



Abortion should not be a crime

BPAS briefing on why abortion law needs to change

Summary

- In England and Wales today, a woman who ends her own pregnancy can be sent to prison for life under laws created before women could vote. From 22nd October 2019, these laws will be repealed in Northern Ireland but still remain in place in England and Wales.
- The Offences Against the Person Act 1861 still governs abortion, putting it in the same position as rape, child-stealing, and blowing somebody up with gunpowder.
- This criminalisation underpins abortion provision – making legal and essential medical care harder to access with longer delays, and meaning some women are forced to continue with pregnancies they do not want.
- More than 10,000 packets of abortion pills have been seized on their way into Great Britain in the last 3 years – every one of which is a crime under the Offences Against the Person Act
- There have been several cases since 2015 where women who have ended their own pregnancy in England or Wales have been subjected to police investigation
- Only 14% of people are aware of the current law and 65% of people believe it is wrong that abortion is criminalised
- International, medical, and civil society bodies are all calling for a change in abortion law – treating it as a medical rather than criminal matter and ensuring no woman can be jailed for ending her own pregnancy.

The current law

Abortion in Great Britain 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 do so under the Abortion Act 1967. But this law did not decriminalise abortion – it simply made it legal in certain, fixed circumstances.

Under current law, abortions must be signed off by two doctors, they must take place in a hospital or premises approved by the Secretary of State for Health, and women must meet one of the seven criteria that allows abortion. Any woman who undergoes an abortion without the permission of two doctors – for example by ordering pills online – can be prosecuted and receive a life sentence as her abortion takes place outside of the Act.

The law also requires doctors to submit a form to the Chief Medical Officer for every abortion that they perform with the woman's personal identifying information, which is then stored by the Department of Health. **Not wanting a child is not a legal reason for having an abortion** in Great Britain.

Impact of the law

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. This requirement can cause **delays for women**, particularly in areas where GPs are required to refer them for care. This can harm their health as abortion – while extremely safe – is safer the earlier it is performed.

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.

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

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.**

Obstacles to access

Although early medical abortion can safely be offered from GP or other community settings, as it is in other countries, the fact that all non-hospital based services must be specifically licensed and approved by the Secretary of State for Health can be a barrier to improving access. Women who are unable to travel to clinics, because of distance, personal circumstances such as coercive relationships, or medical conditions, are poorly served by the current framework, and if they take matters into their own hands by accessing pills online they risk prosecution and prison.

Over the last three years, some 10,000 packets of abortion pills have been seized in Great Britain by drug enforcement officers. The fact that women may know they are breaking the law and risking prosecution may mean they are less likely to seek help if they are concerned about symptoms during or in the immediate aftermath of treatment.

Women on Web

Women on Web is a digital community that answers thousands of help-emails every day from women around the world. If from a country where access to safe abortion is restricted and under 10 weeks pregnant, the website can refer women to a licensed doctor who can provide abortion pills on completion of an online consultation which reveals no contraindications. However, requests from women in Great Britain, despite legal access to abortion, have been increasing, and a recent review found 100 requests over a 7-week period, or an average of 2 per day.

The women in contact with this service who felt unable to access legal abortion services included women experiencing severe pregnancy sickness and those with children with complex medical needs.

These included:

“My young child is undergoing chemotherapy. I have no one to care for her whilst I attend a clinic appointment. I really am at my wits’ end as I don’t have any way to attend this appointment so I would like to have the abortion at home.”

“I come from a strict religious family, which requires me to have a chaperone when I go out so unfortunately I am not able to access the services. I have been trying herbal alternatives like papaya and vitamin c for over a week but it’s not working and now I am losing my mind.”

“I can’t cope with the pregnancy until [the next available appointment]. I feel really sick every day and I can’t cope with day to day activities and looking after my two young children as a single mother. So I desperately want to get rid of this pregnancy because I can’t carry on until that date.”

Healthcare law rather than criminal law

Changing the way abortion is dealt with in law would mean repealing laws specific to abortion – abortion would be treated like any other medical procedure and governed by medical regulation and standards in the same way, for example, as maternity care. This is sometimes known as ‘decriminalisation’. **Decriminalisation does not mean deregulation.**

Abortion services would be provided in accordance with legislation and regulation that already exist, and services would need to be provided in accordance with guidance from bodies such as the Royal College of Obstetricians and Gynaecologists and NICE. **There is nothing in the 1967 Abortion Act which provides for informed consent, safeguarding and support services for women – these provisions are contained in entirely separate bodies of regulation.** Further information on how this is provided in England can be found [here](#).

S58 and s59 of the Offences Against the Person Act 1861 (OAPA) would be **reformed to take consensual abortion out of the criminal law.** Any non-consensual abortion, including through violence or covertly administering pills, would remain illegal with specific new offences.

Decriminalisation would not change the time limit for abortion – that would remain at 24 weeks. The Abortion Act 1967 provisions after 24 weeks (to allow abortion where a woman’s life is at risk or where there is a severe foetal abnormality) would remain in place.

Support for changing the law

Polling from July 2019 found that nearly two-thirds (65%) of British adults do not support the current criminal sanction for abortion. Just 14% support it.

Medical organisations including the **British Medical Association, the Royal College of Obstetricians and Gynaecologists, the Royal College of Midwives, the Royal College of General Practitioners, the Royal College of Nursing, and the Faculty of Sexual and Reproductive Health** support and campaign for the decriminalisation of women and healthcare professionals involved in providing abortion services across the UK.

Calls for decriminalisation are also supported by key women’s rights organisations including **Women’s Aid, Rape Crisis England and Wales, and Maternity Action.**