

CARE for Scotland submission of 6 April 2023

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

1. We are extremely concerned about the potential impact of the petitioner's request to: "*bring forward legislation to fully decriminalise abortion services in Scotland*". The NHS Scotland website says "*It's legal to have an abortion during the first 24 weeks of pregnancy, so long as certain criteria are met.*"¹

Why is CARE concerned about the law?

2. The current law affords the unborn some legal recognition and protection and in so doing recognises that an abortion is **not simply another medical procedure** — another human life is involved. As the Preamble to the UN Convention on the Rights of the Child says the child "*needs special safeguards and care, including appropriate legal protection, before as well as after birth*".
3. By definition, "decriminalisation" could lead to the removal of all existing legal safeguards protecting the child in the womb, **potentially leading to termination upon any grounds (including sex selection) and up to any stage of pregnancy (i.e. up to birth)**.
4. Baroness Hale in a Supreme Court judgment stated "*the community undoubtedly does have a moral interest in protecting the life, health and welfare of the unborn - it is that interest which underlies many areas of the law, including the regulation of assisted reproduction, and of the practice of midwifery, as well as of the termination of pregnancy*".² The Westminster Government has stated that *the period from conception to age two is globally recognised as critical for building strong societies*".³

Are there reasons to be concerned about abortions on the grounds of sex selection?

¹ <https://www.nhsinform.scot/tests-and-treatments/surgical-procedures/abortion>

² [2018] UKSC 27, Baroness Hale at paragraph 21

³ HM Government, *The Best Start to Life: A Vision for the 1,001 Critical Days*, 2021, pages 10, 5, 6 and see 125 and 126 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973112/The_best_start_for_life_a_vision_for_the_1_001_critical_days.pdf

5. **We are firmly of the view that termination based on sex selection, or up to birth, have no place in a civilised society and would not have wider public support.** The UK Government have made clear that under the Abortion Act 1967, which applies in Scotland, “*Sex selection is not one of the lawful grounds for termination of pregnancy.*”⁴ It is contrary to many statements made under international law which require prohibition of sex-selective abortion:
- 5.1. UN Commission on Human Rights Resolution 1996/49 and UN General Assembly Resolution 52/106 calls upon states to “*enact and enforce legislation against... prenatal sex selection*”⁵
- 5.2. The International Conference on Population and Development called to “*eliminate all forms of discrimination against the girl child*” which include prenatal sex selection.⁶
- 5.3. The Beijing Platform for Action said: ‘*Eliminate all forms of discrimination against the girl child...which result in harmful and unethical practices such as prenatal sex selection ...often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses*’.⁷
6. With the advent of non-invasive prenatal testing (NIPT),⁹ it is now possible to discern the sex of an unborn child the **sex of the baby between 7¹⁰ and 10 weeks’ gestation.**¹¹ A 2019 journal article stated, “*The introduction of NIPT has the potential to make the practice of sex-selective termination of pregnancy (TOP) an even more pressing issue. NIPT can determine the sex of the fetus very*

⁴ House of Commons [Written PQ 6069, Answered 28 Jan 2020.](#)

⁵ UN Commission on Human Rights, The elimination of violence against women, 19 April 1996, E/CN.4/RES/1996/49 <https://www.refworld.org/docid/3b00f22f18.html>

⁶ UN General Assembly, The girl child, 11 February 1998, [A/RES/52/106](#)

⁷ UN, Population and Development: [Programme of Action](#) Adopted at the International Conference on Population and Development, Cairo, Sept. 5–13, 1994, New York: Department for Economic and Social Information and Policy Analysis, UN, 1995.

⁸ https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf

⁹ See <https://www.belfastfertility.co.uk/treatments/harmony-prenatal-test/>

¹⁰ Bowman-Smart H, Savulescu J, Gyngell C, Mand C, Delatycki MB. Sex selection and non-invasive prenatal testing: A review of current practices, evidence, and ethical issues. *Prenatal Diagnosis*. 2019;1-10. <https://obgyn.onlinelibrary.wiley.com/doi/full/10.1002/pd.5555>

¹¹ The Nuffield Council on Bioethics say “*NIPT can, in principle, provide earlier results than current screening tests. NIPT usually can be performed at nine to ten weeks of pregnancy, with results being delivered usually within a week of the test.*” *Non-invasive prenatal testing: ethical issues*, March 2017, page 4, <http://nuffieldbioethics.org/wp-content/uploads/NIPT-ethical-issues-full-report.pdf>.

<https://www.nidirect.gov.uk/articles/testing-abnormalities> says “Blood testing for Down’s syndrome can be carried out between 11 and 13 weeks of pregnancy”

accurately and very early in the pregnancy. It is increasingly accurate from 7 weeks' gestation."¹²

The concerns about access

7. We note that terminations reported for 2021 were occurring at **near record numbers in Scotland**, and that the provision for abortions at home, introduced during Covid-19, are to be continued. As such, we believe that the petition projects a **false narrative** that access to abortion services is being impeded. This is evidently not the case.

Wider concerns about abortions

8. The petitioner's focus on widening access and decriminalisation also simultaneously risks diverting attention from important issues such as the current termination of babies with Downs' Syndrome (already legal up to birth), ongoing advances in improving foetal viability, efforts to reduce the number of abortions from its current very high level, and wider discussions about drivers of abortion in Scotland, such as the links between termination and deprivation.¹³
9. Additionally, we note that on 22 March 2023, the Committee agreed to close Petition PE1996 'Take action to prevent discriminatory abortions for disability in Scotland' on the sole grounds that the Scottish Government have indicated that they have no plans to amend the Abortion Act 1967. Consistent logic would therefore demand that this petition should also be closed for the same reason.
10. **We therefore strongly urge the Committee to reject the Petition and all subsequent calls for decriminalisation.**

¹² Bowman-Smart H, et al *Prenatal Diagnosis*. 2019;1-10, *Op Cit*

¹³ <https://www.publichealthscotland.scot/publications/termination-of-pregnancy-statistics/termination-of-pregnancy-statistics-year-ending-december-2021/> published 31 May 2022.