

# British Pregnancy Advisory Service submission of 3 April 2023

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

As a group of organisations that both provide, and represent those who provide abortion healthcare, we support petition PE1969's aims to remove abortion from the criminal justice system through a process of decriminalisation. It is a goal towards which we have been working across the UK for a number of years.

### Current law

Abortion in Scotland has long been underpinned by common law offences. This is different to the statutory underpinning noted in the petition text which applies only to England and Wales, but one source describes the Scottish law as follows:

#### *PROCURING ABORTION*

*To cause or procure abortion whether by drugs or by instruments or violence is a crime. There must be criminal intent, for it may be necessary to cause abortion. The woman herself may be guilty, if she be aware of the purpose for which the drug is administered or the instrument used.<sup>1</sup>*

While a doctor providing a therapeutic abortion in a medical setting, and the woman involved, are not liable for prosecution under common law, it is less clear with regards to the woman if she seeks to end her pregnancy outside a medical setting – in a modern example, for instance, by buying abortion medication online.

The Abortion Act 1967 did not sweep away these common law offences – but codified the legalities of providing abortion in certain, fixed circumstances. Those include having two doctors certify that a woman meets one of the grounds for an abortion, that the abortion takes place in an NHS hospital or licensed premises, and requiring that the abortion is directed by a registered medical practitioner. The law also leaves in

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<sup>1</sup> A Practical Treatise on the Criminal Law of Scotland, 5th edn, by J Walker and D J Stevenson (1948) p114

the hands of the Minister for Health decisions regarding licensed premises – most recently used to legalise (or potentially in future, remove) access to telemedical abortion.

### Impact of the law on abortion provision

Prior to the introduction of the Abortion Act, provision of abortion in Scotland varied significantly – with the north east of Scotland carrying out a substantial number of procedures, while Glasgow declined to provide almost any. In this way, while the Abortion Act in England selectively legalised abortion, in Scotland it instead provided more of a standardised framework for access to healthcare. However, it also placed limitations on provisions which the underlying common law did not require.

It requires two doctors to approve every abortion, for instance. It limits the role of nurses and midwives in the direction of care provided under the Act. And it shaped the role and understanding of providers such that there is now nowhere in Scotland where any doctor, despite a lack of formal criminalization, would seek to provide much-needed care to a woman in a way that contravened the provisions of the Act.

### The case for change

Scotland lags behind the over 50 countries worldwide which have modernised their abortion laws since 1996, including Northern Ireland where Westminster decriminalised abortion in 2019<sup>2</sup>. Current laws are also out of step with The United Nations High Commissioner for Human Rights (OHCHR) who has stated that “*human rights bodies have provided clear guidance on the need to decriminalise abortion [...] to ensure women’s right to health as well as other fundamental human rights*”<sup>3</sup>.

Across the UK, and broad coalition of international, medical, and civil society bodies are all calling for a change in abortion law<sup>4</sup> – treating it as a medical rather than criminal matter and ensuring no woman can be jailed for ending her own pregnancy.

We want to be clear that 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

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<sup>2</sup> [The World's Abortion Laws - Center for Reproductive Rights](#)

<sup>3</sup> [INFO Abortion WEB.pdf \(ohchr.org\)](#)

<sup>4</sup> [Decriminalise abortion - BPAS Campaigns \(bpas-campaigns.org\)](#)

accordance with best practice and guidance. By changing the legal framework, 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.

### Conclusion

**We therefore fully support the aims of this petition and urge the committee to take further steps towards decriminalising abortion in Scotland.**

We believe that this change in law would be a strong symbol in defining Scotland as a country that respects the bodily autonomy of women and upholds the right to access abortion on their terms.

It will align Scotland with the broader movement to strengthen women's reproductive rights and access worldwide, improve the ability of providers to innovate and vary delivery of services, and ensure that abortion continues to be treated as the healthcare it is.

Yours sincerely,

- Chief Executive Officer of the British Pregnancy Advisory Service (BPAS)
- President of Royal College of Obstetricians and Gynaecologists (RCOG)
- Co-Chair of the British Society of Abortion Care Providers (BSACP)
- President of the Faculty of Sexual and Reproductive Healthcare (FSRH)
- Joint-Chair of the Royal College of General Practitioners Scotland (RCGP)