

Society for the Protection of Unborn Children (SPUC) submission of 31 March 2023

PE1969/E: Amend the law to fully decriminalise abortion in Scotland

The first thing to note about this petition is that it is factually incorrect. It states “Abortion is not decriminalised in Scotland. The Offences Against the Person Act 1861 made abortion a criminal offence (punishable with life in prison in the U.K.)” As *Scottish Legal News* has pointed out, the Offences Against the Person Act 1861 does not apply to Scotland. Section 78 of the 1861 Act is entitled: ‘Act not to extend to Scotland’. It reads: “Nothing in this Act contained shall extend to Scotland, except as herein-before otherwise expressly provided.”

Given the fundamental inaccuracy in this petition, it is unclear what the petitioner means by “fully decriminalise abortion services in Scotland”. Before the 1967 Abortion Act, abortion in Scotland was regulated under Common Law. Jonathan Brown of the University of Strathclyde says that “in Scotland, ‘therapeutic abortion’ was regarded as lawful and women who sought termination even from ‘back-alley’ providers were not expressly criminalised.”¹ The contention in the petition that Scottish women are at risk of imprisonment for abortion is therefore not supported – and indeed, no woman in Scotland has ever been criminalised for abortion.

Dr Brown further says: “advocates of the ‘de-criminalisation’ of abortion in Scotland must reckon with what, exactly, ‘de-criminalisation’ is to mean. While...legislative clarity would be welcome, it is not altogether clear that a woman or girl who seeks to procure termination herself commits a crime. Rather, it seems that the fundamental nature of the crime of abortion in Scotland is the intentional or reckless provision of an unsafe termination in circumstances which might put the prospective mother’s life at risk. That such is criminal, it might be thought, is reasonable.”

We agree that keeping abortion within the criminal law is essential for women’s safety. While, as stated, the 1861 Act does not apply to Scotland, in England and Wales it is most often used to prosecute men who have caused or attempted to cause an abortion through physical

¹ <https://www.strath.ac.uk/humanities/lawschool/blog/decriminalisingabortionchallengesforscotland/>

violence or through administering drugs without the woman's consent. There must be protections for women against such abuse. The increasing evidence of the extent to which women are coerced into abortion (a recent BBC poll found that 15% of British women have experienced coercion or pressure to have an abortion they did not want²) shows that it is essential to have a way of prosecuting abusive partners and others who abuse women in this dreadful way.

We also contend that on a contentious moral issue such as abortion, laws and regulations should be decided by accountable elected politicians, rather than devolved solely to the healthcare profession, as would happen if it were not regulated by the law. Decriminalisation would mean that MSPs (and so the public) would have no say on how late abortion is allowed (abortion providers now openly argue that there should be no upper limit), for what reasons (eg whether sex-selective abortion should be permitted), and what safety standards are in place. 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'.³ This alone would suggest that a non-medical procedure, involving the taking of a human life, should be governed by the criminal law, not by unaccountable medical bodies.

Turning now to the demand to ensure that "abortion services are available up to the twenty-fourth week of pregnancy across all parts of Scotland", it is also unclear how the petitioner expects this to be achieved, especially without risking conscience rights. Given that only 71 abortions, 0.5% of the total, were carried out over 20 weeks in 2021, it does not seem like a priority for the strained Scottish NHS.

While SPUC believes that unborn children of all gestations should be protected by the law, this call for post-viability abortion is also out of line with public opinion. Recent polling shows that a minority (40%) of the population believe that abortion should be available even to 20 weeks⁴, let alone 24. As the survival rate for babies born prematurely at 23 and 22 weeks improves, public sympathy is more likely to swing behind reducing the current provision than pushing it to its limit.

² <https://savanta.com/knowledge-centre/poll/reproductive-coercion-poll-bbc-radio-4-8-march-2022/>

³ 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

⁴ <https://www.ipsos.com/sites/default/files/ct/news/documents/2022-07/Global%20Advisor-Global%20Opinion%20on%20Abortion%202022-Graphic%20Report.pdf>