

Engender briefing on decriminalisation of abortion for the Scottish Parliament Citizen Participation and Public Petitions Committee

February 2023

1. INTRODUCTION

Women’s reproductive rights include the freedom and ability to decide if and when to have children and the right to high standards of sexual and reproductive health. However, women in Scotland currently have no legal right to end a pregnancy. That decision ultimately sits with doctors, two of whom must authorise a woman’s request for an abortion. Without this permission, abortion is illegal in Britain,¹ and both women and healthcare providers are subject to prosecution under the Abortion Act 1967. This is in contrast with almost all other European countries.²

The 1967 Abortion Act did not legalise abortion; it simply provided a strict set of criteria under which the procedure is permissible. The Act is underpinned by the belief that sexual and reproductive health is an area of state control, and its parameters are not rights-based or medically justified. Abortion policy is, therefore, out of step with evolving human rights norms, and women’s reproductive health is subject to exceptional and unnecessary restrictions.

In Scotland, the crime of procuring an abortion is not set out in the Offences Against The Person Act 1861, which applies in England and Wales, but in common law.³

2. INTERNATIONAL PERSPECTIVE

The relative stasis on abortion law in Scotland is out of step with momentum towards more liberalised abortion laws globally. Since 1996 at least 50 countries have amended laws to extend the grounds under which abortion is legal.⁴

International human rights bodies have repeatedly made clear the need for states to liberalise abortion law and policies. The UN High Commissioner for Human Rights (OHCHR) states that “human rights bodies have provided clear guidance on the need to decriminalise abortion [...] to

¹ Abortion was legalised in Northern Ireland in 2019. The regulations allow access to abortion up to 12 weeks gestation without conditionality.

² Abortion is available on request throughout at least the first trimester in almost all European countries. See: Women on Web (2011) The World’s Abortion Laws. Available at: https://www.womenonweb.org/en/media/inline/2012/9/13/abortionmap_2011-3.pdf.

³ We recognise that the petition under consideration (PE1969) refers to the Offences Against the Person Act, which does not apply to Scotland. Nonetheless abortion remains a crime unless certain criteria are met.

⁴ Centre for Reproductive Rights (2023) The World’s Abortion Laws. Available at: <https://reproductiverights.org/maps/worlds-abortion-laws/>.

ensure women's right to health as well as other fundamental human rights". It summarises interventions in favour of decriminalisation from the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on Economic Social and Cultural Rights (CESCR), and the Human Rights Commission, amongst others.⁵

3. THE NEED FOR DECRIMINALISATION

All major relevant professional health bodies in the UK, including the British Medical Association, the Royal College of Obstetricians and Gynaecologists, and the Royal College of Midwives, support decriminalisation of abortion,⁶ as well as campaigners such as Abortion Rights Scotland, the Scottish Trades Union Congress (STUC) and the British Pregnancy Advisory Service (BPAS), the largest independent provider of abortion care services in England and Wales.

This widespread expert support is based on women's current demand and future need for access to safe and legal abortion. Abortion is routine healthcare that is accessed by one in three women in their lifetime in the UK.⁷

Given the word limit for this initial briefing we briefly highlight key arguments for decriminalisation here:

- Women's reproductive health is subject to exceptional and unnecessary governance under legislation.
- The legal authority of two doctors has no medical basis and undermines timely access to abortion. It is entirely out of step with increasing emphasis on patient autonomy in other areas of medical treatment.
- Professional health bodies and abortion care practitioners tell us that the two-doctor requirement acts as a barrier to essential healthcare. It can lead to women continuing with an unwanted pregnancy or accessing unsafe services that may be harmful or even fatal.
- Following a lengthy investigation, the Westminster Science and Technology Committee recommended that the two-doctor requirement be removed, finding it served no benefit.
- Burdensome oversight is a drain on capacity within an NHS under extreme pressure.

⁵ OHCHR (2020) Information series on sexual and reproductive health and rights: Abortion. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf.

⁶ BMA (2019) The removal of criminal sanctions for abortion: BMA position paper. Available at: <https://www.bma.org.uk/media/1963/bma-removal-of-criminal-sanctions-for-abortion-position-paper-july-2019.pdf>; RCOG and FSRH (2022) RCOG and FSRH statement on decriminalisation of abortion. Available at: <https://www.rcog.org.uk/media/ly1lmvge/rcog-fsrh-joint-decrim-abortion-position-statement-august-2022.pdf>; RCM (2016) Position statements: Abortion. Available at: <https://www.rcm.org.uk/media/5530/rcm-position-statement-abortion-statement.pdf>.

⁷ Royal College of Obstetricians and Gynaecologists (2022) National Service Specification for NHS abortion care. Available at: <https://www.rcog.org.uk/media/ujmfhg0h/national-service-specification-for-abortion-care-nov-2022.pdf>.

- All other medical practice is governed by regulatory frameworks and not legislation. Such regulation would allow abortion care to adapt with emerging technology and updates in medical research and guidelines.
- Women should not be subject to prosecution for realising their human rights and accessing healthcare, nor should those who assist them. In recent years several women in England have been sentenced for procuring abortion medication, and many others have been investigated.⁸
- Regressions on abortion internationally, most prominently with the overturning of ‘Roe v Wade’ in the USA, highlight the need to future-proof abortion law in Scotland and embed reproductive rights.
- The impacts of anti-choice activity have been increasingly felt in Scotland in recent years, including harassment of women outside health facilities and the establishment of the anti-abortion Stanton Healthcare.⁹ Decriminalisation would safeguard against weaponisation of the law by such actors.
- Evidence from jurisdictions where abortion has been removed from the criminal law shows that decriminalisation does not lead to an increase in the rate of abortion.
- Decriminalisation would remove abortion from criminal law. However, the criminal law would still apply in circumstances where existing criminal offences are committed, such as assault or culpable and reckless conduct.

We now urge the Committee to seek further and fuller evidence regarding decriminalisation of abortion following its initial consideration of this petition.

FOR FURTHER INFORMATION

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ABOUT US

Engender is Scotland’s feminist policy and advocacy organisation, working to increase women’s social, political and economic equality, enable women's rights, and make visible the impact of sexism on women and wider society. We work at Scottish, UK and international level to produce research, analysis, and recommendations for intersectional feminist legislation and programmes.

⁸ Proudman, C (2022) ‘Think abortion is legal in Great Britain? Ask the two women currently facing life sentences’ The Guardian. Available at: <https://www.theguardian.com/commentisfree/2022/aug/19/abortion-legal-great-britain-women-life-sentences-roe-v-wade>.

⁹ Duggan, J (2022) ‘Controversial anti-abortion group accused of misleading women set to expand into Scotland’ iNews. Available at: <https://inews.co.uk/news/anti-abortion-group-misleading-women-scotland-1710460>.