The growing movement to decriminalise abortion

The British Pregnancy Advisory Service (BPAS) is a British reproductive healthcare charity that offers abortion care, contraception, STI testing, miscarriage management, and pregnancy counselling to nearly 80,000 women each year via our clinics in England, Wales, and Scotland. We also treat hundreds of Manx, Northern Irish, Irish, and European women seeking abortion.

At a policy level, we advocate for the provision of comprehensive reproductive healthcare services to all women and support the introduction of 'buffer zones' around abortion clinics to prevent harassment and protect access to services.

In February 2016, we launched the We Trust Women campaign to decriminalise abortion alongside a coalition of other charities and healthcare providers.

Background

Abortion in the United Kingdom is still a criminal offence. Under the Offences Against the Person Act 1861 (and similar common law provisions in Scotland), having or providing an abortion remains a crime that carries a life sentence.

Women accessing abortion in Great Britain (England, Scotland, and Wales, not Northern Ireland) do so under the Abortion Act 1967. But this law did not decriminalise abortion – it simply made it legal in certain, fixed circumstances. For instance abortions must be signed off by two doctors, they must take place in a hospital or premises approved by the Department of Health (such as abortion clinics), and women must meet one of the seven criteria that allows abortion. The most common of these is 'Ground C' - *"the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman".*

Not wanting a child is not a legal reason for having an abortion in Great Britain.

Political contect

Over recent years, anti-choice parliamentarians have lead a sustained attack on the integrity and professionalism of those involved in abortion care, which has impacted on the care we are able to provide to women. It has become clear that in order to safeguard the future of services, abortion needs to be removed from the control of politicians, and subjected to the same regulation as all other medical procedures, rather than the political whim of a small number of individuals acting on their own personal beliefs, and not clinical evidence and women's needs.

A 2017 study from the University of Kent found that these political attacks on providers, alongside the threat of prosecution that is unique to abortion provision, has had a negative impact on the recruitment and training of new abortion doctors, and their willingness to sign off abortions:

> *"It makes doctors frightened. Apart from the fact that it's a Cinderella position anyway because it's not seen as part of normal obs and gynae and on top of that they're now also frightened because they say, "Well if we don't cross this and if we don't tick that then somebody's going to take our registration away", and it's got nothing to do with good clinical care and I'm furious about it."*

Prosecutions

There are also increasing concerns about women themselves being prosecuted. In Northern Ireland, a woman was given a three month-suspended prison sentence in 2016 for ending a pregnancy using abortion medication purchased online, another woman is currently awaiting trial for buying abortion medication for her young daughter, and in 2017 a NI couple received police cautions for buying abortion medication online. Outside of Northern Ireland, in 2015 a 23-year-old mother from the North of England with a history of emotional and psychological problems was sent to prison for using abortion medication bought online to induce a pregnancy in the third trimester.

While prosecutions are rare, evidence suggests that an increasing number of women across the UK are putting themselves at risk of criminal sanction. The study "Barriers to accessing abortion services and perspectives on using mifepristone and misoprostol at home in Great Britain" published in the journal Contraception, found that 519 women from England, Scotland and Wales contacted one online abortion medication provider alone, Women On Web, seeking abortion medication over a 4 month period (Nov 2016 to March 2017.) The study found that nearly half the reasons given by women for seeking abortion medication only – 49 percent – were access barriers, and thirty percent were privacy concerns, including preferring the privacy of using pills at home – which is currently not permitted in England and Wales due to the Secretary of State for Health's interpretation of the law, as will be further detailed. Almost one in five (18%) GB women who contacted WoW stated that they want to use abortion medication online due to domestic violence or family control.

The impact of the law on abortion care provision

When passed in 1967, our Abortion Act was designed to protect women's health – yet in the 21st Century it is preventing the provision of the best possible medical care.

Two doctors' signatures

The Abortion Act requires that two doctors approve each request for a termination. This is a legal requirement which serves no clinical or safety purpose, and is separate to the process of obtaining informed consent, clinical assessment, and safeguarding. No other comparable medical procedure demands legal authorisation by doctors in addition to the normal requirements of obtaining informed consent. This requirement can cause delays for women. This can harm their health as abortion – while extremely safe – is safer the earlier it is performed. On occasion it can even force women to continue pregnancies against their will, seriously jeopardizing their health, as will be discussed below.

Home use and nurse/midwife-led care

The current interpretation of the law in England and Wales has prevented women being able to use medication for an early abortion at home in their own time, after it has been prescribed by a doctor, as women experiencing miscarriage are currently able to do. While in Scotland the Health Minister has decided to allow the home use of misoprostol, **the ability for women receiving treatment in England and Wales to do so remains entirely at the discretion of the Secretary of State for Health, rather than being informed directly by clinical guidance.** The requirement that women take the medication in clinics or hospital not only puts women at risk of miscarrying on their way home, but can also force women to attend multiple appointments – which can in some cases, as documented by the study of requests to Women on Web, compel women to seek pills online.

Nurse-led care

The current interpretation of the Act also prohibits the full development of nurse or midwife-led services, as is already the case in Sweden, Norway, and France, and that are now the model in delivering woman-centred maternity care. There is no reason why suitably qualified nurses and midwives could not perform surgical abortions if they wished to train in this area. Allowing those staff to offer this service would represent an important area of development, could reduce waiting times, and may often be preferred by women.

Women with complex medical conditions are forced to continue with pregnancies as they are unable to find doctors willing or able to treat them.

As noted, the fact that abortion continues to sit in the criminal law has a chilling effect on medical practice and doctors' willingness to authorise abortions, and the threat of prosecution that is unique to abortion can deter doctors from wanting to enter this fundamental area of women's healthcare. As a result of the lack of clinicians willing or able to authorise and perform abortions, **on a regular basis, women with complex medical must continue pregnancies they do not want which can pose a risk to their health.**

In England & Wales, 70% of NHS-funded abortions are performed in the not-for-profit independent sector. However, many women with co-morbidities, such as uncontrolled diabetes, epilepsy, blood disorders, strokes, and high BMI cannot be treated in a stand-alone community clinic, but must be managed within a hospital setting where there is swift access to back-up care and specific clinical expertise in the event of an emergency.

The British Pregnancy Advisory Service's (bpas) Specialist Placement Team is, on average, unable to find hospital-based treatment for two women a month. As bpas only sees a third of all women presenting for abortion care across the UK, the numbers of women overall will be higher - and it is reasonable to assume that **every week a woman with medical conditions is unable to get the abortion she needs.**

Myths about decriminalisation

Decriminalisation would lead to the deregulation of abortion services

Decriminalising abortion would not lead to the deregulation of abortion services. Abortion provision is already highly regulated and our current law does nothing to make the procedure safer or improve care for women, indeed, as previously noted – it can have the opposite effect. Outside of the criminal law, clinics are inspected by the Care Quality Commission (CQC), and healthcare workers are bound by their professional bodies, the General Medical Council (GMC) and the Nursing and Midwifery Council (NMC). Healthcare teams work to detailed, evidence-based guidance produced by the Royal College of Obstetricians and Gynaecologists (RCOG). If specific criminal sanctions relating to abortion were removed, abortion services would remain subject to the very significant body of regulation that governs all other aspects of health care provision, and negligent medical professionals would still face professional sanctions, as well as civil and criminal charges, for providing sub-standard care. Any clinic which does not meet those regulations can be closed down.

Decriminalisation would prevent prosecution for partners who assault their pregnant partners, causing the loss of a wanted pregnancy

Existing laws protecting pregnant women in domestic violence situations are woefully weak. Our decriminalisation bill would bring in new offences related to non-consensual abortion and

violence causing the loss of a wanted pregnancy – allowing women to get the justice they deserve.

Decriminalisation would increase the numbers of "late term" abortions

The previous parliamentary bill from Diana Johnson MP sought to decriminalise abortion up to 24 weeks of pregnancy, and it is not anticipated that a future bill would seek to change the current abortion time limit.

However, even if abortion was decriminalised entirely, there is no evidence removing criminal sanctions leads to an increase in later terminations. Prior to 1990 in Scotland there was no abortion time limit. Despite the legality, there was not a greater proportion of late term abortions performed. Women only request later abortion in exceptional circumstances.

There is no evidence that decriminalisation would lead to an increase in the number or rate of abortion. No woman aspires to experience an unwanted pregnancy and undergo an abortion. Our abortion rate is stable, and women try very hard to avoid unplanned pregnancy. Decriminalisation would not change that. Other jurisdictions in Canada and Australia have removed abortion from the criminal law without experiencing an increase in the rate of abortion.

Key supporters of the campaign

When launched in February 2016, a coalition of organisations supported the campaign, including the Royal College of Midwives, the Family Planning Association (FPA), Women's Aid, and Maternity Action. Since then, a number of other medical bodies have declared their support for decriminalisation. **In June 2017, the BMA voted to support decriminalisation, followed by the RCOG in September, and the FSRH in November.**

Growing societal support for decriminalisation

Public support for a woman's right to choose stands at a record high. Since 2005, support for allowing an abortion if the woman does not wish to have the child – a more liberal framework than is currently in place - has increased from 60% to 70% (NatCen polling.)

Polling conducted by YouGov (commissioned by bpas) has found growing public support for decriminalisation, with two-thirds of GB adults in 2017 opposing criminal sanctions for women who end their own pregnancies, and only 15% supporting, a significant shift since 2015.

When presented with an explanation of the current law and asked "Generally speaking, do you think a woman who intentionally ends her own pregnancy without obtaining authorisation from a doctor should or should not face imprisonment?", members of the public responded as follows:

	2015	**2017**
Should be imprisoned	20%	15%
Should not be imprisoned	54%	66%
Don't know	26%	20%

Northern Ireland

The Abortion Act 1967 does not extend to Northern Ireland. In Northern Ireland, abortions are only allowed on the grounds that (in the words of the ruling in *R v Bourne (1938)*) 'the probable consequence of the continuance of the pregnancy will be to make the woman a physical or

mental wreck'. This is interpreted tightly, and from April 2016 – March 2017, only 13 abortions were performed in Northern Ireland.

During 2016, 724 women from Northern Ireland travelled to England or Wales to access a termination. Since 1967, more than 60,000 women from Northern Ireland have been forced to travel. Only since June 2017 has this medical treatment been publicly funded.

In recent years, there has been a political drive to prosecute women who have made use of online medical abortion services. One woman who took pills she had obtained online was handed a suspended prison sentence. A woman and her partner accepted police cautions for having an abortion after the effect of the trial on her extended to the point she was considered at risk of suicide. One woman who helped her teenage daughter who was in an abusive relationship purchase pills is currently fighting the decision to prosecute her – a case that has been ongoing for more than two years. This final case was brought after a GP at the woman's surgery reported her to the police.

At the same time, the Northern Irish Human Rights Commission has taken the Northern Irish Government to court to force them to allow abortion in the case of rape or fatal foetal abnormality. This case is currently with the UK Supreme Court – it previously having been ruled that the failure to provide abortion services in these cases breaches the European Convention on Human Rights.

In recent years, there has been growing support for a change in law in Northern Ireland. According to a 2016 Amnesty poll:

- 58% of people think abortion should be decriminalised so there would be no criminal penalty for women who have abortions in Northern Ireland; 22% are opposed to this change
- 59% of people think abortion should be decriminalised so there would be no criminal penalty for doctors and medical staff who assist women to have abortions in Northern Ireland; 21% are opposed to this change.

Conscientious Objection

The ability to conscientiously object is written into the Abortion Act 1967 and Diana Johnson is clear that this provision would not be altered. The provision, as interpreted by the Supreme Court in 2014 in the case of *Greater Glasgow Health Board vs Doogan and Another* allows anybody to opt out of participating in a 'hands-on' way in abortion services – including prescribing or providing abortion medication.

Regulators such as the GMC and professional bodies such as the BMA go into more detail with regards to conscientious objection, particularly with regards to the best interests of patients. Some ask medical professionals to be open with colleagues about their objection so that alternative arrangements can be made, and some bodies (such as RCOG) require referral to colleagues who do not have a conscientious objection. The positions of these bodies would not be altered by decriminalisation.

BPAS supports the legal provision of conscientious objection to allow healthcare professionals to practice in line with their personal beliefs, alongside guidelines that make clear the obligations of an individual with a conscientious objection to ensure their patient can access appropriate care. We are clear that current law provides adequate protections for anybody who chooses to opt out

of abortion provision, and that any efforts to extend conscientious objection pose a serious risk to the provision of high-quality and timely NHS-funded treatment for terminations of pregnancy.

Enacting decriminalisation

Legislation on the decriminalisation of abortion passed in Westminster would only be enacted in England and Wales. Northern Ireland is not covered by the Abortion Act and has had control over their abortion policy since 2008. Scotland achieved power over abortion legislation in the Scotland Act 2016.

In March 2017, Diana Johnson MP presented a bill seeking to decriminalise abortion up to 24 weeks of pregnancy. This was supported by MPs across the political spectrum, and passed its first stage by 172 votes to 142. Unfortunately, due to the general election, this bill was not able to pass any further in the previous parliament.

Polling indicates that the current parliament is pro-choice. Polling conducted by YouGov (commissioned by bpas) in 2017 found that, the majority of MPs now support a more liberal position than our current abortion law. Over two-thirds (69%) of those polled – including 58% of Conservative MPs and 84% of Labour MPs - agreed that a woman should be able to have an abortion if she does not want to continue with a pregnancy. Furthermore, over two-thirds (71%) of MPs - 58% of Conservative MPs and 83% of Labour MPs - polled also stated that laws surrounding abortion services should be covered by laws and regulations used for healthcare . Only 16% of MPs think the law surrounding abortion services should be covered by criminal law.

In October 2017, Diana Johnson announced that she would be working on producing a full draft bill to enact decriminalisation which would be published in early 2018. Produced in conjunction with BPAS, several law professors, the Voice for Choice coalition, and an experienced legislative draftsperson, the bill will include:

- An amendment to Section 58 of the *Offences Against the Person Act 1861* to narrow the law against abortion to post-24 week procedures.
- Repeal of Sections 59 and 60 of the *Offences Against the Person Act 1861* (the procurement of drugs to cause an abortion and concealment of birth)
- A statement that no crime is committed by any woman who procures her own abortion, regardless of gestation
- Additional offences for non-consensual abortion, including through the provision of drugs without a woman's knowledge and through violence
- Minor amendments to the Abortion Act 1967, which would remain in place to provide a framework for post-24 week abortions.

This bill would remove all consensual pre-24 week abortion from the criminal law and have it subject to the same legal and procedural guidelines and governance as any other medical procedure.