



We care about women

**Updated with an analysis
of Diana Johnson MP's
published Abortion Bill**

Why abortion should not be decriminalised
A briefing to help you write to your MP



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The laws relating to abortion in England, Wales and Northern Ireland

Offences Against the Person Act 1861

- In England, Wales and Northern Ireland abortion is a criminal offence under the 1861 Offences Against the Person Act (OAPA).
- The 1861 Act is the main piece of legislation which governs abortion in Northern Ireland, which is why abortion is very restricted there. (See special note on Northern Ireland at the end of this briefing.)
- OAPA does not extend to Scotland.

Infant Life (Preservation) Act 1929

- This Act makes it illegal to kill a child capable of being born alive. 28 weeks' gestation is presented in the Act as prima facie evidence that a baby is capable of being born alive, although babies today survive at much younger ages.
- An amendment to the Human Fertilisation and Embryology Act in 1990 ensured that abortions performed under the 1967 Abortion Act were not offences under the 1929 Act. The 1990 Act also introduced a 24 week time limit into the Abortion Act for some cases, in particular where there was a risk to the mental or physical health of the mother if she continued with the pregnancy. These are the vast majority of abortions performed under the 1967 Act. In other cases, such as for disability or where the life of the mother was at risk, abortion was made permissible up to and even during birth in 1990.

Abortion Act 1967

- In England and Wales abortion is primarily governed by the 1967 Abortion Act.
- The 1967 Abortion Act is a bad law. But it did not make all abortions legal, nor did it give women a right to abortion.
- Outside the terms of the 1967 Abortion Act, abortion is a criminal offence under OAPA.
- In theory, the 1967 Act set limits on the grounds under which an abortion can be performed. In practice, those limits are ignored by both doctors and the Department of Health, which has resulted effectively in abortion on demand at least below 24 weeks. About 98% of abortions are performed on the ground that continuing the pregnancy entails greater risk to the mental health of the woman than having an abortion. A pregnancy being "unwanted" is classed as a risk and doctors rarely make a proper assessment of the woman's mental health. Studies from around the world indicate adverse mental health outcomes for women following abortion which are largely ignored by the medical profession when referring women for abortion.¹

¹ Dr Greg Pike, "Abortion and Women's Health", published by SPUC.

Introduction

The Society for the Protection of Unborn Children (SPUC) is opposing any moves which would remove the current criminal sanctions associated with abortion. This briefing booklet is to bring you up to date on the issue.

On 23 October 2018 Diana Johnson, Labour MP for Hull North, sought leave of the House of Commons to introduce an Abortion Bill under the Ten Minute Rule procedure. Ms Johnson's Bill was yet another attempt to push towards decriminalising abortion in Northern Ireland, England and Wales. MPs voted 208 to 123 in favour of introducing the Bill.

Diana Johnson's Bill sought to amend section 58 and to repeal sections 59 and 60 of the Offences Against the Person Act (OAPA).

Bills introduced under the Ten Minute Rule virtually never reach the statute book and are used as a way of raising issues or even testing the opinion of the House of Commons. However, such Bills can act as a **stepping stone towards future legislation**.

The immediate threat is that some or all of the clauses in Diana Johnson's Bill could be inserted into a Government Bill, which could then become law. The upcoming legislation most likely to be hi-jacked by the abortion lobby in the House of Commons is the draft Domestic Violence and Abuse Bill.

Please use this booklet to write to your MP. It is important that MPs receive letters from their pro-life constituents pointing out the truth about decriminalising abortion and highlighting the specific dangers in Diana Johnson's Abortion Bill, as published on 20 November 2018 (see page 4).

A leading legal expert looked at an earlier draft version of Diana Johnson's Abortion Bill, and said:

"In short, no-one should be under any illusion as to the extreme nature of this Bill. If enacted, it would create one of the most permissive abortion regimes in the world, which it would not be unreasonable to describe as tantamount to an abortion free-for-all, at least until the end of the 24th week."

Professor John Keown DCL (Oxford), Kennedy Institute of Ethics, Georgetown University, USA.

Abortion and the criminal law

Why abortion should be governed by the criminal law

- Abortion involves the taking of human life. It is for this reason that those involved in abortion provision should be subject to the strict sanctions offered only by the criminal law.
- Retaining criminal sanctions for abortion shows that it is a very serious matter, whereas the pro-abortion lobby wants the public to view abortion, the killing of an unborn child, as completely normal, safe and convenient.

Changing the law to decriminalise abortion

- Decriminalising abortion would have the effect of removing criminal sanctions associated with abortion. In other words, abortion would be decriminalised.
- The amendment of section 58 and the repealing of section 59 would make the 1967 Abortion Act redundant.
- The amendment of section 58 and the repealing of section 59 would usher in unrestricted abortion, at least before 24 weeks, in Northern Ireland, England and Wales.
- Abortion law is devolved in Scotland but the pressure for Scotland to follow suit and liberalise abortion law would be enormous if decriminalisation occurs in the rest of the UK.

Analysis of Diana Johnson's Abortion Bill

The following five points look at the key concerns:

1. Abortion for any reason up to 24 weeks with no requirement for medical supervision

Diana Johnson's Bill sought to change section 58 of OAPA to make abortions illegal **only after 24 weeks of pregnancy**.² This means that:

- It would no longer be a crime for anyone, **medically qualified or not**, to try to carry out an abortion on a woman by administering pills (medical abortion) or by inserting an instrument (surgical abortion) **up to the 24th week of pregnancy**.
- Abortion could be performed **for any reason** up to 24 weeks, including sex selection abortion.
- There would be no requirement for two doctors to give an opinion that an abortion is 'necessary'.
- Even if some abortions still took place in a medical setting it would be possible for untrained healthcare workers to administer abortions.

2. Anyone can supply the means for an abortion, in any place to any person

Section 59 of OAPA makes it a criminal offence to supply pills or instruments in the knowledge that they will be used for an abortion. Repealing section 59 means that:

- **Anyone** could supply the means for an abortion to anyone, for example, to abusive men wanting to coerce women into an abortion.
- These transactions could take place **anywhere**: in the pub or on the street. For example, nurses could give abortion pills to girls in school clinics.
- Online abortion pill businesses, as well as private abortion clinics, would proliferate under such conditions. (Within the current legislative framework, the Care Quality Commission has found extensive abuses, which put women at risk, at well-known private abortion providers such as Marie Stopes International and the British Pregnancy Advisory Service. This is likely to get much worse if section 59 is repealed.)

3. The bodies of aborted babies can be dumped

Diana Johnson's Abortion Bill includes repealing section 60 of OAPA, which would abolish the crime of concealing the body of a baby who dies before, during or after birth. (This section is currently used when infanticide is suspected but cannot be charged due to lack of evidence.)

There are obvious public health risks attached to such a practice. However, repealing section 60 is also a sign of the utter contempt with which the pro-abortion lobby views the pre-born child. Those wanting to decriminalise abortion consider that unborn babies are so worthless, it does not matter if their dead bodies are dumped without trace.

² Abortion is currently legal up to birth under clauses 1 (b), (c) and (d) of the 1967 Abortion Act. These allow for abortion up to birth in cases where it is deemed:

"(b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

(c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) that there is a substantial risk that if the child were born it would suffer from such physical and mental abnormalities as to be seriously handicapped."

4. Abortions by doctors allowed after 24 weeks

Diana Johnson's Bill aims to make it virtually impossible for an unscrupulous doctor to be prosecuted for killing an unborn baby after 24 weeks. In such a case, a doctor would only have to prove that he or she "believed, in good faith" that the pregnancy had not exceeded its 24th week. In the unlikely event of prosecution, if a doctor claimed to have believed this, it would not be easy to secure a conviction.

Not only does this make a nonsense of the pro-abortion argument that Johnson's Bill 'only' decriminalises abortion for any reason up to 24 weeks, it removes an important restraint on the medical profession.

Further arguments against decriminalising abortion

The impact on women

Contrary to claims made by the pro-abortion lobby, women would not be safer if abortion is decriminalised.

- Women in violent relationships would be at greater risk from abusive men who can by-pass any medical setting and readily obtain abortion pills elsewhere. Intimate partner violence (domestic abuse) is a risk factor for abortion around the world.³
- A woman buying abortion drugs online will receive no after-care, so her use of them would be inherently more risky.⁴
- Underage girls could be at particular risk. Serious case studies of child sexual abuse rings in England found that vulnerable girls were certified for abortions and given the morning-after pill and contraceptives with no questions asked. This approach masked the reality that the girls were being abused.⁵ A culture of weaker governance of abortion, where many abortions would take place in an unsupervised, entirely private environment, would leave girls at greater risk from predatory men.

Why abortion cannot be regulated by the medical profession

- If the law on abortion is changed, it is likely that regulation of abortion would fall to bodies such as the Royal College of Obstetricians and Gynaecologists (RCOG).
- It is extraordinary that it should be thought appropriate that a medical body such as the RCOG should regulate abortion, given that Diana Johnson's Bill (which the medical bodies named below* all supported) is seeking to reduce or remove medical involvement with abortion. In other words, the medical profession cannot both take abortion out of the medical sphere and regulate it on the grounds that it is a medical matter.
- In addition, abortion providers themselves admit that the vast majority of abortions are carried out not on 'medical' grounds but simply because the pregnancy is 'unwanted'.⁶ This alone would suggest that a non-medical procedure, involving the taking of a human life, should be governed by the criminal law.
- Diana Johnson's Bill, if enacted, stipulates that anyone could supply the means for an abortion. How will the medical profession monitor and regulate the activities of people entirely outside its own sphere, such as those running online abortion pill businesses?
- The regulation of abortion should not be handed over to those who effectively constitute the abortion industry. This would be like putting the fox in charge of the chicken coop.

³ Wokoma TT, Jampala M, Bexhell H, Guthrie K & Lidow S (2014) A comparative study of the prevalence of domestic violence in women requesting a termination of pregnancy and those attending antenatal clinic. BJOG 121:627-633

⁴ For information on the dangers of abortion pills see "Abortion pills: Not safe or simple" published by SPUC

⁵ Norman Wells, "Unprotected" (2017) Family Education Trust

⁶ Furedi A, 'Are there too many abortions?' in Abortion Review Special Edition 2: Abortion and Women's Lives (Papers from the BPAS conference, London 25-26 June 2008), p3

The impact on the medical profession

- *The RCOG, along with the British Medical Association and the Royal College of Midwives, are openly collaborating with the abortion industry in the push for decriminalisation.
- The 1967 Abortion Act has some provision for conscientious objection. If this Act is made redundant, the RCOG is likely to put further pressure on doctors, and junior doctors and medical students could be targeted in particular.
- The current RCOG guidance to trainees on 'termination of pregnancy' states that "practitioners cannot claim exemption from giving advice or performing the preparatory steps to arrange an abortion...such steps include referral to another doctor, as appropriate."⁷

Trivialising abortion

- The head of the RCOG, Professor Lesley Regan, has led calls for abortion to be decriminalised and has said that abortions should be treated no differently from other 'medical procedures' – including something as simple as removing a bunion.⁸
- Abortion should not be downgraded to a routine 'medical' matter, where it is considered as 'just one aspect of ... medical care, like having appendicitis, like having a headache ...' .⁹
- Nor should abortion under 24 weeks be downgraded to a mere matter of civil law, where, for example, people trading online in abortion pills could be sued but not criminally prosecuted.

The myth of prosecution for women

There is no substance to pro-abortion claims that, currently, women who have abortions in England and Wales are living under the shadow of prosecution. This is a myth.

- Only two women were prosecuted for procuring their own abortions since 1967.
 - Natalie Towers (32-34 weeks pregnant) bought abortifacient pills online to bring about the death of her unborn baby. Mitigating factors were taken into account by the judge and she received a sentence of two and a half years. This is greatly below the permitted sentence, and typically only half the sentence is served.¹⁰
 - Sarah Catt (at least 38 weeks pregnant) received a sentence of three and a half years. During five pregnancies she had concealed the pregnancy or presented too late for termination. This was also below the limit of what the law currently allows – up to 14 years' imprisonment.¹¹
- No women have been prosecuted for abortion in Scotland and Wales in the fifty years since the 1967 Abortion Act came into force.

Democratic accountability

Abortion is a controversial issue which elicits strong opinions. Presently those opinions can be aired publicly and be subject to democratic control and legislation controlled by elected politicians. This oversight will be lost if the law makes abortion controlled only by a medical profession currently allied with the abortion industry, instead of the criminal law.

Members of the public should be able to lobby their MPs about abortion, and to treat it as a voting issue if they want to, without MPs asserting that this is a matter for the medical profession and not for politicians.

⁷ <https://www.rcog.org.uk/en/careers-training/resources--support-for-trainees/advice-and-support-for-trainees/advice-for-trainees-on-termination-of-pregnancy/>

⁸ <https://www.spuc.org.uk/news/news-stories/2017/september/abortion-should-be-like-sorting-bunions>

⁹ E. Lee, S. Sheldon, J. Macvarish, The 1967 Abortion Act fifty years on: Abortion, medical authority and the law revisited, *Social Science & Medicine*, vol. 212, July 2018

¹⁰ Hartley-Parkinson R. "Mother jailed for taking poison to kill unborn son". *Metro Online*, 17 December 2015. <http://metro.co.uk/2015/12/17/mother-jailed-for-taking-poison-to-kill-unborn-son-5571849/>

¹¹ R v Sarah Louise Catt [2013] EWCA Crim 1187. [www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Crim/2013/1187.html&query=\(sarah\)+AND\(catt\)](http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Crim/2013/1187.html&query=(sarah)+AND(catt))

A special note on Northern Ireland

The abortion lobby in the Westminster Parliament is exploiting the tragic outcome of the referendum on the 8th Amendment in the Republic of Ireland in May 2018, in order to impose widespread abortion on Northern Ireland.

By targeting Northern Ireland with the aim of repealing OAPA, the abortion lobby gains changes to the law in England and Wales also.

- Pro-abortion propaganda is focused on sensationalising cases of women in Northern Ireland allegedly suffering because of restrictive abortion laws. Women in the rest of the United Kingdom, and around the world, suffer grievously because of liberal abortion laws.
- If OAPA is repealed, Northern Ireland will change from being one of the safest places in the world for unborn babies to one of the most dangerous.
- Sections 58 and 59 of OAPA have prevented 100,000 abortions in Northern Ireland.

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