that to bring ourselves up to date with a nearly 30-year-old innovation would in fact be a retrogressive step. And second, Dr Allinson highlighted the fact that clause 6(9) requires the provision of counselling for women seeking a termination under this Act and that clause 6(14)(d) requires that guidelines issued under subsection (12) must be framed so as to secure that:

\emph{there is available to a pregnant woman information in writing from support groups and other organisations representing people with disabilities.}

I welcome the provision of information from such organisations for women who discover that the child they are carrying has a disability, but this in no sense justifies the termination of children from 14 weeks onwards just because they are disabled.

Mr President, if we vote for the Bill before us today without this amendment we will be sanctioning the abortion of babies after 24 weeks, right up to birth, a timeframe when the baby is viable and sentient. And it no longer makes sense to talk impersonally of a foetus. We will be sanctioning the abortion of such babies from 24 weeks up to birth simply because they have a disability. I would submit that it is not possible to sanction such termination during that period when the baby is viable outside the womb, unless one is content to send the message that the lives of babies with disabilities are of less value and are less deserving of protection than able-bodied babies.

No doubt the reason for suggesting this change is that it was mandated in Great Britain through a backbench amendment in 1990. But, as I said, things have moved on significantly since then. In 1990 the landmark Disability Discrimination Act had not been passed and there was no Disability Rights Commission. That Act did not come into force until 1995 and the Disability Rights Commission was not set up until several years after that. One of the things that the Disability Rights Commission quickly did was to speak out against the discriminatory nature of Britain’s abortion law and the Commission said of the provision – it said this, from the Disability Rights Commission:
The Section 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.

And that state of affairs continues, rightly, to be a source of embarrassment for the United Kingdom. Paragraphs 12 and 13 of the concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland published last October by the United Nations Committee on the Rights of Persons with Disabilities, states this:

The Committee is concerned about perceptions in society that stigmatize persons with disabilities as living a life of less value than that of others and about the termination of pregnancy at any stage on the basis of fetal impairment. The Committee recommends that the State ... amend its abortion law accordingly.

We have something similar in the spirit of our Equality Act which prevents discrimination on the grounds of disability. But if all that was not enough, Mr President, the case for this amendment has been strengthened since clauses stage in the House of Keys because of developments earlier this month in the Supreme Court. So on 7th June, the Supreme Court ruled – in other words, after the clauses stage had been taken in the other place – that while a prohibition of abortion in the context of fatal foetal abnormality where a baby is unlikely to survive birth or die soon after which is not human rights compliant:

... it is not possible to impugn as disproportionate and incompatible with Art 8 legislation that prohibits abortion of a foetus diagnosed as likely to be seriously disabled. A disabled child should be treated as having equal worth in human terms as a non-disabled child.

That is quite a lengthy quote but I give the last sentence of it again.

A disabled child should be treated as having equal worth in human terms as a non-disabled child.

That was the unanimous decision of all judges, 7-0, in the Supreme Court on 7th June. And if I were to extract relevant parts of the judgment I would include the following statements.

The unborn foetus is not in law a person, although its potential must be respected.

And:

... in principle a disabled child should be treated as having exactly the same worth in human terms as a non-disabled child.
This is also the consistent theme of the United Nations Committee on the Rights of Persons with Disabilities expressing concerns about the stigmatising of persons with disabilities as living a life of less value than that of others, and about the termination of pregnancy at any stage on the basis of foetal abnormality, and recommending states to amend their abortion laws accordingly.

And again, UNCRPD – the United Nations Committee on the Protection of the Disabled – is based on the premise that if abortion is permissible there should be no discrimination on the basis that the foetus, because of a defect, will result in the child being born with a physical or mental disability. This is particularly so in the light of the Committee’s consistent criticism of any measure which provides for abortion in a way which distinguishes between the unborn on the basis of a physical or mental disability.

My final extract from that judgment from 7th June:

...children born with disabilities, even grave disabilities, lead happy, fulfilled lives. In many instances they enrich and bring joy to their families and those who come into contact with them. Finally, the difficulty in devising a confident and reliable definition of serious malformation is a potent factor against the finding of incompatibility.

So, given the rationale of the Supreme Court not to recognise a human right to terminate a pregnancy on the basis of disability arising from the fact that they argue a disabled child should be treated as having equal worth as a non-disabled child, I would submit that it is not possible for us to mandate the termination of those lives without entering very dubious moral territory.

Hon. Members will, I think, have been circulated by Lord Shinkwin from the House of Lords, who is one of the leading campaigners against the discrimination that this Bill would introduce without this proposed amendment, and I will not go over his words, I let them speak for themselves. But perhaps I can just take a sentence from what he has written, I believe. He writes, ‘Clause 6(8)(d)(ii) of the Bill defies the logic of genuine equality and would instead enshrine deadly disability discrimination in Manx law’.

It says that, ‘Human beings like me’ – like him, like Lord Shinkwin – ‘who live with a serious impairment which is likely to limit both the length and quality of his life can be aborted right up to birth. I believe,’ he continues, ‘that to allow this clause to stand would be one of the most regressive and discriminatory acts the Isle of Man has ever taken against its own future citizens’.

That is the view expressed by Lord Shinkwin and I know that his view has been welcomed by other disability charities. Disability Rights UK, for instance, which is the leading charity of its kind in the United Kingdom run by and for people with lived-experience of disability or health conditions has been outspoken in its commitment to end disability discrimination before birth. And I might quote from Liz Sayce, the Chief Executive Officer of Disability Rights UK, who says that she congratulates Lord Shinkwin on raising this issue.

The Bill is not about the rights and wrongs of abortion, fundamentally it is about equality

Now, we could say, Mr President, that given that late term abortions have to be provided in England where English law will obtain we should not be out of line with Great Britain; but I would disagree with that. I would suggest that we do not need to follow England or the United Kingdom in this regard. We
can take a higher road and in so doing we can make it plain that in 2018 we have a different view of human rights than that which obtained and prevailed in England in 1990. I would suggest that we can take a moral lead on this issue and that we can put the Isle of Man in prime position on a moral map, challenging England to amend its own discriminatory legislation.

I repeat, I think, what I said in my Second Reading speech that I would want to afford as far as is possible within circumstances to give equal weight to the mother and to the child and to say that both lives matter. But even if one were to accept the premise that now we need to give more emphasis to the rights of the woman, it does not follow from that that we can sanction the termination of babies who are sentient and would be viable just because they have a disability. It seems to me that at this point, even if we have previously decided to prioritise the rights of the woman over the rights of the unborn, that is a different discussion once you come to that stage of viability – you are looking then at two sentient and viable lives and we need to foster a society that values them both.

In suggesting that we do not sanction for the first time the termination of sentient viable human beings, just because they have a disability, I want to be clear that I am very mindful of the challenge that that presents their mothers and indeed our society as a whole. I would very much welcome the provision of additional support for women who find that their child has a disability that is not a fatal foetal abnormality, after 24 weeks. The numbers we are talking about are small but it matters hugely. It matters hugely because of what it says about the kind of society that we want to have, and our view of disability and viable sentient human beings.

So I suggest, Mr President, knowing that Great Britain embraced its misplaced law before there was a proper regard for disability rights; knowing that the Disability Rights Commission spoke out strongly against the discriminatory provisions in English law; knowing that the United Nations Committee on the Rights of Persons with Disabilities has only just recently condemned Great Britain for its abortion law and recommended a change; knowing that the Supreme Court has now ruled since the Keys debate that there is no Article 8 case for abortion on the grounds of the child likely to be seriously disabled; and knowing all that we do about viability and about disability rights – I suggest that as a Council we cannot stand back and allow clause 6(8)(d)(ii).

I would strongly urge Council to vote for this amendment and to take an important lead in the British Isles sending the message that the lives of disabled people matter and that it is not appropriate or permissible to sanction the termination of viable sentient human beings up to birth purely for reasons of disability.

I beg to move the amendment in my name

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A full transcript of the debate can be accessed here